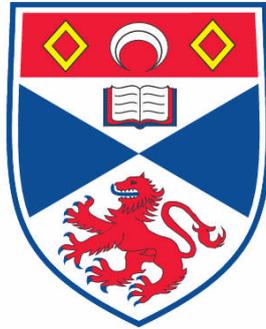


**DEFENDING THE "SATANIC VERSES" : CONSTRUCTIVE
ENGAGEMENT : BRITISH-IRANIAN RELATIONS AND THE
RIGHT TO FREEDOM OF EXPRESSION (1989-2004)**

Bernd Kaussler

**A Thesis Submitted for the Degree of PhD
at the
University of St. Andrews**



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Defending the “Satanic Verses”

Constructive engagement:
British-Iranian relations and the right to freedom of expression (1989-2004)

Thesis submitted for the degree of Doctor of Philosophy

Bernd Kaussler

St Andrews, 3 May 2007

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Abstract

This thesis aims to conceptualize what is often referred to in diplomacy, as a policy of “constructive engagement”, by employing neoliberal-institutionalist theories and conflict resolution approaches. The adopted “model for constructive engagement” serves as the theoretical framework and centres on the basic assumption that non-coercive diplomacy coupled with the offer of incentives is best suited at resolving conflict as well as promoting human rights in international relations. Rather than looking at determinants of foreign policy making, the thesis focuses, therefore, on the actual exercise of power and influence in international relations. As such, power, both in terms of a state’s available assets as well as seen as a form causation, is considered the crucial variable in determining diplomatic manoeuvring and negotiation behaviour. The empirical context for the research project is provided by the case of British-Iranian relations during the period from 1989 to 2004. The narrative is divided into two parts: the first one deals with the impact of the *fatwa* against Salman Rushdie by *Ayatollah* Khomeini on bilateral relations and investigates British diplomacy towards Tehran, which followed the European Union’s policy of “Critical Dialogue” with Iran. Whilst the promotion of human rights was on the agenda of the “Critical Dialogue”, findings indicate that contrary to other EU member states, most notably Germany, Whitehall was able to genuinely pursuing a policy of “constructive engagement”, demanding meaningful changes in Iranian behaviour. However, findings also show that Britain’s priority was at resolving the “Rushdie affair” and not necessarily at promoting and protecting human rights in Iran. The second part of the narrative looks at the “Comprehensive Dialogue” which was implemented by the European Union in 2000 and established a direct linkage between economic rewards and the improvements of human rights in Iran. Whilst the Iranian government and parliament met EU demands, the country’s maze of power centres, most notably those dominated by hardliners and conservatives, worked against any meaningful improvements in the protection and respect of human rights. Both narratives indicate to what extent diplomacy and negotiations were influenced by domestic constituents, referred to as the Two-Level Game, as well as by asymmetries of interdependence between the EU and Iran. Overall, the data implies that constructive engagement, whilst subject to political and economic interdependence, constitutes an effective form of human rights diplomacy.

INTRODUCTION

The motivation for this thesis on constructive engagement was an immediate reaction to the invasion of Iraq in 2003. The US rationale, which eventually led to the war against Iraq, was largely a product of the neo-conservative movement, which advocated an American internationalism to bring “change from a position of strength” to the world as whole and to the Middle East in particular. Confronted with such unconditional and coercive expression of US foreign policy, the underlying rationale for this thesis was to find a peaceful form of diplomacy towards that region. Turning towards the Middle East strategy of the European Union (EU), it appeared that the Common Foreign and Security Policy (CFSP) approach was generally based on Europe’s “ability to persuade” with non-coercive means as opposed to the “ability to compel” through coercive means. Neo-conservatives, such as Kagan, may well argue that the EU’s projection of soft power in its engagement with third countries is a sign of weakness rather than strength. It may also be true that because of its very proximity, reliance on Middle Eastern energy resources and deeply intertwined history that Europe’s future is embedded in the Middle East, more so than that of the United States.¹ Whilst such political and economic realities certainly provide for crucial foreign policy determinants, the question, which still needed an answer, was whether Europe’s soft-power approach is actually working. Put simply, it seemed that the EU does not change countries’ behaviour and extract concessions by threatening to invade them, but rather, with the incentive of contractual relations or the prospect of membership. For countries, like Bosnia, Ukraine or Turkey the only thing worse than having to deal with the Brussels bureaucracy is being unable to deal with it at all. EU membership and contractual relations with the Union are such powerful lures that countries are willing to change economic, judicial, legal and political structures just to join or enter such agreements.² In fact the Euro-Mediterranean partnership, also known, as the Barcelona Process, was created to turn the Mediterranean-Middle East region into a region of dialogue, exchange and cooperation with the objective of establishing peace, stability and prosperity. Whilst the prospect of belonging to a free-trade area is being held out to countries such as Jordan; Syria; Lebanon; Algeria and Morocco as the economic

¹ Geoffrey Kemp, “Europe’s Middle East Challenges” in *The Washington Quarterly*, 27:1, p. 163

² see Mark Leonard, “Why the US needs the EU” in *Time*, 28 February, 2005

incentive, the ultimate goal is to bring political concerns such as democracy, good governance, the rule of law and human rights in these Middle Eastern states into harmony with EU standards. This transformative power, which the EU is wielding or attempting to hold over the Middle East is what Nye refers to as “soft power”. This is the attraction of ones ideas or the ability to set the political agenda in a way that shapes the preferences of others.³ Europe’s penchant for such “constructive engagement” rather than coercive diplomacy ultimately provided for the theoretical research question of this thesis: “What constitutes a policy of constructive engagement and is it a viable strategy to achieve such goals as promotion of democracy, human rights, peace and economic development through foreign policy?”

While there is extensive literature on the application of hard power and negative sanctions in foreign policy through both the use of economic sanctions as well the use of force or coercion, international relations scholars have rarely considered the operation and effectiveness of constructive engagement in practice nor attempted to define this complex process theoretically within political science literature. Recognizing that realism and national security imagery are poorly adapted to analysing problems of political and economic interdependence, it appears that any bargaining model for constructive engagement will have to be based on the assumptions of liberalism that international regimes and institutions can mitigate anarchy and promote co-operation through reinforcement of reciprocity and that states will enter into co-operative relations even if another state gains more from the interaction. Hence, the research aspect on diplomacy in this thesis deals with resources, tools and limits of statecraft, with the exercising of influence and the wielding of power. Theoretically, the aim was to construct a model for constructive engagement by drawing on international relations theory, diplomatic practices and conflict resolution theory. In order to narrow the research focus, the model adopted in this thesis attempts to find mechanisms for promoting human rights in foreign policy.

³ Joseph S. Nye “The Changing Nature of World Power”, Political Science Quarterly, Vol. 105, No. 2 (Summer, 1990), p. 181

The fundamental correlation between diplomacy and the concept of human rights was based on the assumption that whilst it should be seen as a moral and legal obligation to denounce human rights violations, human rights diplomacy should also attempt to promote a culture in which human rights make sense. In a Hegelian sense this means that rights are seen as a by-product of a functioning ethical community rather than as a phenomenon that can be taken out of this context and promoted as a universal solution to the political ills of the world. Thus, the hypothesis put forward in this thesis is that constructive engagement constitutes a viable and sustainable foreign policy option to promote and protect human rights in foreign policy. It essentially promotes human rights as a distinct culture rather than as an external movement which “forces people to be free” (in a Rousseauian sense) from without.

Objectives of Case Study

Since the theory largely deals with statecraft and diplomatic efforts to promote and defend a normative concept such as human rights, British Iranian relations from 1989 - 2004 seemed an appropriate case study to test this hypothesis. The break of relations in 1989 between both countries over what the Iranians considered an offence of the sacred and the British government considered a human right issue, constituted an unprecedented event in contemporary international relations history: the break of bilateral relations over a book! Iran’s death sentence against the author (which had prompted the bilateral predicament) followed by British efforts to convince Iran of the right to freedom of expression proved to be the acid test for the model adopted in this thesis. The objective of the case study was therefore, to scrutinize *how* the British government implemented Europe’s policy of constructive engagement. Given the fact that Britain implemented the EU-CFSP of constructive engagement towards Iran (which had the improvement of human rights as a stated objective) the *impact* on human rights will also be assessed. For the sake of narrowing the research area of human rights and given the fact that the *fatwa* against Salman Rushdie was treated as a violation of Article 19 of the International Covenant of Political and Civil Rights (ICPCR), the research focus is the impact of constructive engagement on the “Right to Freedom of Opinion and Expression” in Iran. Empirically, the thesis is thus divided into two parts:

1. Research on the first phase of constructive engagement with Iran - referred to as the “Critical Dialogue” by the EU (from 1992 onwards) - covers the period of British Iranian relations from 1989-2000. This part, which is the main research focus, attempted to shed light on the reasons for the break of relations (i.e. the *fatwa*) and how both sides perceived the issue at hand. The objective was to assess how successful Britain’s policy of constructive engagement was at defending Rushdie’s right to freedom of expression, solving the issue and at protecting Article 19 in Iran.
2. Research on the second phase of constructive engagement with Iran, referred to as the “Comprehensive Dialogue” by the EU, scrutinized the more institutionalised EU-Iran Human Rights Dialogue between 2001-2004 and attempted to identify how successful this approach was at promoting and protecting human rights in general, and the right to freedom of speech in particular.

Research Sources and Methods

Whilst the traditional secrecy surrounding Whitehall and the Foreign and Commonwealth Office (FCO) indicated the need to shed light on British foreign policy, by the same token, it proved to be an impediment for the actual research. Throughout the course of this study, a total of fifteen requests for freedom of information under the British Freedom of Information Act had been forwarded to the FCO, all of which had been denied on the ground that the enquiry “ related to the formulation or development of government policy.”⁴ In an effort to substitute for this reluctance to disclose information on foreign policy and in order to provide a coherent picture of British diplomatic strategies and policy towards Iran, information was attained through publicly available primary resources, which included debates in the House of Commons and House of Lords, reports submitted by the Foreign Affairs Select Committee as well as parliamentary enquiries. A great deal of information on British decision making towards

⁴ E-mail from Ian Wilson, Information Management Group, FCO, “FOI Request 1122-05”, received 15 November, 2005

Iran in the immediate aftermath of the *fatwa* was found in “The Scott Inquiry”. Furthermore, research at Special Collections at the University of Bradford uncovered declassified proceedings of inter-departmental government meetings and proved valuable in portraying initial Whitehall strategy. Interviews with British diplomats in Iran and London helped to depict what actually happened during negotiations and how perceived leverages were being conveyed to the Iranian side. Research conducted at the Swedish Foreign Ministry Archive in Stockholm provided significant empirical data on not only the role of Sweden in protecting British interests during the break of relations with Iran, but, more importantly, managed to disclose vital information on diplomatic communications between Whitehall and the Swedish government. The most essential source of primary information was the private manuscript by Baroness Frances d’Souza at the House of Lords, who at the time had been Head of Article 19 and the Rushdie International Defence Committee. This manuscript, which had been handed to the author proved a fundamental piece of data depicting how the British government formulated and translated its policy of constructive engagement with Iran and defended Rushdie’s right to freedom of expression. What also proved vital in depicting perceived influences over Iran, were primary sources from the European Union, which included the “EU Bulletin”; the “Official Journal of the European Union”; “RAPID Press Releases” and European Parliament debates and enquiries as well as interviews with EU Commission officials. German parliamentary documents and declassified intelligence reports were equally useful sources in showing how the Europeans attempted to sway Iran.

Whilst much of this related to perceived statecraft by respective actors, research on objective political and economic factors was carried out by scrutinizing the “IMF Direction of Trade Statistics”; the “BP Review of World Energy”; the “Economist Intelligence Unit Report on Iran”; “Iran Focus”; the “United Nations Energy Statistics Yearbook” and various European, American and Iranian newspapers. These documents helped to see how subjectively perceived economic and political diplomatic instruments actually correlated to objective political and economic realities and how this translated into actual policy. Thus, in line with the model on constructive engagement, the methodology adopted was to identify how asymmetries in economic and political

interdependence between Britain and Iran influenced and dictated respective diplomatic manoeuvring and leverages vis-à-vis one another. Research on Iranian diplomacy was carried out at the Institute for Political and International Studies in Tehran (which is linked to the Iranian Foreign Ministry), the archives of the state run news agency of the Islamic Republic of Iran “IRNA”, the University of Tehran, as well as at the archive of “Atieh Baha” - an independent strategic consultancy in Iran.⁵ Consulted sources in Iran were books; journals and newspaper articles; business and political risk briefs; interviews with government officials as well as human rights activist community, academics and foreign diplomats. These sources provided the data for bilateral relations, the international political context as well as respective domestic political developments.

The evaluation of the actual impact of constructive engagement on the right to freedom of expression and speech was based on research conducted at the Archives of the Human Rights Commission at the United Nations Office in Geneva. Consequently, reports by the UN Special Rapporteur for Iran as well as the Special Rapporteur for the Right to Freedom of Expression and Speech provided the empirical data on the situation of the right to freedom of expression. The actual evaluation of the impact of constructive engagement on Article 19 in Iran, was based on a straightforward methodology, of subdividing the right to freedom of speech into two categories: (i) respect of the right to freedom of speech and (ii) protection of this right:⁶

- (i) To respect: This requires the state and its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or impinging on their freedom to exercise their right.
- (ii) To protect: This primarily concerns appropriate legislation confirming the rights for all individuals and groups. It also obliges the state and the agents to prevent the violation of rights by state and non-state actors. It

⁵ “Iran Focus” is published by Atieh Bahar.

⁶ *part of this methodology is based on* Gordon Crawford, “Evaluating EU promotion of human rights, democracy and good governance: towards a particular approach”, European Development Policy Group Discussion Papers No.22, (Development Studies Association, 2001), p.12

requires that where violations do occur, appropriate remedies exist in the form of accessible and well-publicized complaints and inspection procedures. This in turn concerns the framework of the rule of law and access to justice.⁷

Literature Review

Whilst the theoretical research question of how constructive engagement should be conceptualised in international relations theory and practice was one motivation for this thesis, the lack of literature on contemporary British Iranian relations as well as on the Rushdie affair proved to be another incentive. Existing accounts of British Iranian relations are exclusively historical ones. The most recent is Alan W. Ford's "The Anglo-Iranian Oil Dispute of 1951-1952" and dates back to 1954. Mary Ann Heiss' "Empire and Nationhood – The United States, Great Britain, and Iranian Oil, 1950-1954" provides a more contemporary account of Britain's ousting of Iranian Prime Minister Mossadeq. These accounts are useful to appreciate the historical context, but certainly do not shed any light on contemporary bilateral relations. Concerning the *fatwa* on Rushdie, Daniel Pipes's book "The Rushdie Affair – The Novel, the Ayatollah and the West", published two years after the *fatwa*, attempted to explain why the "Satanic Verses" shook Iran and the Muslim world. However, Pipes does not focus on British responses and the impact on bilateral relations nor does his political agenda allow him to deliver an objective academic account. "Fiction, Fact and the Fatwa – 2000 days of censorship" published in 1994, by the human rights group "Article 19" contains a chronology of the group's efforts to defend Rushdie. This proved to be valuable background reading of this group's campaigns, but fails to appreciate the wider picture of British Iranian relations. A similar account is Niels Fried-Nielsen's "Freedom of Expression: The acid test", which looks at the Scandinavian countries' reactions towards Iran following the *fatwa*. Davina Miller's chapter on "British foreign policy, human rights and Iran" in "New Labour's Foreign Policy- A new moral crusade?" is the only existing account on contemporary British

⁷ *Based on methodology put forward by Humanist Committee on Human Rights, Matching Practice with Principles: Human Rights Impact Assessment: EU Opportunities – An outline for the development of Human Rights Impact Assessment for EU policy measures with an external effect*, (Utrecht, HOM, 2002), p.49; It should be noted that in human rights advocacy, one talks of respecting, protecting and promoting human rights.

Iranian relations. In examining policy towards Iran, Miller argued, that one does not find any modifications in pursuit of human rights; rather she concluded that, indeed, ethical considerations, including human rights have been sacrificed in order to effect engagement with the Islamic Republic.⁸ Miller bases this conclusion on the observation that the Labour government changed policy in two respects to reach an accommodation with Iran. Firstly, it abandoned its relationship with the National Council of Resistance of Iran, which the party had nurtured during opposition. Secondly, the Labour government accepted the Iranian position on the *fatwa*, a position that the Iranian government had held since 1993.⁹ Miller concluded that the rapprochement with Iran pointed to the fact that New Labour's new human rights agenda was merely of rhetorical nature. A genuine modification of policy would have required the promotion of human rights above the narrow economic and political advantage. The author criticises the motives behind Britain's rapprochement, claiming that they sacrificed the human rights objectives, officially proclaimed by Robin Cook as to be at the heart of British foreign policy.¹⁰ Whilst Miller is right in the sense that Britain was primarily interested in solving the Rushdie issue, research findings refute her argument that Britain was primarily interested in re-establishing relations for economic reasons. In fact, the data of this research indicates how Britain managed to use asymmetrical economic interdependence as an economic incentive.

Looking at human rights literature on Iran, the most in-depth account of human rights in Iran is undoubtedly Nazila Ghanea's "Human Rights, the UN and the Baha'is in Iran" as it provides an analysis of the UN system and the situation of the Baha'is, Iran's largest religious minority. Another valuable account is Abrahamian's "Tortured Confessions – Prisons and Public Recantations in Modern Iran", which documents the use of torture as a means to legitimizing the ruling elite and eliminating dissent. The final secondary resource on human rights relevant for this thesis is "Guardians of Thought – Limits on

⁸ Davina Miller, British foreign policy, human rights and Iran, in Richard Little, Mark Wickham Jones (ed.), New Labour's foreign policy, A new moral crusade (Manchester, Manchester University Press, 2000),

p. 189

⁹ *ibid*, p. 190

¹⁰ *ibid*, p. 186

Freedom of Expression in Iran, published in 1993 by Human Rights Watch. Though rather dated, it provided crucial information on the legal framework concerning the right to freedom of expression.

Overall, the fact that the Rushdie affair constituted a unique, yet un-researched case in international relations literature was the primary reason for this thesis. The fact that two states essentially broke relations over a book raised so many questions, that it seemed necessary to shed light on this issue. Ultimately, it affected British-Iranian relations for over ten years, threatened the life of a British subject, and stimulated campaigns on both sides of the spectrum (to kill Rushdie and to defend his right to publish), and saw assassination attempts, bombings and murder.

CHAPTER ONE

A MODEL FOR CONSTRUCTIVE ENGAGEMENT

1. Introduction

The aim of a “Model for Constructive Engagement” is to define constructive engagement and to place it in historical context as well as to conceptualize it as a foreign policy strategy by applying neo-liberal institutionalist theories of International Relations. It is assumed that political and economic interdependence between states constitutes a fundamental factor, determining both behaviour as well as capabilities of states. Accordingly, the adopted model largely treats statecraft and diplomatic instruments as a reflection of a state’s power and its ability to influence. Respective asymmetries in interdependent relationships are recognized as factors influencing statecraft and the diplomatic means available to governments and practitioners. The concept of power in this thesis does, therefore, not so much reflect a realist’s view of a state’s interests defined in terms of power, but rather their treatment of power as a form of causation and currency available to states. Because of these premises, together with the overall aim of formulating a universally applicable theoretical framework of the European Union’s conditional human rights diplomacy, the model largely drew from liberal approaches on regime formation and inter-state co-operation. Whilst the focus of the narrative is on British-Iranian relations, the adopted model provides the overall “manual” for analysing British efforts of engaging with Iran. Additionally, the thesis attempts to formulate a valid theoretical model for future research on constructive engagement by the EU or any other state.

2. Definition and Historical Context of Constructive Engagement

Since the term constructive engagement will be used throughout this discussion a clear definition of the concept is essential. The term is recognized as denoting a deliberate foreign policy strategy (i.e. the opposite to isolation and punitive sanctions) rather than a

mere continuation of normal diplomatic relations between two or more states.¹¹ This is important to emphasize since the term itself often tends to remain a source of confusion. In Chinese, the word appears to mean simply the conduct of normal relations and in German no comparable translation exists.¹² The term itself was first used as result of the controversial US policy towards South Africa during the terms of Nixon, Carter and then Reagan. Advocating a “strategy of change” in the face of an internationally growing cacophony for punitive sanctions and the failure of constructive engagement under Carter and Nixon, Ronald Reagan’s then assistant secretary of state for African affairs became the architect for a renewed policy of engagement rather than isolation towards South Africa.¹³ Accounts on the period of US constructive engagement towards Pretoria describe how this policy - a combination of diplomatic pressure and extension of favourable trade terms as a reward for South African amelioration of apartheid – was intended to catalyse evolutionary change from within the South African polity. Aiming to transcend the fallacies of the Carter years and approaches of the Nixon administrations, the assistant secretary for African affairs, Chester Crocker, suggested during the 1980s a new strategy of constructive engagement which would not only recognize significant changes for which the Botha government had previously received little international credit but also to reward future developments.¹⁴ Whilst discarding radical and unrealistic demands for a speedy transfer of power, the State Department advocated a “clear Western

¹¹ The concept of constructive engagement is widely ambiguous among policymakers and scholars. Often condemned to be nothing more than pursuing a solicitous policy towards anathematised countries or controversial authoritarian regimes, constructive engagement is, therefore, regarded as a controversial foreign policy option; one that is determined by economic interests rather than genuine interest to change certain state behaviour. The focus of this thesis is not why constructive engagement is the choice of implementation for some governments rather than on how the mechanisms of this policy can contribute to alter state behaviour. For a discourse on opposing US and European policies towards so called rogue states, *see* Richard N. Haas, Transatlantic Tensions, The US, Europe and Problem Countries (Washington, D.C., Brookings, 1999)

¹² It is interesting to note that it was actually the European Union’s policy of “Critical Dialogue” towards Iran, which translated into German as “Kritischer Dialog” turned out to be the first usable term describing a policy referred to the English language as constructive engagement. *see* Richard N. Haas and Meghan L. O’Sullivan, Honey and Vinegar – Incentives, Sanctions and Foreign Policy, (Washington, D.C., Brookings Institution, 2000), p.1

¹³ *see* Jeffrey Herbst, Incentives and Domestic Reform in South Africa, in David Cortright (ed.), The Price of Peace – Incentives and International Conflict Prevention (New York, Rowman and Littlefield, 1997), pp.205-222 ; Audie Klotz, Norms reconstituting interests: global racial equality and US sanctions against South Africa, International Organization Vol. 49, No. 3, (Summer 1995), pp. 451- 478

¹⁴ Christopher Coker, The United States and South Africa 1968- 1985: Constructive Engagement and its Critics, (Durham, Duke University Press, 1986), pp.154-158

readiness to recognize and support positive development and engage credibly in addressing a complex political agenda.”¹⁵ Although US constructive engagement towards South Africa did not succeed in persuading the white government to abandon its apartheid regime, assessments on the policy reveal that it was the bureaucratic failure to implement constructive engagement effectively, rather than the failure of the concept itself that had led to the decision after 1985 to abandon a dialogue and to re-employ negative sanctions against Pretoria.¹⁶ Thus, US diplomacy towards South Africa coined the term as well as conceptual mechanism of constructive engagement.

Since constructive engagement still holds a rather elusive status in international relations literature, it is vital to clarify the idea behind it before moving to a conceptual definition. Embedding the idea within the history of diplomacy, we find that “great powers are often confronted by ambitious states that are not socialized into the norms of the international system and pose a threat to its orderly workings and stability.”¹⁷ Numerous twentieth century American and European diplomatic efforts, both successful as well as disastrous, to reform these outlaw states or rogue leaders show what significance a “common concept of legitimacy” and international norms holds for the stability of the international system. Kissinger defined this common concept as an “international agreement about the nature of workable arrangements and about the permissible aims and methods of foreign policy”. This implies “the acceptance of the framework of the international order by all major powers, at least to the extent that no state is so dissatisfied that, like Germany after the Treaty of Versailles, it expresses its dissatisfaction in a revolutionary foreign policy.”¹⁸ While there exists no clear and commonly accepted definition of an outlaw or rogue state, George defines them in the following terms:

¹⁵ *ibid*, p.155

¹⁶ *ibid*, pp. 111- 114; *see also* Michael Clough, “Beyond Constructive Engagement” in *Foreign Policy*, No. 61(Winter 1985-1986), pp.3-24

¹⁷ Alexander George, *Bridging the Gap – Theory and Practice in Foreign Policy* (Washington D.C., Institute for Peace, 1993), p. 48

¹⁸ Henry A. Kissinger, *A World Restored*, (London, Gollancz, 1973), p. 1; *see also* Alexander George, *Bridging the Gap – Theory and Practice in Foreign Policy*, p. 48 George distinguishes between “revolutionary” or “outlaw” states and “revisionist” states, which seek merely to rectify the status quo and do not reject the norms and practices of international system.

Outlaw states and their rogue leaders refuse to accept and abide by some of the most important norms and practices of the international system. Such states may seek to dominate and reshape the system to their own liking, and they may aim at global or regional hegemony. Some of them resort to practices such as state terrorism and taking as hostages citizens or official representatives of other states.¹⁹

In looking at what defines a policy of constructive engagement and what constitutes its success, this dissertation does not focus on why outlaw states challenge the international order and stability, nor analyse what determinants cause countries to take an active stake in allegedly preserving that system. Rather the focus of this study is on the strategy to engage with such a state.

Constructive engagement is a non-coercive strategy and set of diplomatic practices for bringing “outlaw” or “rogue” states to conform to what are held by the great powers to be legitimate international norms., in this case, protecting international human rights standards.

Essentially constructive engagement is a strategy of what George calls “conditional reciprocity” demanding meaningful changes in policy and behaviour in return for each concession or benefit.²⁰ Within the context of using conditional reciprocity or linkage diplomacy as a tactic to encourage changes in another state’s policies, George points to its strategic use “as part of a long-range effort for bringing about fundamental change in the nature of the outlaw state and its leadership, that is, the gradual replacement of its antipathy to the norms and practices of the international system with attitudes and behaviour more supportive of that system.”²¹ Due to the absence of any systematic scholarly study of past efforts to reform outlaw states and to draw their leaders into acceptance of the norms and practices of the international system²², it is, therefore, the intention of this thesis to conceptualise and assess the strategy of constructive engagement as a method of doing so.

¹⁹ Alexander George, Bridging the Gap – Theory and Practice in Foreign Policy, p. 49

²⁰ *ibid*, pp. 50-51

²¹ *ibid*, p. 51

²² as stated by Alexander George , Bridging the Gap – Theory and Practice in Foreign Policy , p.57

It is important to emphasize that constructive engagement is distinct from appeasement. Whilst its tactic of conditional reciprocity is different from appeasement, its underlying goal, that is avoidance of conflict, reduction of tension, resocialization into international society through non - coercive means, is indeed in line with the general idea behind appeasement. Despite differences in the two strategies, a review of the literature on appeasement gives insights into the conditions and requirement of constructive engagement that may or may not be appropriate.

George states “when an outlaw state not only rejects important norms of the international system but also seeks major changes in the status quo, appeasement of even its legitimate and seemingly reasonable demands is unlikely to contribute to resocializing it into accepting the norms of the international system”. On the contrary appeasement “is more likely to reinforce the rogue leader’s ambitions and strengthen his predisposition to challenge the system.”²³ The historical case against appeasement, British diplomacy towards Germany from 1937-1939, is well understood and deeply entrenched in the consciousness of generations of policy makers. The traditional view against appeasement, dominated by prominent critics such as L.B. Namier, J.W. Wheeler Bennett, Alan Bullock, and Winston Churchill himself, considers it to be a policy of shameful weakness before the challenge of the dictators, which was doomed to fail.²⁴ It was this traditional negative image of appeasement and the conviction that the Second World War could have been prevented by a policy of timely resistance to German aggression that influenced western policymakers during the cold war.²⁵ Even four decades later this image was still upheld in influential international relations literature. As Hans Morgenthau denounces appeasement as:

²³ *ibid* , p. 50

²⁴ J.L. Richardson, “New Perspectives in Appeasement: Some Implications for International Relations”, *World Politics*, Vo. 40, No. 3 (April, 1988), p. 290; *see also* John W. Wheeler-Bennett, *Munich: Prologue to Tragedy* (London, Macmillan Press, 1948); Lewis B. Namier, *Diplomatic Prelude*, (London, Macmillan, 1948); Winston Churchill, *The Second World War, I: The Gathering Storm* (London, Cassell, 1948)

²⁵ J.L. Richardson, *World Politics*, p. 291

[...] a foreign policy that attempts to meet the threat of imperialism with methods appropriate to a policy of the status quo [...] One might say that appeasement is a corrupted policy of compromise, made erroneous by mistaking a policy of imperialism for a policy of the status quo. ²⁶

Yet the failed attempt of Neville Chamberlain to appease Hitler in the late 1930s and to bring Germany back as a responsible actor into a reconstituted European system may only point to a disastrous misapplication rather than discredit the concept altogether. It is not the purpose of this dissertation to provide a reappraisal of British diplomacy towards Nazi Germany, yet any analysis of contemporary constructive engagement strategies and the defence of its morality need to reflect upon two important considerations. Firstly, the fault of the British government and others during the 1930s was not that they attempted to pursue conciliation in their dealings with Germany. Other policies, such as a consistent policy of deterrence, designed to maintain the Versailles settlement unimpaired could never have succeeded as long as the most powerful nation in Europe harboured resentment against it. The fault was that Britain and other governments attempted conciliation without sufficient reserves of deterrence as an inducement against alternative courses. ²⁷ Conceivably, it is true that no degree of armed strength on their part could have convinced Hitler that they really meant business, yet conciliation unbacked by strength was certain to fail. Hence, drawing on lessons from history, constructive engagements needs to employ both carrots and sticks in such a way that neither of the two options outweigh each other. Effectively, it means that as much as a policy of conciliation without strength is fruitless, so is deterrence without conciliation doomed to indefinite stalemate.

Secondly, the original idea of appeasement (that is reasonable concessions made from a position of strength) is still a fundamental purpose of diplomacy, “ an essential and sometimes invaluable card in an on-going game which should not be discarded antipathetically because it was once misplayed.” ²⁸In fact, any charge against appeasement, for the purpose of condemnation, levelled against a policy which aims at

²⁶ Hans Morgenthau, Politics among Nations, 3rd ed. (New York, Macmillan, 1967), p. 96

²⁷ Evan Luard, “Conciliation and Deterrence: A Comparison of Political Strategies in the Interwar and Postwar Period”, World Politics, Vol. 19, No.2 (Jan. 1967), p. 186

²⁸ William R. Rock, British Appeasement in the 1930s, (London, Edward Arnold, 1984), p. 99

easing tension and avoiding conflict and misses the mark entirely in a world where such policies are the only means of assuring peaceful coexistence.²⁹ Nevertheless, appeasement should always be implemented from a position of strength, coupled with the political will to draw on available power capabilities and to use any leverage as incentives for demanded concessions.

Regarding the conditions under which it is viable to employ a policy of appeasement, it is crucial to assess whether there are signs that the object is appeaseable. Essentially, “appeasement has a rightful place in resolving disputes through negotiated settlement and peaceful change; but it is wholly inappropriate in dealing with force, violence and aggression.” In making concessions the state initiating appeasement towards another country “should never involve the surrender of fundamental principles upon the preservation of which the claim to loyalty and respect for that government depends. That would constitute betrayal, by the means, of the very ends which they were devised to defend and promote”³⁰ In advocating precisely this case for assessing the preconditions to employ a strategy of appeasement or constructive engagement, George attempts to replace the simple generalization so strongly rooted in the post-Munich era “if appeasement then World War III “ with a more differentiated analysis. He argues for examining historical cases of appeasement in order to identify those conditions under which it is likely to be a viable conflict avoidance strategy and those in which it is likely to be misguided and contribute to the eventual onset of war.³¹ If we recall that appeasement only shares the underlying aims and non-coercive methods with constructive engagement but not its coherent reciprocal technique, George’s sequence of inter state cooperation clarifies where constructive engagement may fit. In the classic European balance of power system the gradation among different steps for improving relations between two states was incorporated into common concepts and practices of diplomacy. According to George this process might begin with “détente “, which refers to a relaxation of acute tension and which may be accompanied by the reduction of hostile

²⁹ *ibid*, p. 99

³⁰ *ibid*, pp. 99-100

³¹ Alexander George and Gordon A. Craig, *Force and Statecraft – Diplomatic Problems of our Time*, 3rd ed. (Oxford, Oxford University Press, 1995), p. 157

behaviour without settling the prevailing disagreements or removing the underlying conflicts of interests. “Détente” may then develop into “rapprochement”, whereby one or both sides express a desire to address some or all of their disagreements with a view to possible agreement. This, in turn could lead to an “entente” – in which the two sides recognize a similarity of views and interests, but the understandings are limited to certain issues and the improvement in relations stops short of an alliance. “Entente” could then lead to “appeasement” – the methodological removal of the principal cause of the conflict and possibly end in an “alliance”.³² Constructive engagement simply describes the process from détente to appeasement in as much as it provides the mechanisms and initiatives for this “evolution of cooperation and conflict reduction” to move forward.

Whilst, the British appeasement policy of 1937-1939 is not likely to be easily surpassed as a historic example of how not to conduct policy of détente, Willy Brandt ‘s 1970s *Ostpolitik* towards the Soviet Union and Eastern Europe, on the contrary proves the success of what today would be most likely referred to as constructive engagement. Brandt had a clear notion not only of the changes that he wished to effect, but also of the difficulties that lay in his path, so that his initiative was based on a shrewd assessment of potentials risks and gains and of how to utilize leverage to manoeuvre around obstacles.³³ Though *Ostpolitik* contained the possibility of major concessions to the Soviet Union and the East German regime and thus contained elements of what could be regarded as appeasement, Brandt orchestrated a complex process of détente to ensure that he gained important benefits not only for West Germany but for Europe as a whole. Diplomatic, economic and cultural relations with Eastern European states, which primarily aimed at eliminating distrust and tension, were initiated by Bonn through commercial and credit incentives for these economically depressed governments.³⁴ Unlike Chamberlain in his dealings with Hitler, Brandt did not rush the détente process in order to move as quickly as possible into appeasement. Making realistic calculations of the complexity of and political risks of his course, Brandt knew that Europe can “approach this goal [an enduring peace order] only step by step, in a long-drawn-out process of détente, that is by

³² *ibid.*, p. 157 and p. 247

³³ *ibid.*, p. 254

³⁴ *ibid.*, p. 254

means of mutual rapprochement, understanding and cooperation in all areas of interstate relations: As advocates of constructive engagement would argue today, he also claimed that “the establishment of diplomatic relations is a means to the attainment of this goal, not an end in itself.”³⁵ Hence, *Ostpolitik* was a strategy in which diplomatic moves were carefully controlled and timed. Brandt, aware of the two level game of diplomacy, always aimed at solidifying domestic support before implementing his policy of détente and appeasement. Bearing in mind that the sequence détente → rapprochement → entente → appeasement cannot be pursued in today’s world in precisely the same manner as it was in the European balance-of-power system, *Ostpolitik* proved that the implementation of détente / appeasement remains potentially viable if employed with due caution and with sensitivity to the greater complexity of the situation and the nature of the risks involved.³⁶ Indeed, the careful step-by-step process in which Brandt pursued his non-coercive *Ostpolitik* backed by German economic might and NATO deterrence bears important similarities with what today would be regarded as a moral and successful strategy of constructive engagement.³⁷

3. Power and Influence

Actions of states and statecraft in international relations are often described in terms of influence and power. Power is often referred to as the capacity to direct the decisions and actions of others. Influence relationships are usually viewed as being based on power. Because of the fact that state A possesses influence over B, it is considered as more powerful and therefore more influential than state C.

For the purpose of clarity of this research, the term power has to be further defined. Power could be described as the “capacity to direct the decisions and actions of others” and derives from objective strength and will. “Strength comes from the transformation of resources into capabilities”, whereas “will infuses objectives with resolve”. If we talk

³⁵ Willy Brandt, *A Peace Policy for Europe* (London, Weidenfeld and Nicolson, 1969), p. 104

³⁶ Alexander George and Gordon A. Craig, *Force and Statecraft – Diplomatic Problems of our Time*, 3rd ed., p. 256

³⁷ It should, however, be noted that unlike Chamberlain’s appeasement, *Ostpolitik*, was not applied in a situation where force or aggression were employed or threatened by the target state.

about a state's strategy in the context of pursuit of power one should really see it as a state's attempt to marshal its available capabilities, whether military, economic or political, and to bring them to bear with precision. "Statecraft then seeks through strategy to magnify the mass, relevance, impact and irresistibility of power". Essentially statecraft guides the ways in which a state deploys and applies its power abroad.³⁸

We shall use Robert Dahl's definition, which explains power as a relation among actors in which one actor induces one or more actors to behave in some way they otherwise would not do.³⁹ If we accept Dahl's definition that A has power over B to the extent that he can get B to do something that B would not do otherwise, then we ultimately have to agree with him that power describes a situation of "coercive influence".⁴⁰ Having defined power as a causal relationship between actors in which the desires and intentions of one actor affects the actions or preferences of one or more actors, Dahl goes on to distinguish between *manifest* and *implicit* influence. *Manifest* influence can be understood as causing other people to act in some particular way through one's own actions.

If A wants outcome x; if A acts with the intention of causing B to bring about x; and if as a result of A's actions, B attempts to bring about x, then A exercises *manifest* influence.⁴¹

On the contrary *implicit* influence refers to a situation in which one actor shapes his behaviour to conform to what he believes are the preferences of another actor, without having been given explicit demands or orders about the other actor's intentions.

If A wants outcome x, then although A does not act with the intention of causing B to bring about x, if A's desire for x causes B to attempt to bring about x, then A exercises *implicit* influence over B.⁴²

³⁸ see Chas W. Freeman, Jr. Arts of Power – Statecraft and Diplomacy (Washington D.C., US Institute of Peace Press, 1997), pp. 3-5

³⁹ Robert A. Dahl, Modern Political Analysis, (Englewood Cliffs, N.J., Prentice-Hall, 1976), p. 40

⁴⁰ *ibid.*, p. 50

⁴¹ *ibid.*, p. 30

⁴² *ibid.*, p. 31, see also Jack H. Nagel, The Descriptive Analysis of Power, (New Haven, Yale University Press, 1975), pp.16-30

While Dahl draws his conclusion from empirical data analysing the effects of elections on elected officials, i.e. their desire to be re-elected and their expectations of future reactions of voters or campaign contributors to their present conduct, the notion of *implicit* influence is also of particular importance for this study. Hypotheses on the role of soft power in the process of constructive engagement and the assumed influence from the attraction of another's ideas and preferences have to be understood within the context of Dahl's concept of *implicit* influence. Another issue at hand now is how to solve the problem of comparability when actors have different amounts of influence with respect to different issues. Dahl acknowledges this problem of how to describe the relative influence of different actors in a political system or relationship. While he argues that there is no single best way of measuring the relative amount of power or influence of different actors, he suggests estimating an actor's influence with a given scope and domain. He argues that "if influence is a form of causation, then the amount of A's influence over an outcome should be equivalent to the amount of the outcome (B's actions) or predispositions caused by A's desires." Thus, the meaning of "more influence" has to be understood within the context of the scope of domain. The domain of A's influence consists of the other participants, B and C, influenced by A. The scope of A's influence refers to the matters on which this actor can influence B, C. In exercising influence, then, A influences a domain of B and C with respect to certain scope of their actions or predispositions.⁴³ In line with pluralist approaches Dahl's focus is, therefore, not on the sources of power but merely on the exercise of it. Power according to him means influence in decision-making and can be analysed only after "careful examination of a series of concrete decisions."⁴⁴

One can conceive of "power" – "influence" and "control" are serviceable synonyms – as the capacity of one actor to do something affecting another actor, which changes the probable pattern of specified future events. This can be envisaged most easily in a decision – making situation.⁴⁵

⁴³ see Robert A. Dahl, Modern Political Analysis, pp. 32-40

⁴⁴ Robert A. Dahl, "A Critique of the Ruling Elite Model", The American Political Science Review, Vol. 56, No. 4 (December, 1962), p. 466

⁴⁵ Nelson W. Polsby quoted in Steven Lukes, Power – A Radical View, (Basingstoke, MacMillan Press, 1974), p.13

Dahl's central method is to determine for each decision, which participants had initiated alternatives that were finally adopted, had vetoed alternatives initiated by others, or had proposed alternatives that were turned down. The actions were then described as individual "successes" or "defeats". Consequently the participants in the relationships with the greatest proportion of successes out of the total number of successes were then considered to be most influential.⁴⁶

The logical complement of influence is autonomy. To the extent that A influences B on some matter X, then B is not autonomous in relation to A with respect to X. Conversely, B is autonomous in relation to A, with respect to X, to the extent that A does not influence B's actions or intentions with respect to X.⁴⁷

The answer to the question of what constitutes power and how it will be referred to in this thesis, is that those actors will be classified as powerful which possess the capability of influencing the actions and decisions of others. Hence, our understanding of power derives from our assessment of observable behaviour in a process of decision-making.

4. Power Resources: Hard and Soft Power

Though Dahl's treatment of power as causation is vital for our understanding of power, the treatment of power as a currency or source is inevitable to a study dealing with a political or economic bargaining situation. Thus, power can be both, causation as well as currency. Before further elaborating on the instruments, i.e. positive sanctions as means of exercising power during constructive diplomacy, capabilities and resources of power need to be identified. So what are the means at a state's disposal when implementing foreign policy, particularly what constitutes the spectrum of means when attempting to influence? Hill's pyramidal power inventory consisting of resources, capabilities and instruments is helpful in developing a set of attributes on which a state's power is based. Resources are "the elements, derived from history and geography, which constitute [...] the "basic forces" of foreign policy, which determine the limits of a country's impact on

⁴⁶ Robert A. Dahl, Who Governs? Democracy and Power in an American City, (New Haven and London, Yale University Press, 1961), p.336

⁴⁷ Robert A. Dahl, Modern Political Analysis, p.40

the world – if not its ambition.”⁴⁸ Accordingly, a country’s resources include the territory, population, level of industrialization, natural resources and expertise. These are the tangible power attributes of a country. While national elements, such as sheer land size or population by themselves do not make a state a great power, “ a large area often comes with a generous natural resource endowment, and along, with a large population, can support a sizable agricultural and industrial base.”⁴⁹ The obvious virtue of defining power resources as the possession of certain resources is that it makes power appear more concrete and certainly helps to treat power as currency.⁵⁰ To reach the level of instruments, Hill asserts, that these resources must be operationalized into capabilities, which he identifies as the “recognizable elements of modern government’s responsibilities” for which separate bureaucracies might exist and where decisions may hope to have an effect.⁵¹ Hill includes the armed forces, patterns of trade and general strength of the nation’s economy, agriculture and industry. Lastly, the instruments or strengths of power available to states that wish to channel or alter the behaviour of other states fall into four broad categories: diplomatic or political strength, cultural, economic and military strength.⁵² Since the aim is to conceptualize constructive engagement as a peaceful and non-coercive foreign policy option, diplomatic and economic strength shall be the focus of this model:

1. *Diplomatic strength* is measured in the ability of a state to persuade others of the wisdom of its policies. Hence, next to substantive representation and continuous negotiation, the core task of diplomacy then “ is not just the management of order, but the management of change, and the maintenance by continued persuasion of order in the midst of change.”⁵³
2. *Economic strength* is measured in a country’s financial assets, output of goods and services, and market. It finds expression in dependence or reliance by other

⁴⁸ Christopher Hill, The Changing Politics of Foreign Policy, (Basingstoke, Palgrave MacMillan, 2003), p.136

⁴⁹ Bruce Russett, Harvey Starr, David Kinsella, World Politics – The Menu for Choice, p. 94

⁵⁰ see Hans J. Morgenthau; revised by Kenneth W. Thompson , Politics among Nations: The struggle for power and peace , (New York: MacGraw-Hill, 1993)

⁵¹ Christopher Hill, The Changing Politics of Foreign Policy, p .136

⁵² *ibid*, pp.134-154

⁵³ R. P. Barston, Modern Diplomacy, (Halrlow, Longman Group, 1988), p. 2

countries on its capital, output and market. It is manifested in a state's trade and investment flows to and from other countries.⁵⁴ Economic statecraft can wield influence in world politics through two strategies:

- a. Negative sanctions, which can include the boycott of imports, embargoes on exports, restrictions on private business and travel and the imposition of price rises through punitive duties, freezing of assets or aid suspension.⁵⁵
- b. The use of positive sanctions is carried out through economic policies such as trade preferences, technology transfer, loans and grants on privileged terms.⁵⁶

As stated above the instruments in this model of constructive engagement are economic statecraft, particularly positive sanctions, as well as diplomacy with its main task of persuasion and negotiation. The other vital element involved in a strategy of constructive engagement is linked with the muscle of soft power or what Dahl coined "implicit influence". In contrast with the hard (or command power) of ordering others to do what one country wants, soft power is the power of attractive ideas or the ability to set the political agenda and determine the framework of debate in a way that shapes other's preferences. Nye argues that the ability to affect what other countries want tends to be associated with intangible power resources such as culture, ideology and institutions.⁵⁷ Soft power or what Susan Strange calls "structural power", involves the ability of state A to influence the context or environment surrounding state B's decisions - that is the structure of the situation in which B finds itself.⁵⁸

Hard power can rest on inducements (carrots) or threats (sticks). But there is also an indirect way to exercise power. A country may obtain the outcomes it wants in world politics because other countries want to follow it. Admiring its values, emulating its example, aspiring to its level of

⁵⁴ see Chas W. Freeman, Jr. Arts of Power – Statecraft and Diplomacy, p.17

⁵⁵ see David Baldwin, Economic Statecraft, (Princeton, Princeton University Press, 1985), p. 41

⁵⁶ Christopher Hill, The Changing Politics of Foreign Policy, p. 151

⁵⁷ Joseph S. Nye, "Soft Power", Foreign Policy, No. 80, (Fall 1990), p.166

⁵⁸ Though this concept is more directed to the international political economy realm it support Nye's concept of soft power influence. see Susan Strange, "What About International Relations", in Susan Strange (ed) Paths to International Political Economy, (London, Allen & Unwin, 1984), p. 191

prosperity and openness. In this sense, it is just as important to set the agenda in world politics and attract others as it is to force them to change through the threat or use of military or economic weapons. This aspect of power – getting others to want what you want – I call soft power. It co-opts people rather than coerces them.⁵⁹

Because interdependence makes the use of force and even the threat to disrupt or manipulate an interdependent relationship increasingly costly, Nye argues that the great powers of today are less able to use their traditional power resources to achieve their goals than in the past. Nye lists five trends, which have contributed to this diffusion of power: economic interdependence, transnational actors, nationalism in weak states, the spread of technology, and changing political issues.⁶⁰ Hence, by contrast to tangible elements of hard power, such as military and economic strength, the dimension of soft power, to set the agenda and determines the framework of a debate, becomes more important. This model for constructive engagement takes Nye's concept further and treats conditional human rights diplomacy, as pursued by the CFSP of the EU as well as the practice of EU enlargement as strategies that largely draw on soft power. Concerning EU enlargement, soft power, as manifested in the *acquis communautaire*,⁶¹ established itself as guarantor for sustainable European integration. The reason for this is more than simply adopting common rules and norms (requirements of any international regime) member states align their entire economic, legal and political system to EU standards. As Schimmelfennig argues:

Community actors cannot just bargain, that is, exchange threats and promises, but need to argue, that is legitimize their preferences on the basis of the community ethos, and to be concerned about their image and credibility as community members. For those actors that pursue ethos-conforming preferences, the ethos adds legitimacy to their goal and thus strengthens their bargaining power. Conversely, actors that pursue self-serving goals not in line with the ethos run into image and credibility problems, which compromise their

⁵⁹ Joseph S. Nye, *The Paradox of American Power – Why the World's Only Superpower Can't Go It Alone* (Oxford, Oxford University Press, 2002), pp.8-9

⁶⁰ Joseph S. Nye, "Soft Power", *Foreign Policy*, p. 160

⁶¹ This refers to the entire body of EU law and includes all the treaties, regulations and directives passed by EU institutions as well as judgments laid down by the Court of Justice. Any new member state must adopt, implement and enforce all the *acquis* to be allowed to join the EU. *see* http://news.bbc.co.uk/1/hi/in_depth/europe/euro-glossary/1216329.stm, website accessed on 30 March, 2004

future ability to argue and act successfully. As a consequence, community members whose preferences and actions violate the community ethos can be shamed and shunned into compliance.⁶²

However, what interests us here is not enlargement, but the role of soft power in Europe's external relations. Nye himself acknowledges that Europe also derives soft power from its foreign policies gaining not only "credibility from its position on global climate change, international law, and human rights treaties" but, as Jack Straw claims, the EU has also "experience in the subtle art of soft power" [...] and "tends to exert its influence overseas via the promotion of democracy and development through trade and aid."⁶³ It is this aspect which the model on constructive engagement attempts to conceptualize. Since the EU has made the respect for human rights an integral part of its external and development policies towards third countries, one could argue that European hard and soft power assets manifest themselves on two levels. The former constitutes the short-term inducement, the latter the long-term mechanism to get the third party to permanently align itself to Europe's political agenda.

Any trade, cooperation, dialogue, partnership and association agreement with the EU and third parties contains a so-called human rights clause. This provision essentially constitutes a suspension mechanism, which allows the EU to react in the event of violation to end any contractual agreement.⁶⁴ What this means in theoretical terms is that non-coercive power assets, such as A's offer of entering a contractual agreement or forming an economic regime with B is used as short term "inducement" to allow a dialogue to take place and extract respective political concessions from B. Since the adoption of A's "normative demands" (i.e. human rights) is a condition on the agreement as well as including a suspension mechanism once the contractual relationship had been concluded, A essentially created a relationship which encourages B to channel or limit its activities in ways A prefers. But as Nye suggests, if a country's ideas, norms or culture

⁶² Antje Wiener and Thomas Diez, European Integration Theory, (Oxford, Oxford University Press, 2003), p. 91

⁶³ Joseph S. Nye, Soft Power – The Means to Success in World Politics, (New York, Public Affairs, 2004), pp.80-81

⁶⁴ Vaughne Miller, "The Human Rights Clause in the EU's External Agreements", House of Commons, Research Paper 04/33, (House of Commons Library, 4 April 2004), p.15

are attractive and seem legitimate to others, the universalism of this country's culture and its "ability to establish a set of favourable rules and institutions that govern areas of international activity are critical sources of power."⁶⁵

5. The Power of Conditionality: the Exercise of Influence during Constructive Engagement

Hill's pyramidal relationship between resources, capabilities and instruments seems only helpful on a methodological level since resources of power, which have always been a vague concept for statesman and analysts of international politics, have become more complex. Because we previously accepted the idea of interdependence as a concept capable of explaining the overall structure of international relations as well as outcomes, the relationship between power and asymmetries in interdependence is of great significance for our understanding of cooperation and non-cooperation among states. The idea that asymmetrical interdependence is a new source of power implies nothing more than mutual dependencies on – using Hill's terminologies – respective resources and capabilities. The concept of dependence in international politics refers, according to Hirschman, to a relationship in which one party needs the benefits derived from a relationship more than the other.⁶⁶ Hirschman's analysis of dependence is based mainly on reversing the story illustrating the "gains from trade" in standard accounts of the theory of international trade.⁶⁷ Yet this concept of "dependence" in terms of opportunity costs for foregoing trade should not be depicted as mere trade dependence since Hirschman drew attention to the intimate link between the concept of "gain from trade" and the concept of dependence.

The influence which country A acquires in country B by foreign trade depends in the first place upon the total gain which B derives from that trade; the total gain from trade for any country is indeed nothing but another expression for the total impoverishment which would be inflicted upon it

⁶⁵ Joseph S. Nye, "The Changing Nature of World Power," Political Science Quarterly, Vol. 105, No. 2 (Summer, 1990), p. 182

⁶⁶ see Albert O. Hirschman, National Power and the Structure of Foreign Trade (Berkeley, University of California Press, 1945)

⁶⁷ see R. Harrison Wagner, (Economic Interdependence, Bargaining Power, and Political Influence" , International Organization, Vol.42 , No. 3 (Summer, 1988), p. 462

by a stoppage of trade. In this sense the classical concept, gain from trade, and the power concept, dependence on trade, now being studied are seen to be merely two aspects of the same phenomenon.

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Hirschman's aim is to show that the ability of one government to threaten interruption of trade with another can be a means of employing power to demand certain concession from the weaker country. Defining dependence in terms of reliance on others, consequently implies a lack of self sufficiency, which in turns implies that it would be costly for the dependent party to allow changes in the relationship. The capability of one country to change or threaten to change certain patterns of a relationship are in Hirschman's economic model the ability to manipulate the terms of trade in one's favour by the use of tariffs and export taxes. Hirschman's leap from this market power to "relationships of dependence and influence"⁶⁹ is made in two steps: First, he points out that if two states in a bilateral trading relationship both have market power, then the equilibrium terms of trade between them depend on the actions of both states, and thus are subject to the same sort of indeterminacy as they would be if the two states bargained directly over the terms of trade. By drawing on outcomes of historical economic negotiation Hirschman attempts to prove that "tariffs are the manifestations of bargaining power under conditions of private trading."⁷⁰ This statement indicates that Hirschman assumes that the same factors that influence a government's degree of market power also influences the relative bargaining power of states in negotiations over the terms of trade.⁷¹ Second, and this is more relevant to concerns of constructive engagement, he concludes that states who have bargaining power in this sense are not only able to manipulate terms of trade but also to use it to demand political concessions.

The ability to manipulate the terms of trade in one's favour depends, indeed, on the gain from trade derived by the trading partners, and the policies we have described are directed precisely to increase this gain. The monopolistic exploitation of a trading partner can then be considered as one of the uses to which the power secured through the influence effect may be put. We are here concerned

⁶⁸ Albert O. Hirschman, National Power and the Structure of Foreign Trade, p. 18

⁶⁹ *ibid*, p. 15

⁷⁰ *ibid*, p. 43

⁷¹ *see* R. Harrison Wagner, "Economic Interdependence, Bargaining Power, and Political Influence", p. 463

only with the methods and conditions leading to this power, not with its possible uses which may be the reaping of advantages of any kind- military and political, as well as economic. ⁷²

Taking Hirschman's argument further to economic interdependence between states one can see that what Hirschman calls the "objective gains from trade" are mutual dependencies on respective resources or capabilities, which, according to common liberal parlance, are made possible along the lines of comparative advantage. The commonsense underlying much of the literature on economic dependence tells us that if one actor needs the other's resources or capabilities more than the other, then the first is in a weak bargaining position. ⁷³ As Hirschman states:

[...] If we say that the bargaining power of the entrepreneur is superior to that of the non-unionized worker [...] we think not only of the differences in bargaining skill, cunning, information, etc, but mainly of the fact that the worker "needs" the entrepreneur more than the entrepreneur "needs" him. This, in turn, means that we are implicitly comparing two utility gains, or at least, the levels of satisfaction of the two opponents if there is no contract. ⁷⁴

If one accepts the fact that control over resources has the potential to affect certain outcomes, with the consequence that a more dependent actor in an interdependent relationship is being determined or significantly affected by external forces, then we have to ultimately agree with Keohane and Nye that asymmetries in interdependence are most likely to provide sources of power and influence. ⁷⁵ A less dependent actor in a relationship, therefore, has a significant political resource, because changes in the relationship will be less costly to that actor than to its partners. To understand this role of power in interdependence, one must distinguish between *sensitivity* and *vulnerability*, whereas the former refers to a commitment to a certain pattern of domestic and international rules and the latter could be defined as an actor's liability to suffer costs imposed by external events. *Sensitivity* is measured by the volume of flows across borders, but also by the costly effects of changes in transactions. Keohane and Nye assert

⁷² Albert O. Hirschman, National Power and the Structure of Foreign Trade, p. 26

⁷³ see R. Harrison Wagner, "Economic Interdependence, Bargaining Power, and Political Influence", p. 465

⁷⁴ *ibid.* 466

⁷⁵ Robert Keohane, Joseph N. Nye, Power and Interdependence, (New York, Longman, 2001), p. 9

that the fact that a set of policies remaining constant may reflect the difficulty in formulating new policies within a short time, or it may reflect a commitment to a certain pattern of domestic and international rules.⁷⁶ The *vulnerability* dimension of interdependence refers to the relative availability and costliness of the alternatives available to the actors.⁷⁷ Thus, while *sensitivity* means liability to costly effects imposed from outside before policies have been changed, *vulnerability* refers to an actor's liability to suffer costs imposed by external events even after policies have been altered.⁷⁸ *Vulnerability* dependence can be measured only by the costliness of making effective adjustment to a changed environment over a period of time. Manipulating economic or socio-political *vulnerability*, while providing a source of power and influence for the less dependent actor, however, also bears risks and are likely to lead to counterstrategies.⁷⁹ In line with Dahl's methodology, A is autonomous of B only if A would suffer from changes in the relationship less than B. If A is less *sensitive*, and more importantly, less *vulnerable*, A will be able to exert influence over B. Dependency theorists refer to this as compliance with the core. It describes a situation, in which "dependent states comply with the foreign policy wishes of the core in exchange for economic rewards or to avoid economic punishments."⁸⁰ Nevertheless, A's potential autonomy relative to B largely depends on asymmetric control in the relationship, in which B's *sensitivity* as well as *vulnerability* is greater than that of A. Since political and economic interdependencies are not static and generally reflect fluctuating political and economic realities in international relations, *sensitivities* and *vulnerabilities* are just as fluid and effect respective foreign policy behaviour.

Now, before attempting to distinguish between modes of hard and soft power (or manifest and implicit influence), it is vital to subdivide the spectrum of means of hard power in international relations into two broad categories: coercive and non-coercive. International relations scholars tend to associate non-coercive strategies as the choice of

⁷⁶ Robert Keohane, Joseph N. Bye, Power and Interdependence, p. 11

⁷⁷ *ibid*, p. 11

⁷⁸ *ibid*, p. 11

⁷⁹ *ibid*, p 14

⁸⁰ Laura Neack, Jeanne A.K. Hey, Patrick J.Haney, Foreign Policy Analysis – Continuity and Change in its Second Generation (London, Prentice Hall, 1995), p. 210

strategy for small and / or less developed states. The means of influence applied in a non-coercive strategy include:

- a. *Support*: A gives B assistance to do something which B wants to do but cannot do for want of the necessary means
- b. *Stimulation*: A demonstrates to B that it is feasible to carry out a certain action at a certain point of time
- c. *Persuasion*: A enables B to come to an understanding of his “true” situation by means of truthful information. Persuasion by rational communication is consistent with the Kantian categorical imperative that one should treat his fellow human beings always as ends in themselves, rather as means to an end.⁸¹

Dahl argues that non-coercive forms of power in foreign policy implementation, particularly, rational persuasion, are possibly the only morally permissible means of influence.⁸² The fact that manipulative persuasion, various forms of coercion and the physical use of force are commonplace aspects in international relations surely shows that the idea of rational persuasion lacks universal acceptance in international society, however it does not indicate that the concept as such is invalid. On the contrary, constructive engagement in fact stems from this idea. Far from condemning rational persuasion to remain in the idealistic realm of liberalism, engagement suggests that “rational communication” is at the core of engagement between sender and target and should be understood as a concept, which provides the theoretical foundation of constructive engagement. Nevertheless, since there are mechanisms and tools available to a diplomacy of constructive engagement outside the realm of non-coercion, coercive strategies do not contradict rational persuasion if applied sensibly. These include foreign policy tools such as negative sanctions (forms of punishment) and positive sanctions (rewards). In popular political parlance positive and negative sanctions are respectively referred to as the “carrots and sticks” of diplomacy.

⁸¹ see Philip Everts, Guido Walraven (ed.) The Politics of Persuasion: Implementation of Foreign Policy by the Netherlands, (Aldershot, Hants , 1989), pp.77-78; Robert A. Dahl, Modern Political Analysis, p. 45

⁸² Robert A. Dahl, Modern Political Analysis, p. 52

The foreign policy option of constructive engagement, which essentially is the use of positive sanctions to persuade governments to change certain aspects of their behaviour, has received relatively little scrutiny in international relations literature. On the contrary, scholars and policymakers tend to study and pay more attention to negative sanctions that actively seek to manipulate, harm or diminish the capacities and resources of the target country. Economic sanctions in particular have increasingly become the tool of choice for policymakers to protest or coerce a change in an offending country.⁸³ The efficacy of sanctions has been subject to extensive debate; in which scholars seek to find an answer to the question of whether economic sanctions actually work in respect to stated policy goals.⁸⁴

Within the context of an interdependent relationship, it is evident that the sender will have to consider certain basic criteria, which should be assessed when applying negative sanctions during constructive engagement. The first criteria in weighing the use of negative sanctions in a given situation is impact, which is the sheer economic or political damage that sanctions inflict on the target country.⁸⁵ Quite often, sender countries prefer to employ export rather than import controls. One reason for this choice is that A is able to implement negative sanctions, if A enjoys a dominant market position as supplier of

⁸³ In 1997, the U.S. President's Export Council reported a total of seventy-three countries that were under some form of unilateral economic sanctions. For an analysis on the use and efficacy of U.S. laws and executive orders imposing various sanctions against states (in particular Iran and Libya). *see* Troy Lavers, "Law as a Smart Bomb or just a limited tool of Coercion: Considering Extra-territorial Economic Sanctions", *RUSI Journal* (October, 2001) Vol.146, No.5, p.17

⁸⁴ In the most extensive study of sanctions, Hufbauer, Schott and Elliott measured success in terms of achieving stated policy goals. After examining 115 cases in which sanctions were used, Hufbauer concluded that sanctions were successful 35 percent of the time. *see* Gary C. Hufbauer, Jeffrey J. Schott, Kimberly A. Elliott, *Economic Sanctions Reconsidered- History and Current Policy* (Washington, 1990), pp.92-93; *see also* Robert Pape, "Why Sanctions Still Do Not Work" *International Security*, Vol. 23 (Summer, 1998), pp.66-77; David A. Baldwin, *Economic Statecraft*, (Princeton, Princeton University Press, 1985), pp-130-144; Concerning British-Iranian relations and the sanctions debate, it should be noted that the imposition of sanctions against Iran by Britain in 1951 (together with covert operations) proved effective for Britain to achieve stated policy goals. The success of sanctions in this historical case mainly derived from the fact that whilst oil rents were fundamental for the survival of the Iranian economy, Britain and other major Western powers were able to substitute oil imports from Iraq, Kuwait and Qatar. *see* Makio Miyagawa, *Do Economic Sanctions Work?* (London, Macmillan Press, 1992), pp.30-33

⁸⁵ Hufbauer and associates argue that those cases that inflict heavy costs (i.e. destabilization, military impairment, and other major policy change cases) on the target country are generally successful. *see* Gary C. Hufbauer, *Economic Sanctions Reconsidered- History and Current Policy* (pp.101-102)

exports rather than as purchaser of imports.⁸⁶ The United Kingdom, the USA, as well as the EU member states seem to particularly enjoy a dominant position as a manufacturer of military hardware as well as high-technology goods.⁸⁷ It should, however, also be considered what options B has to reduce the effects of any such trade embargo. The level of *vulnerability* of B to the trade embargo will also reflect B's capability to develop alternative sources of supply; to stimulate and diversify domestic production, develop industrial substitutes⁸⁸ and, most importantly, attempt to use asymmetries in the interdependent relationship in order to inflict maximum costs to A and thus minimise the overall impacts with regards to A's desired outcome. The freezing of financial assets held by B in A may carry severe political and legal consequences. Financial sanctions, including deprivation of trade finance, loans, development assistance, on the other hand, may carry more leverage and have, as Hufbauer found, the potential to tilt the political balance towards A's favour. Unlike, trade sanctions, where the impact is often being diffused through B's population, financial sanctions, on the other hand, may directly affect policies of the government.⁸⁹

The second criterion, brought forward by O'Sullivan is the effectiveness of sanctions; that is the extent to which sanctions actually achieve their goal. Whilst impact and effectiveness are theoretically related, they are far from synonymous as the former refers to the sheer economic or political damage that sanctions inflict on B and the latter indicates whether A's goal had been achieved. Hufbauer's findings have shown that sanctions which had the most profound economic impact on a country were the ones most likely to achieve their goals. Nevertheless, economic pain does not have to lead to political gain.⁹⁰ The "rally around the flag" effect and especially the human suffering⁹¹

⁸⁶ see Gary C. Hufbauer, Economic Sanctions Reconsidered- History and Current Policy, p.65

⁸⁷ *ibid*, for the impact of economic interdependence on British arms exports see Davina Miller, Export or Die- Britain's Defence Trade with Iran and Iraq (London, Cassell, 1996), pp.2-21

⁸⁸ Margaret P. Doxey, International Sanctions in Contemporary Perspective, (London, Macmillan Press, 1987), p. 91

⁸⁹ Gary C. Hufbauer, Economic Sanctions Reconsidered- History and Current Policy , p.70

⁹⁰ Maeghan O'Sullivan, Shrewd Sanctions, Statecraft and State Sponsors of Terrorism, (Washington, D.C., Brookings Institution, 2003), p. 27

⁹¹ for the human impact of UN sanctions on the Iraqi population see Denis Halliday, "Sanctions have an impact on all of us" in Middle East Report, No. 209, (Winter, 1998), p.3; Roger Normand, "Iraqi Sanctions, Human Rights and Humanitarian Law", Middle East Report, No. 200, (July-September, 1996), pp.40-46

associated with a sanction regime, lend support to the claim that constructive engagement together with a sanction regimes, specifically aimed at the government's ability to manoeuvre (e.g. military adventures, control of financial flows) could produce the expected outcome at less cost to a country's population.

The third criterion to employ when considering the use of sanctions refers to the cost to the government imposing negative sanctions. Evidently, the imposition of sanctions in an interdependent relationship always imposes costs on A as well as B. Whilst the cost that A suffers from imposing sanctions on B should be taken into the overall assessment of how successful the sanctions regime was, the associated financial, economic and possibly political detriments are also fundamental determinants to A on whether it is wise and desirable to employ them in the first place. A's decision to employ sanctions or not largely - though not exclusively - depends on A's own *vulnerability* on changing the relationship with B. If A's *vulnerability* is such that A is unable to substitute for the loss of B with available alternatives, A is unlikely to employ sanctions. If, however, A's *sensitivity* is such, that it can react quickly to its own implemented changes in the relationship without inflicting costly changes on itself, the use of sanctions against B might seem more desirable.

Within the context of our discussion of constructive engagement (which follows the dictum of "rational persuasion") the use of positive sanctions seems to offer an overall more holistic approach to maintaining communication and solving problems between states. Positive sanctions, while not overtly coercive, aim to influence the recipient state's behaviour towards the sender state's preferred direction. Positive sanctions or inducements are defined as actual or promised rewards to the recipient state. While this definition may seem simple enough and the concept of influence by rewards may actually not have any definite moral standing one way or the other ⁹², Baldwin argues that there are "conceptual and empirical difficulties in distinguishing between positive and negative sanctions." ⁹³ In order to distinguish between positive and negative sanctions imposed

⁹² Robert Dahl, *Modern Political Analysis*, p. 47

⁹³ David A. Baldwin, "The Power of Positive Sanctions", *World Politics*, Vol. 24, No. 1 (Oct. 1971), p.23

from actor A to B, Baldwin establishes B's baseline of expectations at the moment of A's influence attempt. Drawing the concept of baseline from Blau, he defines it in terms of B's expected future value position, "i.e. his expectations about his future position relative to the things he values."⁹⁴ Positive sanctions or inducements, then, are actual or promised improvements in B's value position relative to his baseline of expectations, while negative sanctions are actual or threatened deprivation relative to the same baseline.⁹⁵

For our understanding of how power is exercised through positive sanctions during constructive engagement, we need to consider Baldwin's three pitfalls to distinguishing between positive and negative sanctions. The pitfalls concern B's perception, time and conditional influence attempts.

This is vital because a policy of constructive engagement, which employs the mechanism of conditionality, needs to distinguish between positive and negative sanctions as well as between incentives and bribes. What is essential, are the circumstances in which A offers inducements to B as well as the timeline of A's attempt to influence and the desired outcome. If this thesis uses the concept of positive sanctions as a form of social exchange in inter state relations, then we have to be alert to scholarly arguments against such a presumption. As Bachrach and Baratz argue, explanations of power relations should specify from whose point of view the situation is being viewed. When nation A gives nation B economic aid in return for support in the United Nations, it is right to state that nation A has used positive sanctions, i.e., foreign aid to influence nation B's behaviour at the United Nations. Undoubtedly, an influence attempt has succeeded and an exchange has occurred. This conclusion would be in line with Baldwin's assertion that exchange relations are simply subsets of power relations.⁹⁶ The difficulty arises when one brings in the question of where positive sanctions end and negative ones start. What if nation B is a least developed country and unfavourable economic and ecological conditions present a

⁹⁴ *ibid*, p. 23; *see also* Peter M. Blau, Exchange and Power in Social Life, (New York, Wiley, 1964), p. 116

⁹⁵ David A. Baldwin, "The Power of Positive Sanctions", pp. 23.24

⁹⁶ David A. Baldwin, "Power and Social Exchange" in The American Political Science Review, Vol. 72, (Dec, 1978), p. 1230

serious threat to the well-being or even survival of vast amounts of its population? Hence, though A may perceive itself as using carrots, B may perceive the promise of foreign aid as using sticks.⁹⁷

The second pitfall concerns time and is illustrated by Dahl's discussion of positive coercion in which he observes that substantial rewards can be made to operate in the same way: "For if B is offered a very large reward for compliance, then once his expectations are adjusted to this large reward, B suffers a prospective loss if it does not comply."⁹⁸ Baldwin criticises Dahl's treatment of using two different baselines:

In referring to negative sanctions, he uses the baseline existing at the moment of A's influence attempt, while his references to positive sanctions use the new baseline after B has taken account of A's influence attempt.⁹⁹

Since the overall goal of constructive engagement is to shift B's baseline, i.e. to cause B to change the expected value improvements associated with doing X, it is important in an analysis of carrot and stick diplomacy to specify both B's baseline of expectations as well as the time when it was established. One should be aware that today's reward may lay the groundwork for tomorrow's threat and tomorrow's threat may lay the groundwork for a promise on the day after tomorrow.¹⁰⁰ Since the argument runs that constructive engagement seeks co-operation and political concessions through incentives with the long-term aim to actually increase interdependence in the relationship, then we come to an assertion close to Schelling's discussion of "compellent threats". Schelling uses the term "compelling threat" to describe a situation in which A threatens B, intending to keep him from starting something rather than to make B do something.¹⁰¹ "The threat that compels

⁹⁷ Given B's needy circumstances it perceives conditional aid as coercive as it assumes that a political prize has to be paid in order to meet A's demands.

⁹⁸ David A. Baldwin, "The Power of Positive Sanctions", p. 24

⁹⁹ *ibid*

¹⁰⁰ *ibid*

¹⁰¹ Schelling distinguishes between the application of force and the threat of force as strategies to avoid "zero-sum scenarios". See Philip M. Barnett, "Rational Behaviour in Bargaining Situations" in *Noûs*, Vol. 17, No.4 (November, 1983), pp. 623-624; for Baldwin's critique on "complement threats" see David A. Baldwin, "Thinking about threats" in *The Journal of Conflict Resolution*, Vol. 15, No.1 (March, 1971), pp.71-78

rather than deters, therefore often takes the form of administering the punishment *until* the other acts, rather than *if* he acts.” For our analysis of constructive engagement we may evolve this argument by claiming that in an interdependent relationship, the less dependent actor A may be willing to start punishing, i.e. to withdraw rewards, even if this would simultaneously punish A itself. Thus, what A is doing during the process of constructive engagement is using the carrot to shift B’s baseline and subsequently would initiate the threat of using the stick if B’s baseline shifts contrary to A’s expectations and demands. Consequently, constructive engagement uses rewards to force a conditional commitment of the actor it seeks to extract political concessions from, followed by a threat to administer punishment (i.e. withdrawal of rewards or employment of negative sanctions) only then when B ceases to give concessions to A. This observation ultimately leads to Baldwin’s final pitfall, which deals with the problem that “it seems to be easier to distinguish rewards from punishments than to distinguish promises from threats”¹⁰² Schelling argues:

An unconditional commitment by A to reward (or punish) B regardless of whether he does X or not is not a promise (or a threat). Thus a promise to reward if B complies must imply a threat not to reward if B fails to comply. Likewise a threat to punish B for non-compliance must imply a promise not to punish for compliance. Thus, all threats imply promises and all promises imply threats; they are simply different ways of describing the same conditional influence attempt.¹⁰³

Contrary to Schelling’s argument that threats and promises are merely names for different aspects of the tactic of selective and conditional self-commitment, Baldwin takes the stance that a conditional commitment not to reward if the other actor fails to comply is not necessarily a threat.¹⁰⁴ An example may illustrate this line of argument: If country A informs B that it will not be rewarded if it does not give a political concession X, this is only a threat if B had a prior expectation of receiving the reward. Therefore Baldwin distinguishes three kinds of conditional commitments available to A:

¹⁰² David A. Baldwin, “The Power of Positive Sanctions“, p. 25

¹⁰³ *ibid*

¹⁰⁴ *ibid*, p. 26

- (1) Conditional commitment to reward (promise)
- (2) Conditional commitment to punish (threat)
- (3) Conditional commitment neither to reward nor punish (assurance) ¹⁰⁵

Thus, an assurance would make it possible for A to promise a reward to B for compliance without simultaneously threatening to punish B for non-compliance. Instead A rather assures B that it will not be rewarded for non-compliance.

How does Baldwin's third aspect of conditional commitment fit in the process of constructive engagement? Since we evolved earlier Schelling's "compellent threat" as part of the constructive engagement strategy, the notion of assurance corresponds, therefore, only partly. During constructive engagement country A assures B a reward for compliance with its demands on political concessions and may neither threaten nor promise any repercussions or rewards respectively if B decides not to give in. Yet, the idea of constructive engagement, in line with our definition, allows A to withdraw the reward when B ceases to give political concessions. Accordingly, it may be conceivable to add a fourth kind of commitment to the above list; one which could be called continuous conditional commitment during constructive engagement. During constructive engagement, one may thereby isolate threats and promises of positive sanctions as follows:

1. Conditional assurance of a reward the recipient does not expect to have.
 - (i) No threat of punishment for non-compliance, rather sender assures recipient that it will not be rewarded for non-compliance
 - (ii) Reward for compliance
2. Continuous conditional commitment that the recipient
 - (i) Will continue to receive the reward for compliance
 - (ii) Will be deprived of the reward for non-compliance
 - (iii) Might face the threat (and use) of negative sanctions as a last resort

¹⁰⁵ *ibid*, p. 26

Along this line of reasoning, it would be consistent to state that continuous conditional commitment can be perceived as a threat to the recipient because the recipient, though it may not have had expectations about a reward, would actually be deprived of it for non-compliance or even face the use of negative sanctions as A's last resort. It can be summarized that contrary to the exercise of power during coercive diplomacy and the use of negative sanctions, constructive engagement does not back the demand for political concession with a threat of punishment for non-compliance.¹⁰⁶ Rather it ceases to give rewards in the case of non-compliance. Hence, the theoretical idea behind constructive engagement conceptually isolates threats from promises and treats both rewards and punishments as opportunity costs to the recipient. Therefore, it can be concluded that comparing constructive engagement with "carrot and stick diplomacy" may be misleading since in this picture using the "stick" is merely withdrawing the "carrot" after it had already been awarded.¹⁰⁷ The use of negative sanctions is only the last resort and can be employed as a last resort if negotiations involving the promise of rewards and the withdrawal of the latter have failed.

6. Towards a Model for Constructive Engagement

Conceptualising a peaceful policy of constructive engagement within IR theory ultimately leads to the adoption of neo-liberal approaches to state cooperation based on

¹⁰⁶ According to George, coercive diplomacy involves four basic variables: the demand, the means used for creating a sense of urgency, the threatened punishment for non-compliance and the possible use of incentives. Differences in these variables yield five basic types of coercive diplomacy: the ultimatum, the tacit ultimatum, the "try-and-see" approach, and "gradual turning of the screw" and finally the carrot and stick approach. Ultimatums employ demands and threats, and impose a time limit for compliance in order to enhance the adversary's sense of urgency. Ultimatums are called "tacit" when the threat or time limit is conveyed implicitly. The "try-and-see" approach makes a demand, and then opens by employing relatively coercive force. If the adversary does not comply, coercive force is increased. When "gradually turning the screw" the coercing power makes explicit at the outset the intention to apply increasing degrees of pressure until the adversary complies. When the coercing power supplements its threats with incentives, it employs the carrot and stick approach. *see* Alexander George, Coercive Diplomacy as an Alternative to War, (Washington, D.C. U.S. Institute of Peace Press, 1991), pp. 3-14;

¹⁰⁷ The threat to administer punishment must not be confused with the concept of deterrence. Contrary to our concept of withdrawing rewards, deterrence is commonly thought about in terms of convincing opponents that a particular action would elicit a response resulting in unacceptable damage that would outweigh any likely benefit. Rather than a simple cost/benefits calculation for B, deterrence, therefore, aims to influence B not to do something it will otherwise do by threatening it to deprive it of something, which was not previously given by A. *see* Bruce Russett, Harvey Starr, David Kinsella, World Politics – The Menu for Choice, (Boston, St Martin's Press, 2000), pp.90-91

cycles of reciprocity. This is particularly applicable for a model of constructive engagement, which, as had been established previously, essentially incorporates economic and political cooperation regimes with the target state on the basis of normative conditionality. The peculiarity about conceptualizing such model in an interdependent relationship between A and B, is that asymmetries of interdependence between A and B allow for the use of incentives, as moves to get B to join an international regime rather than allowing A to act as hegemon to sustain it. Since we established earlier that power can derive from asymmetries of interdependence and is subject to fluctuation, the formation of international regimes within the framework of constructive engagement essentially reflects the notion of achieving cooperation in an effort to coordinate common interests and reduce this uncertainty. Thus, considering this interdependence, one has to conceptualize constructive engagement along the line of neo-liberal insights, which views international regimes as interest based, rather than power based.

6.1 Interstate Cooperation and State Preferences: A Structural Explanation

Drawing an analogy from market economics, neo-liberals generally presume that states cooperate without a centralized political authority. States, if fully informed of their interests and those of other actors, will seek to increase their individual gains through mutually rewarding interactions rather than engage in unrewarding conflict. In our quest to find a formula for a successful strategy of constructive engagement, we will build upon Keohane's vital question of "why an actor behaved in a certain way [...] what its incentives were: that is, what were the opportunity costs of its various alternative courses of action? Opportunity costs are determined by the nature of the environment as well as by the characteristics of the actor."¹⁰⁸ Hence, our analysis focuses on how incentives affect the international environment for bilateral cooperation or non-cooperation. Our model adopts Keohane's definition of cooperation as "the existence of a degree of policy coordination where actors adjust their behaviour to the actual or anticipated preferences of others."¹⁰⁹ Cooperation essentially requires that an actor adjusts its policies to reduce

¹⁰⁸ Robert Keohane, *After Hegemony*, (Princeton, Princeton University Press, 1984), p. 80

¹⁰⁹ *ibid*, p. 50

the consequences on, or facilitates the goals, of another state.¹¹⁰ If attempts are made to adjust policies and these become significantly more compatible to one another, cooperation follows. If, however, no attempts are made to adjust policies, discord prevails.¹¹¹ Keohane argues that one needs to examine actors' expectations about future patterns of interaction, their assumptions about the proper nature of economic arrangements, and the kinds of political activities they regard as legitimate. Ultimately, this premise leads to the assumption that A may initiate the formation of an international regime with B in order to alter the behaviour of the target.

A. International Regimes

Each act of cooperation or discord affects the beliefs, rules, and practices that form the context for future actions. Each act must, therefore, be interpreted as embedded within a chain of such acts and their successive cognitive and institutional residues.¹¹² According to Keohane, the concept of international regime not only enables us to describe patterns of cooperation; it also helps to account for both cooperation and discord. While regimes themselves depend on conditions that are conducive to interstate agreements, they may also facilitate further efforts to create such conditions. Arguably, the concept of international regime theory in the context of constructive engagement is vital because it helps to explain both:

- (i) The short-term mechanism for cooperation and / or rapprochement
- (ii) The long-term mechanism to control the target state's behaviour

Keohane and Axelrod's approaches to cooperation and the entire literature on international regimes represent a successful attempt to be neither as broad as international structure analysis nor as narrow as the study of formal organizations. Borrowing from behavioural science, scholars of international regime theory argue that states under controlled conditions may reciprocate the cooperative acts of their opponents while

¹¹⁰ *ibid*, pp.51- 52

¹¹¹ *ibid*, p. 51

¹¹² *ibid*, p. 56

international laws and norms shape states' preferences for such cooperation.¹¹³ Hence, any attempt to explain the forces behind constructive engagement and its tool of positive sanctions has to be imbedded within this theory which essentially, as John Ruggie put it, claims that "international behaviour is institutionalised."¹¹⁴ More specifically, Ruggie defined regimes as "a set of mutual expectations, rules and regulations, plans and organizational energies and financial commitments."¹¹⁵ Stephen Krasner's definition seeks a middle ground between "order" and explicit commitments as it emphasizes the normative dimension of international relations.¹¹⁶ Krasner identifies a regime as "a set of implicit or explicit principles, norms, rules and decision making procedures around which actors' expectations converge in a given area of international relations"¹¹⁷

- a) Principles are beliefs of fact, causation and rectitude
- b) Norms are standards of behaviour defined in terms of rights and obligations
- c) Rules are specific prescriptions or prospective for actions
- d) Decision making procedures are prevailing practices for making and implementing collective choice.¹¹⁸

B. Game theory and the formation of international regimes

The Prisoner's Dilemma, which is part of game theory, has been used to explain how cooperation can evolve under anarchic conditions. While it is vital to distinguish cooperation from international regimes, this thesis accepts the explanatory potential of game theory or rational-choice approaches to describe the dynamics and mechanisms of cooperation, which, if occurring between actors, may be followed by the creation of a

¹¹³ William Long, Economic Incentives and Bilateral Cooperation, (Ann Arbor, University of Michigan Press, 1996), p. 9; Robert Axelrod, The Evolution of Cooperation, (New York, Basic Books, 1984), pp.7-26

¹¹⁴ John Ruggie, "International Responses to Technology: Concepts and Trends" International Organization 29 (Summer, 1979), p. 559, quoted in Stephen Haggard and Beth A. Simmons, "Theories of International Regimes", International Organization, Vol.41, No.3 (Summer, 1987), p. 492

¹¹⁵ John Ruggie quoted in Stephen Krasner, International Regimes, (Ithaca, Ithaca University Press, 1983), p. 2

¹¹⁶ Stephen Haggard and Beth A. Simmons, "Theories of International Regimes", p. 493

¹¹⁷ Stephen Krasner, International Regimes, pp.1-21

¹¹⁸ *ibid*, pp.1-21

regime. In the game theory literature, it is argued that situations in international relations, in which states without a central authority face mixed interests and preferences, corresponds with games such as the Prisoner's Dilemma (PD). The PD suggests that, in discrete interactions, state preferences will prohibit cooperative interactions. The reason is that the PD presents us with a 2 x 2 game in which the options for the players / prisoners of cooperation and defection correspond to states' choices in international relations. This simplified model of a strategic interaction structure creates four potential outcomes for each player: mutual cooperation (CC), mutual defection (DD), unilateral defection (DC) and unreciprocated cooperation (CD). Within the context of international relations the dynamics of the PD suggests that each states prefers an outcome of mutual cooperation (CC) to mutual defection (DD). Nevertheless, each state also seeks its advantage by defecting while the other cooperates (DC) to an outcome of mutual cooperation (CC) and each state would prefer mutual defection (DD) to a situation in which one is exploited by choosing to cooperate while the other defects (CD). Hence, the preference order of states reads as follows: DC>CC>DD>CD.¹¹⁹ The paradox of game theory is, as Jervis suggests, that "even if each side prefers CC to DD (and each knows that this is the other 's preference) the result can be non cooperation DD because each part is driven by the hope of gaining its first choice – which would be to exploit the other (DC) – and its fear that if it cooperates, the other will exploit it (CD).¹²⁰ Essentially, the PD suggests that, in discrete interactions, state preferences will prohibit cooperation, despite a certain degree of convergence of interests between them.

For neo-liberals, two inherent problems arise from the PD for the study of international co-operation and constructive engagement respectively. First, in the real world, states engaged in PD situations are very unlikely to confront each other only once. Secondly, as Keohane suggests, the implication inherent in rational choice theory implies that "relevant decisions of governments, and other actors, about whether to cooperate can be treated as if they were voluntary"¹²¹ Keohane discredits the assumption of "voluntary

¹¹⁹ Robert Jervis, "Realism, Game Theory, and Cooperation" *World Politics*, 40, No.3 (April, 1988), pp. 317-319

¹²⁰ Robert Jervis, "Realism, Game Theory, and Cooperation" p. 317

¹²¹ Robert Keohane, *After Hegemony*, p. 71

actions” in international relations as flawed. He argues that states are “rational egoists”¹²², who “calculate costs and benefits of alternative courses of action in order to maximize their utility in view of those preferences.”¹²³ However, in analysing cooperation and the formation of international regimes, Keohane stressed that it is important to bear in mind that “regimes can be more or less imposed; that is, decisions to join them can be more or less constrained by powerful actors”¹²⁴ He asserts that “relationships of power and dependence in world politics will, therefore, be important determinants of the characteristics of international regimes.”¹²⁵ During constructive engagement, the asymmetries of interdependence and the inherent power of the sender state show that the result of bargaining about political concessions and / or international regime formation may not be entirely voluntary. Taking Keohane’s argument about regime formation under hegemonic scheme further¹²⁶, we see that during constructive engagement, the sender state may wield its influence over the weaker target state to agree upon the formation of an international regime, which may either bring more beneficial outcomes to the sender or may be mutually beneficial for both states.¹²⁷ In this regard, the “issue structure model”, one of the models applied by Nye and Keohane, explaining regime change in interdependent relations, seems to fit state behaviour under constructive engagement. In this model, the strong state makes the rules; but it is strength within the issue area that counts. In this model, regimes are likely to change “when the underlying distribution of power in an issue area is inconsistent with the effective distribution of power within a regime.”¹²⁸ How can this then be applied to constructive engagement? State A may want to use its “comparative invulnerability”¹²⁹ in one aspect of the interdependent relations and link the formation of an international regime according to

¹²² A premise which the PD assumes too.

¹²³ Andrews Hasenclever, Peter Mayer and Volker Rittberger, Theories of International Regimes, (Cambridge, Cambridge University Press, 2004), p.29

¹²⁴ Robert Keohane, After Hegemony, p. 71

¹²⁵ *ibid*, p. 71

¹²⁶ In “After Hegemony”, Keohane relies almost as much on the theory of hegemonic regime stability as he criticises it. Stating that hegemonic stability plays an important (though not essential) role in international regime formation, his emphasis is that international regimes facilitate cooperation if cooperation and discord are not determined simply by interests and power. Andrews Hasenclever, Peter Mayer and Volker Rittberger, Theories of International Regimes, p.87

¹²⁷ Robert Keohane, After Hegemony, p. 72

¹²⁸ Robert Keohane, Joseph N. Bye, Power and Interdependence, p. 121

¹²⁹ *ibid*, p.120

A's norms and rules, whilst creating enough incentives to ensure that B will equally benefit from mutual cooperation.

Moreover, neo-liberals also argue that the mechanism behind regime formation is based on the iterated Prisoner's Dilemma. In an iterated PD, that is, if the game is played repeatedly, it is generally agreed that players may learn to rationally cooperate. The reason is that a multi-play PD offers players an incentive - higher payoffs in the long run for mutual cooperation than mutual defection, as well as means - the ability to sanction a previous defection - to cooperate which are absent in a single PD game.¹³⁰ Seen from this perspective, cooperation takes place, because future rewards, resulting from CC, are appreciated. Owing to accumulative experience, Axelrod points out that high probability of repeated or future plays is a necessary but not sufficient condition for cooperation to emerge: the future must also affect the calculations of the players in order to persuade them not to defect in the present play.¹³¹ Because future payoffs in iterated PDs are valued less than present payoffs, cooperation in an iterated PD requires that the "weight" of the next move relative to the current move on the "discount parameter, w , must be large enough to make the future loom large in the calculations of total payoffs"¹³² However, Gowa argues that the magnitude of the discount parameter needed to maintain cooperation which is a function of the payoffs received in individual plays in the iterated PD does not determine the most successful strategy in a iterated PD. The strategy that will maximize an actor's long-run utility depends on the strategy employed by the other actor. Thus, if one actor's strategy dictates permanent defection, the opponent's optimum strategy is also defection.¹³³ In such a situation of players' respective conflicting and complementary interests, "a new approach is needed"¹³⁴ that draws "on people who have a rich understanding of the strategic possibilities inherent in a non-zero-sum setting, a situation in which the interests of the participants partially coincide and

¹³⁰ Joanne Gowa, "Anarchy, Egoism, and Third Images: The Evolution of Cooperation and International Relations", International Organization, Vol.40, No.1 (Winter, 1986), pp.169-170

¹³¹ Robert Axelrod, The Evolution of Cooperation, p. 15

¹³² *ibid*, p. 15

¹³³ Joanne Gowa, "Anarchy, Egoism, and Third Images: The Evolution of Cooperation and International Relations", p. 170

¹³⁴ Robert Axelrod, The Evolution of Cooperation, p. 29

partially conflict”¹³⁵ Axelrod ‘s solution to what was referred to as “permanent defection” draws from lessons from a fictional computer tournament.

A computer tournament for the study of effective choice in the iterated Prisoner’s Dilemma meets these needs. In a computer tournament, each entrant writes a program that embodies a rule to select the cooperative or non-cooperative choice on each move. The program has available to it the history of the game so far, and may use this history in making a choice. If the participants are recruited primarily from those who are familiar with the Prisoner’s Dilemma, the entrants can be assured that their decision rule will be facing rules of other informed entrants. Such recruitment would also guarantee that the state of the art is represented in the tournament.¹³⁶

In order to increase the worth of the computer tournament as predictor of effective choice, Axelrod conducted it in two rounds. A strategy called TIT FOR TAT (TFT) won both rounds: It begins by cooperating and then retaliates once for each defection by the other player. TFT discourages, therefore, exploitative strategies and can yield relatively high payoffs against other strategies.¹³⁷ This strategy of reciprocity explains the forces behind a successful foreign policy of constructive engagement. The strategy of constructive engagement is but a strategy of reciprocity, which punishes players who are uncooperative and rewards compliant choices. We can expect that practitioners in such a “reciprocal engagement cycle” tend to institutionalise cooperative strategies or choices as a general practice, so that they will benefit from others’ use of the strategy as well as from their own. Since constructive engagement is an iterated PD, rather than a single PD, incentives from A may result in political concessions from B,¹³⁸ which can ultimately

¹³⁵ Robert Axelrod, *The Evolution of Cooperation*, p. 30

¹³⁶ *ibid*, p. 30

¹³⁷ Robert Axelrod and Robert O. Keohane, “Achieving Cooperation under Anarchy: Strategies and Institutions” in Kenneth A. Oye, *Cooperation under Anarchy*, (Princeton, Princeton University Press, 1986), pp. 244-245

¹³⁸ It should be noted that the term “political concession” during constructive engagement, which involves the promotion and protection of human rights merely refers to A’s diplomatic efforts to persuade B to ratify respective UN Human Rights Covenants or remind B of its commitments, if it is already a state party to any of these international human rights regimes. Within the context of the CFSP of the European Union, all EU member state are state parties to all UN human rights covenants as well to the Rome Statute of the International Criminal Court, which represents the first specific provision for enforcement and compliance with international human rights standards. More importantly, however, with the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms, human rights have become part of domestic legislation in all EU member states. Whilst Article 1 provides that “The High Contracting Parties shall secure to everyone within their jurisdiction the rights and freedoms defined in Section I of this Convention” Article 34 allows individuals to make an application to the court if any of the rights of the

lead to the formation of an international regime. TFT is successful as Axelrod argues, because it “is nice, forgiving, and retaliatory. It is never the first to defect, it forgives an isolated defection after a single response, but it is always incited by a defection no matter how good the interaction has been so far.”¹³⁹ This assumption is supported by Homans’ argument that rewards tend to spawn more rewards and punishment to spawn more punishment. “While the exchange of rewards tends towards stability and continued interaction, the exchange of punishments tends towards instability and the eventual failure of interaction in escape and avoidance [...]”¹⁴⁰

The application of TFT during constructive engagement then looks as follows: The sender state “A” begins by cooperating (offer of incentives), then does whatever B did in the last move, retaliating for defection (no rewards) and reciprocating for acts of cooperation (rewards). It can be concluded that when both players follow this line, complete mutual cooperation results.

C. Shadows of the Future – functions of international regimes

So far, it has been established that in the iterated PD, concerns about the effects of future actions help to promote cooperation. This follows the line of reasoning that the more future payoffs are valued relative to current payoffs, the less the incentive to defect today- since the other side is likely to retaliate tomorrow.¹⁴¹ This observation explains why the formation and maintenance of international regimes is the ultimate goal as well

convention were violated by a state party. Judgments by the European Court of Human Rights, which are declaratory in nature, are legally binding, providing a unique international organ of control in protecting compliance to human rights standards. Thus, in line with international regime theory: any EU member-state promoting human rights either unilaterally or multilaterally through the EU Commission and Council, demands to comply with the same extraterritorial standards, rules and norms the state party itself is subject to. The convention entered into force on 3 September 1950. For original text *see* Council of Europe, European Treaties ETS No. 5, Convention for Protection of Human Rights and Fundamental Freedoms, Rome, 4.XI.1950 *Text completed by Protocol No. 2 (ETS No. 44) of 6 May 1963 and amended by Protocol No. 3 (ETS No. 45) of 6 May 1963, Protocol No. 5 (ETS No. 55) of 20 January 1966 and Protocol No. 8 (ETS No. 118) of 19 March 1985*; for proceedings before the court *see* Clarre Ovey and Robin C.A. White, European Convention on Human Rights (Oxford, Oxford University Press, 2002), pp.396- 419

¹³⁹ Robert Axelrod, The Evolution of Cooperation, p. 46

¹⁴⁰ George C. Homans, Social Behaviour: Its Elementary Forms (New York, Harcourt, Brace and World, 1961), p. 57

¹⁴¹ Robert Axelrod and Robert O. Keohane, “Achieving Cooperation under Anarchy: Strategies and Institutions”, p. 232

as a functional mechanism for a successful constructive engagement strategy. Essentially, it is the power of the actors' respective expectations, which makes international regimes significant in sustaining cooperative and possible mutually beneficial relations among formerly estranged states. The principles, rules and norms of institutions of international regimes make states "concerned about precedents, increasing the likelihood that they will attempt to punish defectors. In this way, international regimes help to link the future with the present. "¹⁴²

Functional theories help to explain regime strength, particularly the pattern of why compliance with regimes tends to persist even when the structural conditions that initially gave rise to them change. Keohane argues that the regime's benefits are simply that it provides incentives to certain forms of cooperative action, by offering:

- (i) A legal framework establishing liability for actions, presumably supported by governmental authority.
- (ii) Perfect information among actors.
- (iii) The reduction of transaction costs.¹⁴³

Drawing an analogy from market and the uncoordinated actions of states, Keohane, shows - whilst acknowledging that none of the above conditions are met in world politics - how political market failure provides a functional explanation of both why regimes are needed and how they mitigate the collective action dilemma.¹⁴⁴ What Keohane refers to as legal liability, implies that international regimes serve the function of international contracts, "which help to organize relationships in mutually beneficial ways"¹⁴⁵. As Keohane asserts

¹⁴² *ibid*, p. 234

¹⁴³ Robert Keohane, *After Hegemony*, pp.86- 87

¹⁴⁴ Political market failure situations refer to situations in which the outcomes of market-mediated interactions are sub-optimal, given the utility functions of actors and the resources at their disposal. If the players monitor each other's behaviour and if enough of them are willing to cooperate on condition that others cooperate, they may be able to adjust their behaviour to each other and reduce discord. This ultimately results in the formation of institutions set up of principles norms, rules and procedures. *see ibid*, pp. 82-84

¹⁴⁵ *ibid*, p. 88

These arrangements are designed not to implement centralized enforcement of agreements, but rather to establish mutual expectations about others' patterns of behaviour and to develop working relationships that will allow the parties to adapt their practices to new situations.¹⁴⁶

The notion of reducing transaction costs as the third essential function of international regimes explains state's adherence to a regime. In a regime, like in a market failure situation, transactions costs of certain possible bargains have been increased, while the costs of certain possible bargains have been reduced.¹⁴⁷ Thus, incentives to violate regime principles are reduced in that an iterated PD increases transaction costs of illegitimate bargains and decreases them for legitimate ones. As for the second incentive among actors it is not merely information about other governments' resources and capabilities, but also accurate knowledge of their future positions. In part, this is a matter of estimating whether they will keep their commitments and when holding to their commitments in iterated PD, government's reputation becomes an important asset in persuading others to enter into an agreement with it.¹⁴⁸ These functional theories, put forward by Keohane suggest that regimes thrive in situations where states have common as well as conflicting interests and preferences on multiple, overlapping issues and where externalities are difficult but not impossible to deal with through bargaining. Where these conditions exist, international regimes can maintain cooperation.

6.2. Bargaining¹⁴⁹ and Interdependence

It has been established that positive sanctions have the potential to initiate a cycle of reciprocity and can be seen as useful policy tools in fostering state cooperation (possibly leading to regime formation). Now, we must identify how incentives can affect a state's

¹⁴⁶ *ibid*, p. 89

¹⁴⁷ *ibid*, p. 90

¹⁴⁸ *ibid*, pp.93-94

¹⁴⁹ It should be emphasized here that throughout game theory literature, a barter situation between two individuals or states, is referred to as a *bargain* situation rather than *negotiation*. The reason for this seems to be that Nash's model on bargaining is so influential and subsequently so widely used that the term itself has become a tradition.¹⁴⁹ This emphasis is important to avoid any confusion, since the concept of *negotiation* in this study solely refers to diplomatic practices. *see* Rudolf Avenhaus, "Game Theory", in Victor A. Kremenyuk, *International Negotiation – Analysis, Approaches, Issues*, (San Francisco, Jossey-Bass, 2002), p. 208

definition of its preferences by changing its external payoff environment and its domestic politics, which in turn may alter its chosen policies. What is needed for a constructive engagement bargaining model is to establish a two level (structural / agent-level) explanation for how incentives can contribute to cooperation. Firstly, by using an international exchange model we need to establish how positive sanctions could alter the external environment of the recipient to produce a political concession or adjustment, which essentially will lead to cooperation. However, by treating preference formation and change as exogenous factors, it is obvious that the international exchange model fails to capture how incentives can affect agent-level choices. Thus, the second goal is to identify what role sender and recipient preference formation respectively play for cooperation to take place.¹⁵⁰

6.2.1 Changing the International Payoff Structure

Hirschman's work on market power is a useful, yet not sufficient, starting point for a model of economic incentives. While recognizing the potential for both positive and negative sanctions, Hirschman focuses on coercive influence stemming from the threat of interrupting commercial or financial relations not on incentives. Wagner's critique of Hirschman focuses on Hirschman's assumption that asymmetrical interdependence necessarily translates into political influence. Rejecting that notion, he asserts that influence cannot be conceptualised without a theory of bargaining and exchange.¹⁵¹ The sender state can derive political influence from the recipient state's dependence on the gains of trade only if the sender is willing to sacrifice some of its gains from trade for the political concession. This trade-off requires that the sender places greater monetary value on the political issue that the recipient does. Thus, political influence comes from the willingness to pay part of one's gains from trade for a change in the recipient's political behaviour, not from the mere existence of asymmetry. Influence is possible only "if a

¹⁵⁰ based on William J. Long, Economic Incentives and Bilateral Cooperation, (Ann Arbor, University of Michigan Press, 1996), p. 19

¹⁵¹ R. Harrison Wager, "Economic Interdependence, Bargaining Power and Political Influence", International Organization 42, No.3 (Summer 1988), pp.462-472

government that is attempting to exercise influence has a bargaining advantage with respect to the terms of trade that it has not exploited.”¹⁵² As Wagner asserts:

Since the exercise of influence by threats to interrupt trade is commonly thought to be coercive, this seems not to be what people have in mind when they think of the exploitation of economic dependence for political influence. If political influence is no more than the mutually beneficial exchange of economic resources for political concession, then “exploiting asymmetrical interdependence” is simply a confusing way of talking about ordinary exchange relationships. It is important to ask, therefore, whether by bargaining simultaneously over the division of the money and Bargainer 2’s political behaviour, Bargainer 1 can force Bargainer 2 to change his behaviour without fully compensating him for the resulting loss in his utility.¹⁵³

Wagner concludes that the use of economic interdependence for political influence “requires that the exchange of economic resources for political concessions make both parties to a relationship better off than they would be if they bargained over the distribution of the gains from the economic relationship alone.”¹⁵⁴ This helps us to understand the basic mechanism behind positive sanctions. Whilst not entirely dismissing the “power of interdependence”, his findings tell us that political concessions may result from an interdependent relationship due to the fact that the sender wielding political influence could, if it chose, successfully demand more favourable terms in the existing relationship. Applying Wagner’s findings to see how incentives can change an international payoff structure, we can identify that positive sanctions can alter a state’s payoff structure under certain conditions. Firstly, although a recipient has a declining marginal utility for the economic incentives (i.e. goods or technology) what may be more important is the recipient’s total utility for these goods or technology. As Long asserts that if this total utility remains substantially positive during the sender’s influence attempt, the incentive could represent a powerful inducement.¹⁵⁵ This total utility depends on what extent the recipient needed the sender state’s offered resources or capabilities. That is:

¹⁵² *ibid*, p. 473

¹⁵³ *ibid*, p. 470

¹⁵⁴ *ibid*, p. 481

¹⁵⁵ William J. Long, Economic Incentives and bilateral Cooperation, p.21

- (i) The offered goods, services, commodities are valued because they are important to the recipients economic and political goals
- (ii) Are scarce in the recipient 's state.
- (iii) The terms offered by the sender for obtaining them are strictly in line with our earlier definitions of reward (i.e. conditional assurance of a reward).

The success of constructive engagement thus depends on the recipient's total utility of the incentives, which, according to Long, is most likely when advanced technology is part of the package.¹⁵⁶ This is due to the fact that advanced technology is such an integral part of a state's overall productive capability.¹⁵⁷ The second reason why incentives can foster cooperation is that, unlike sanctions, they open up new opportunities for trade and exchange, create opportunities for both sender and recipient to acquire a portion of the new gains from trade.¹⁵⁸ This assumption is based on the prerequisite that the sender (in line with Wagner's model) "does not fully exploit its market power over the terms of trade but allows the recipient to gather economic benefit from new trade or to refrain from fully exploiting its market power over existing trade to gain political concessions from the recipient."¹⁵⁹ By creating new gains from trade or technology transfer, or foreign aid, the sender acquires the means for bargaining over political concessions. By not fully exploiting its market power in the respective economic niche and not exploiting the recipient's respective vulnerability, rather than contributing to its relative equilibrium, both parties win and cooperation occurs.

¹⁵⁶ William J. Long, "Trade and Technology Incentives and Bilateral Cooperation", in David Cortright, (ed) The Price of Peace – Incentives and International Conflict Prevention, (New York, Rowman & Littlefield Publ., 1997), p.86

¹⁵⁷ for a discussion on dependence of less developed countries on technology transfer and the importance of advanced technology as a vital element of economic development, see Michael Todaro, Economic Development (New York, Addison-Wesley, 2000), pp. 131-133

¹⁵⁸ William J. Long, Economic Incentives and bilateral Cooperation, p.22

¹⁵⁹ *ibid*, p.22

6.2.2 Agent Level Explanations

Yet, relying simply on an international exchange model misses the respective domestic factors accounting for changes in state preference. It is argued that before an international exchange of economic benefits for political concession can occur two prerequisites have to be met on agent-level:

- a. The sender state must establish its preference for political concessions versus economic gains to alter the terms of trade.
- b. The recipient state must adopt an internal exchange function favouring gains from trade (and political concessions) rather than political autonomy.¹⁶⁰

a. Sender preferences

Advocates of positive sanctions and constructive engagement often point to the counterproductive effects of negative sanctions on both sender and target state. Recalling earlier mentioned vital criteria for the employment of sanctions, Hufbauer's study on negative sanctions confirms the argument that negative sanctions invariably cost societal actors and create conflict between the state and society. Hufbauer concludes that with regard to societal groups in the sender state, "business firms at home may experience severe losses when sanctions interrupt trade and financial contact [...] After the first flush of patriotic enthusiasm, such complaints can undermine a sanctions initiative"¹⁶¹ The support for positive sanctions, on the contrary, increases as exporters and investors take a growing interest in the gain from trade and technology transfer associated with new or expanded commercial relations. It must be emphasized that this market based phenomenon of mutual benefits for government and non-government actors in the sender state, which cuts across to the recipient, supports our idea of a successful constructive engagement strategy, which essentially attempts to construct multiple channels and informal societal and economic

¹⁶⁰ William J. Long, Economic Incentives and bilateral Cooperation, p.23

¹⁶¹ Gary C. Hufbauer, Jeffrey J. Schott, Kimberly A. Elliott, Economic Sanctions Reconsidered- History and Current Policy, p.78

ties between sender and recipient.¹⁶² Thus, unlike coercive strategies, such as economic sanctions, economic gains initiated by incentives tend to maintain a domestic support base for international cooperation.

b. Target Preferences

The sanctions literature suggests that domestic antidotes generated in the recipient state (i.e. target) limit the effectiveness of negative sanctions because they tend to unify the target country in support of the government and in resistance to an external threat and compel the target country to search for commercial alternatives. Both reactions move the target country away from a preference for the sender's desired outcome.¹⁶³ Long suggests that incentives are less likely to produce this negative impact on the recipient state. Incentives, seen as non-coercive instruments, provide a tangible material benefit that the recipient can appropriate. Most importantly, within the political economy of the recipient state, incentives encourage those state or societal actors who have the most to gain economically to be more sympathetic or less resistant to the political concession the sender seeks.¹⁶⁴ Overall, incentives can provide substantial economic benefits for the recipient state, which may persuade government as well as societal actors to enter and sustain the sender state's initiated reciprocal cycle of reciprocity.

6.2.3 Playing the Two-Level Game

A crucial factor to take into consideration on the agent level during constructive engagement is what Putnam referred to as the two-level game. Putnam asserts that

¹⁶²this also refers again back to Keohane and Nye's characteristic of complex interdependence (an ideal state of world politics) which among other features requires multiple channels connecting societies including informal ties between governmental elites as well as formal foreign office arrangements as well as informal ties among non-governmental elites, Robert O. Keohane, Joseph N. Nye, Power and Interdependence, p.21

¹⁶³Gary C. Hufbauer, Jeffrey J. Schott, Kimberly A. Elliott, Economic Sanctions Reconsidered- History and Current Policy p.10

¹⁶⁴William J. Long, "Trade and Technology Incentives and Bilateral Cooperation", in David Cortright, (ed) The Price of Peace – Incentives and International Conflict Prevention, (New York, Rowman & Littlefield Publ.) 1997, p.89

though Nye and Keohane are the intellectual fathers of international regime theory, the role of domestic factors was largely neglected in their work. Rejecting states as complete unitary actors, Putnam constructed a two-level, win-set-based model, which incorporates a general equilibrium theory for the interaction of domestic and international factors. According to Putnam, international negotiations have to be divided into a two-level game:

At the national level, domestic groups pursue their interests by pressuring the government to adopt favourable policies, and politicians seek power by constructing coalitions among those groups. At the international level, national governments seek to maximize their own ability to satisfy domestic pressures, while minimizing the adverse consequences of foreign developments.¹⁶⁵

For negotiators, this means that they have to appear at both board games. Moves that are rational on one board may not be perceived as such on the other. The task of a political leader / negotiator is to negotiate outcomes which are consistent on both boards.¹⁶⁶ Given the fact that these two environments have different dynamics, Putnam provides a sequential model: (a) Level I: bargaining between negotiators, leading to a tentative agreement (b) Level II: separate discussions within each domestic group of constituents about whether to ratify the agreement. At this stage, the domestic groups can only agree or disagree with the outcome; any amendments require agreement from all other parties involved.¹⁶⁷ Accordingly, Putnam argues that the requirement that any Level I agreement must in the end be ratified on Level II, makes the “win-set” for any given Level II constituents the set of all feasible Level I agreements that would “win”, i.e. gain the necessary majority among the constituents, when simply voted up or down.¹⁶⁸ Thus, Level II “win-sets” are crucial for understanding Level I agreements because (a) larger Level II “win-set”, will make

¹⁶⁵ Robert D. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games”, International Organization, Vol.42, No.3 (Summer, 1988), p. 434 ; *see also* James Fearon, “Domestic Political Audiences and the Escalation of International Disputes,” American Political Science Review Nr. 88:3 (Sept. 1994), pp. 577-592

¹⁶⁶ Robert D. Putnam, “Diplomacy and Domestic Politics: The Logic of Two-Level Games”, pp.434-435

¹⁶⁷ *ibid*, pp. 436-437

¹⁶⁸ *ibid*

Level I agreements more likely (b) the relative size of the respective Level II “win-set” will affect the distribution of the joint gains from the international bargain. Thus, the larger the perceived “win-set”¹⁶⁹ of a negotiator, the more he/she can be pushed around by another Level I negotiator.¹⁷⁰ For Putnam three factors determine the “win-set”: (a) distribution of power, preferences, and possible coalition among Level II constituents; (b) Level II political institutions, (c) Level I negotiator’s strategies. Applying these determinants to constructive engagement two-level negotiations, the “win-set” would be determined as following:

- (a) Generally, the lower the cost of no-agreement, the smaller the “win-set”. The size of the “win-set” (i.e. the negotiation room for the Level I negotiator) depends on the relative size of, what Putnam refers to, as “the relative size of the isolationist forces (who oppose international cooperation in general) and the internationalists (who offer “all-purpose” support).”¹⁷¹ Again asymmetries in interdependence tend to have impact in that “all-purpose support for international agreements is probably greater in smaller, more dependent countries with more open economies, as compared to more self-sufficient countries, like the US [...]”¹⁷² Thus, during constructive engagement B’s relative vulnerability to no agreement with A, will make “all-purpose support” more likely. By the same token, however, cleavages between “hawks and doves” (i.e. factional conflicts on Level II) raises the risk of involuntary defection on Level I.¹⁷³
- (b) The greater the autonomy of central decision-makers from their Level II constituents, the larger their “win-set” and thus the greater the likelihood of achieving international agreement. Yet, *ceteris paribus*, the stronger a state is

¹⁶⁹ Larger “win-sets” with a broader range of alternatives can achieve a broader supportive collation

¹⁷⁰ *ibid*, pp. 437-440

¹⁷¹ *ibid*, pp. 442-443

¹⁷² *ibid*, p. 443

¹⁷³ *ibid*, p.444

in terms of autonomy from domestic pressures, the weaker its relative bargaining position internationally.¹⁷⁴

- (c) Each Level I negotiator will want to maximize the other's "win-set", but not necessarily his own, as whilst this will increase the likelihood of an agreement, it will also weaken his bargaining position vis-à-vis the other negotiator. A way around this dilemma is the use of conventional side-payments and generic "good-will." The two-level approach, however, emphasizes that the value of international side-payments should be calculated in terms of its overall value to the likelihood of ratification, rather than in terms of its overall value to the recipient nation.¹⁷⁵ Simultaneously, Level I negotiators have a strong interest in the popularity of their counterpart, since state B's popularity increases the size of his "win-set", and thus increases both the odds of success and the relative bargaining leverage of state A. As such, negotiators should be expected to try to reinforce one another's standing with their respective constituents and hence expand their "win-sets."¹⁷⁶

Overall, Putnam's model of the interaction between the domestic and international spheres and treating them as mutually dependent provides a crucial variable for constructive engagement, in that it helps us to understand domestic roots for voluntary, and more importantly, involuntary defection during international negotiation. In the case of Iran, this means that negotiations are subject to domestic factions.

¹⁷⁴ This refers mainly to totalitarian regimes, where diplomats representing an entrenched dictatorship are less able than representatives of a democracy to claim that the domestic pressures at home make it difficult to accept the deal. *ibid*, p.449

¹⁷⁵ *ibid*, p.450

¹⁷⁶ *ibid*, pp. 450- 451

7. Conclusion: Constructive Engagement: A soft-power strategy

Our model for constructive engagement attempted to define constructive engagement as well as applied neo-liberal approaches to conceptualizing it within general IR theory. We established that unlike appeasement, constructive engagement should be perceived as a strategy to bring about meaningful change in a state's behaviour without the use of force. It is also usually associated with an effort of "reintegrating" ostracized states back into the international community. The latest example for this perception in international relations literature and amongst policymakers alike, is Chris Patten's speech in Tehran during the Comprehensive Dialogue entitled "The Iranian Choice – An Opportunity to Embrace the Family of Nations", during which he emphasised that human rights are universal and reminded the Iranian government that "no nation state, however mighty, is sufficient unto itself. Cooperation with our partners – cooperation between the EU and Iran – is a requirement, not an ideal."¹⁷⁷ Reiterating that such cooperation was conditional on human rights improvements, Patten's vision was one of which:

I am convinced that there is a vital role that Iran, if it really wants to, can play on this international stage, among the Family of Nations. You may seize that role tomorrow, or in twenty years from now – the choice lies with you. Rome was not built in one day, nor was a democratic Europe or even the European Union created overnight. But the challenge – the imperative of working with others is one that every modern society has to face.¹⁷⁸

In this light, constructive engagement was perceived as a peaceful policy, in which the sender attempts to extract political concessions or demand political or economic reform from the target without the use of force. Ultimately, this refers to a causation in which the sender attempts to dominate the target's political agenda. That the latter is being co-opted to such extent that it aligns its preferences along that of the sender. This ability of shaping the preferences of others is what Dahl referred to as implicit

¹⁷⁷ Chris Patten, "The Iranian Choice – An Opportunity to Embrace the Family of Nations" in The Iranian Journal of International Affairs, Vol. XV, No.1&2, (Spring-Summer, 2003), p. 129

¹⁷⁸ *ibid*, p. 131

influence and Nye as soft power. Whilst recognizing soft power as a fundamental aspect of constructive engagement, it was asserted that hard power in the form of sanctions (i.e. carrots and sticks) still forms part of the dynamics of constructive engagement. Therefore, during constructive engagement, it was argued, that hard and soft power assets manifest themselves on two levels. The former constitutes the short-term inducement, the latter the long-term mechanism to get the target to permanently align itself to sender's political agenda. Thus, it was asserted that the use of positive (as well as negative sanctions) provides policymakers with tools to extract respective concessions from the target state. We also recognised that respective asymmetries in political and economic interdependence are vital for our understanding on sources of power and influence. Given the changing nature of interdependence in international relations, it was established that such asymmetries are potential source of power for both sides of the relationship. As such, it was argued that either side has the potential to influence the actions of the other. Therefore, we were careful not to exclusively relying on Hirschman's findings on the power of manipulating the terms of trade in an asymmetrical interdependent relationship. Rather, we followed Wagner's conclusion, that asymmetrical interdependence can only be a source of power in a bargaining situation when the less dependent actor chooses not to exploit certain asymmetries. Instead, the more powerful actor can offer incentives, thus indicating that it could afford to change the terms in the existing relationship.

This issue of interdependence eventually led to a structural explanation of cooperation under anarchic conditions in which approaches explaining the formation of regimes were used to explain (a) the short-term mechanism for cooperation and / or rapprochement and (b) the long-term mechanism to control the target state's behaviour. Theories explaining the formations of international regimes have, thus, been identified as providing functional explanations of international cooperation and also helped to understand that an institutionalised coordination of preferences, rules

and principles during regime formation ¹⁷⁹ may achieve cooperation under anarchy. Game theory, based on the iterated PD approaches to international relations, can provide the principal tool for analysing and explaining this cooperation. Axelrod's TFT strategy has shown that a cycle of reciprocity, that is a situation in which the attempt of cooperation of one egoistic actor influences the decision for cooperation of another egoistic actor. Whilst such structural explanations were helpful at identifying patterns of cooperation and how positive sanctions can be used to initiate a cycle of positive reciprocity, the agent-level was considered equally important. Putnam's two-level game was seen as vital as it explains how involuntary defection or cooperation during international negotiation can merely be seen as a reflection of the domestic environment.

Overall, constructive engagement was approached as a deliberate non-coercive policy of any given state to demand changes in the behaviour (domestic or international or both) of another state. Since the focus was on statecraft and power and the ability to sway, the model almost solely relied on neo-liberal accounts on achieving cooperation under anarchy. By and large, soft power, i.e. the ability to make others believe what you believe or co-opt rather than coerce was seen as the ultimate goal of constructive engagement. Since the focus will be on human rights diplomacy, Chapter Three will build on this idea and show that constructive engagement, far from being seen as cultural imperialism, constitutes a means to establish a universal normative consensus.

¹⁷⁹ Since 2000, the Commission of the EU offers Iran to enter a Trade and Cooperation Agreement with the EU which is subject to political and economic changes in Iran (particularly improvements in human rights) and which gives Iran most favoured nation status.

CHAPTER TWO

CONSTRUCTIVE ENGAGEMENT - PUTTING THEORY INTO DIPLOMATIC REALITY

1. Introduction

In foreign policy analysis literature, the reference to diplomacy is often seen as synonymous with negotiation in international relations or sometimes even used interchangeably with international relations itself. Whilst negotiation is a central task of diplomacy, uses of the term diplomacy in such general ways, however, do not give justice to both the profession as such and the meaning it has in the context of international cooperation. Accepting the common definition of diplomacy as the “management of international relations by negotiations”¹⁸⁰, this study also identifies diplomacy as the profession of persuasion and diplomats as statecraft’s visible practitioners which, as peaceful heralds of state power, implement respective foreign policies towards other states.¹⁸¹ Turning to Harold Nicholson for a definition we find a characterisation of the ideal diplomatic practitioner:

Diplomacy [...] in its essence is common sense and charity applied to International Relations; [it is the] application of intelligence and tact to relations between governments [...] The worst kind of diplomatists are missionaries, fanatics, and lawyers; the best kind are reasonable and humane sceptics. The art of negotiation is essentially a mercantile art. The foundation of good diplomacy is the same as the foundation of good business – namely credit, confidence, consideration and compromise.¹⁸²

The essentials of Martin Wight’s conception of what constitutes diplomacy, which is particularly important within the context of constructive engagement, are summarized in the following set of fundamental moral principles:

Honesty or truthfulness: don’t tell lies or break promises, it does not pay and brings its own retribution; establish a reputation for straight dealing.

¹⁸⁰ C.T.Onions (ed.) *The Oxford Dictionary of English Etymology* (Oxford, Clarendon Press, 1976), p. 270

¹⁸¹ Chas. W. Freeman, Jr. *Arts of Power – Statecraft and Diplomacy*, p. 4 While this may appear obvious to the reader, the intention behind this emphasis is to stress the significance to accept the study of diplomacy as an important segment in the field of foreign policy analysis.

¹⁸² Harold Nicholson, *The Evolution of Diplomatic Method* (London, Constable, 1954), p.180

Moderation and restraint: keeping a sense of proportion [...] requires the absence of assertiveness of national (and personal) egotism, and a readiness to make concessions, to give way on unessentials.

Courtesy: seeking not diplomatic victories, triumphs or successes, all of which imply a defeated antagonism, but agreements, which suggests common achievement; or perhaps seeking victories which come without being noticed. The art of diplomacy is that which gets its own way, but leaves the other side reasonably satisfied.

Respect for the other side: thinking the best of people [...] trying to share their point of view, understand their interests [...] ¹⁸³

While liberal institutional approaches explain how cooperation among states evolves through the use of positive sanctions, reciprocity and coordination of interests and preferences, literature on diplomatic practices actually helps to formulate a practical model for constructive engagement. A model which surely derives its explanatory power from liberal institutionalism, but, which on a more detailed and pragmatic level eventually conceptualises the ideas, techniques and practices of constructive engagement.

2. Diplomatic Reality of Constructive Engagement

While game theory conceptualises negotiations as a process of strategic choice and value maximisation, the history of negotiations makes it sometimes difficult to locate such concepts in the diplomat's practice. Findings from the iterated PD in game theory tell us the dynamics of cooperation, however, various processes of diplomatic persuasion, communication and concession are sometimes broader and looser than theory implies. It is important at this stage to stress that while actors in constructive engagement and the theories behind it, partly draw from techniques and findings from conflict resolution literature, the concept of constructive engagement itself should be understood as a distinctive process of foreign policy implementation, both from a theoretical as well as practical viewpoint. ¹⁸⁴ In line with liberal institutionalist

¹⁸³ Robert Jackson, "Martin Wight's Thought on Diplomacy" in Diplomacy & Statecraft, Vo.13, No.4 (December, 2002), p. 10

¹⁸⁴ Conflict resolution theory distinguishes between three major types of activity to manage or resolve conflict. The first method is bargaining and negotiation, in which parties undertake to resolve their

approaches to international cooperation constructive engagement follows a non-threatening, constructive negotiation style, which aims at joint problem-sharing and problem-solving by identifying the needs underlying each party's position and by seeking solutions which accommodate them adequately.

2.1 Prenegotiation – Bringing the Target State to the Table

The process of prenegotiation is commonly referred to as the process of getting to the table as it establishes the need for negotiation. This process is vital for the actual round-the-table negotiation because it covers the important phases of “defining the problem or demand”, “developing a commitment to negotiation on the part of the parties” followed by the third phase “arranging the negotiations”¹⁸⁵ The first two phases centre about the creation of a political commitment to enter into a dialogue regarding the sender state’s demand or to solve a problem which has been defined in such a way as to be susceptible of mutually satisfactory management. The fourth phase, negotiation itself, then involves efforts to come to closure or crystallize the previous intent or search in a concrete agreement.¹⁸⁶ Throughout this first phase of constructive engagement the message to be conveyed should include:

- a. Parties have important common interests as well as concerns that divide them
- b. If the target state is willing to enter into negotiation, incentives which the sender conceives to be beneficial for both parties, will be on the agenda
- c. There is a possible solution to the problem: this may involve the suggestion that negotiation of the respective demand or dispute in question be linked to

differences directly, overcoming conflict and establish cooperation. The second major type is mediation and conciliation, which describes the involvement of third parties. This creates a triangle of relationships, which facilitates but also may complicate reconciliation. The third tactic is arbitration and adjudication. Here the reconciling decision is transferred to a third party, leaving the binding decision on how to resolve the conflict to a neutral party rather than to the adversaries themselves. *see* I. William Zartman and J. Lewis Rasmussen (ed.) Peacemaking in International Conflict: Methods and Techniques, (Washington, D.C., United States Institute of Peace Press, 1997), p. 9

¹⁸⁵ William Zartman, “Prenegotiation: phases and functions” in Robert Matthews, Charles Pentland (ed.) Getting to the table: Processes of international prenegotiation, International Journal, Volume XLIV, No.2, (Spring 1989), p. 239

¹⁸⁶ *ibid*, p.239

another in which the parties are also opposed, thus increasing the agenda and scope for trade offs.

Essentially, prenegotiation is the process in which the parties move from conflicting unilateral solutions to a mutual problem or seemingly unacceptable demands to a joint search for a cooperative multilateral solution. It is, therefore, vital for the sender state during this period to convince the target state to arrive at the conclusion that some joint solution is possible.¹⁸⁷ During conflicts, the decision to enter into negotiations is found to be associated with a “plateau and a precipice” – a mutually hurting stalemate combined with the mutual acknowledgement that a negotiated settlement may be better for all concerned than continuing with things as they are.¹⁸⁸ On the other hand, constructive engagement is a foreign policy strategy portraying a process of demanding and persuading and may but does not necessarily have to involve a prior conflict with a “hurting stalemate”. Hence, it is not the perceived symmetry of power and the prospect of an impending catastrophe, but on the contrary, perceived asymmetries in power resources and the prospect of having rewards on the agenda. It is the initial incentive that rewards in return for compliance with demands will be on the agenda, which marks the first trigger to start the phase of prenegotiation. In line with earlier established theory of constructive engagement, it should be evident that the sender state will not attempt to dominate the exchange with the less powerful target state. Quite the opposite, the sender state should apply any perceived leverage over its counterpart only to induce the target state to enter into negotiations by illustrating potential benefits for both parties involved. Hence, a successful strategy of constructive engagement should attempt to make it clear that the desired outcome will be, what scholars in conflict resolution theory refer to as a “win-win solution”. Such an outcome, also called “positive-sum”, is a mutually agreeable negotiating outcome in which the interests of both parties are satisfied, and which is often the result of joint problem solving. Such outcomes are likely when the future relationship between the conflict parties matters to both, when the interests of the parties are interdependent and when the parties are prepared to cooperate in joint problem-solving,

¹⁸⁷ *ibid*, p. 239

¹⁸⁸ G. R. Berridge, *Diplomacy – Theory and Practice* (London, Palgrave, 2002), p. 30

that is if conflict parties manage to reconcile their respective interests rather than positions.¹⁸⁹ As Richmond defines it:

The aim of negotiation is to reorganize the balance of power in a manner that is acceptable to both sides, so creating stability in their relationship. While a change in the perception of the conflict as zero-sum would be the optimum outcome, it is more likely that the two sides will be increasingly motivated by the need to alter the balance of power in their own favour, in the process changing the stakes into items that can be used to benefit both parties.¹⁹⁰

Thus, during prenegotiation, the diplomat implementing a policy of constructive¹⁹¹ engagement should demonstrate that the sender does not regard the demand or issue at hand with a winning mentality, seeking only ways to overcome and get what it wanted by the end of the negotiation. Rather the sender's diplomacy should represent a clear conciliatory mentality, advocating a solution, which is to be found with and not against the target state. Whilst emphasizing the significance and weight of the respective demand, the sender state should at the same time show his preparedness to give a little to get something and to settle for an attainable second best rather than hold out for unattainable victory.

Zartman portrays the most important functions of prenegotiation, which help to understand the significance of this first stage of engagement. Because negotiation is an exercise in mutual power and involves the exchange of contingent gratifications (Tit-For-Tat), initial exchanges of information during prenegotiation may lower the risk associated with cooperation and may prepare escape hatches in case things go wrong. Secondly, prenegotiation allows the parties to assess and come to terms with the costs of concessions, agreements and losses and with the costs of failure before firm commitments are made.¹⁹² Therefore, a very significant function of prenegotiation for

¹⁸⁹ see Hugh Miall, Oliver Ramsbotham, Tom Woodhouse, Contemporary Conflict Resolution, (Cambridge, Polity Press, 1999), pp.5-6

¹⁹⁰ Oliver P. Richmond, Mediating in Cyprus: the Cypriot communities and the United Nations (London, Frank Cass, 1988), p. 7

¹⁹¹ I. William Zartman, "Prenegotiation: phases and functions" in Robert Matthews, Charles Pentland (ed.) Getting to the table: Processes of international prenegotiation, International Journal, p. 244

¹⁹² *ibid*, p. 244

constructive engagement based on a strategy of Tit-For-Tat is a requirement or a belief in reciprocity. Zartman argues that “fear of reciprocity is its own undoing: one does not make concessions when one is sure the other side will not repay and the other side does not repay a concession because it is sure that the other will not either.”¹⁹³ Prenegotiation, therefore, is the time to convince the target state that concessions will be required and rewarded. Such exchanges are less risky during this phase because they are indicative of future behaviour rather than representing commitments on either side.¹⁹⁴ Essentially, showing the possibility for creative solutions is to suggest the possibility of exchanges, side-payments, compensations or contingent benefits as inducement for agreements. The success behind constructive engagement lies in the ability of the sender to show the target that by entering into dialogue about changes of political behaviour or allegiance to international normative regimes a new good might be jointly created. The sender must show how the target stands to gain from the new creation, without hiding the fact that it too will benefit; too great a gain for the target will arouse suspicion, whereas too great a gain for the sender will not attract the other party.¹⁹⁵ Zartman identifies these kinds of proposals as positive exercises of power terming promises “volitional gratifications” and predictions “non-volitional gratifications”.¹⁹⁶ As argued earlier, constructive engagement may make use of both. Zartman sums up this important function by stating that “it is the idea of jointly created gain that is suggested in order to bring about a decision to negotiate, with negotiations themselves covering the allocation of contributions and benefits.”¹⁹⁷ Prenegotiation also allows each party to estimate and consolidate support for an accommodative policy and to prepare the home front for a shift, from a winning to a conciliatory mentality. It allows each party to put together a domestic coalition of interests to support termination or resolution rather than continuing with a conflict or supporting a hostile position towards an issue.¹⁹⁸ Another important core function of prenegotiation involves the turning of the problem into manageable issues susceptible of

¹⁹³ *ibid*, p. 245

¹⁹⁴ *ibid*, p. 245

¹⁹⁵ I. William Zartman and Maureen R. Berman, The Practical Negotiator, (New Have, Yale University Press, 1982), p. 72

¹⁹⁶ *ibid*, pp. 72-72

¹⁹⁷ *ibid*, p. 73

¹⁹⁸ William Zartman cited in Robert Matthews, Charles Pentland (ed.) Getting to the table: Processes of international prenegotiation, International Journal, p. 246

a negotiated outcome by identifying the problem, searching for options and setting the parameters along the path to find a formula which will eliminate competing zero-sum definitions and their inherently one sided solution.¹⁹⁹ Lastly, prenegotiation during constructive engagement is necessary to select those who are susceptible of coming to agreement from among the participants to the conflict or those who are too ideologically or emotionally attached to a certain position. What Zartman calls a “core group of agreeers” which come together and gradually expand membership describes a tactic of building a coalition across the sender and target parties large enough to make a stable agreement no broader than necessary to cover the issue - a tactic of participant instrumentalism.²⁰⁰ Thus, prenegotiation sets the agendas as much as the participants at the table. In sum, during prenegotiation the sender state, who by initiating a foreign policy of constructive engagement in the first place, clearly demonstrates adherence to a non-coercive diplomacy seeking positive - sum outcomes, attempts to convince the target state that it is in their mutual interest to negotiate. Once they have agreed on an agenda and all of the multifarious questions that come up under the heading of “procedure”, both parties will then get round to substantive negotiations.²⁰¹

Suggested methods and techniques to reach win-win outcomes before and during negotiations

Theory on conflict resolution encompasses a wide range of literature providing valuable knowledge to understand the roots, dynamics and processes of conflict and how to manage them constructively in order to achieve sustainable peaceful outcomes. Undoubtedly ever since academic approaches to peace and cooperation started to emerge in the 1950s and 1960s conflict resolution theory developed an exceptional theory-practice-theory nexus unprecedented in social and political science. Whilst recognizing this abundance of patterns and matrixes offering solutions to resolve conflicts, the focus of this thesis is solely on negotiation, the technique of problem solving and the potential

¹⁹⁹ *ibid*, p. 246 *see* paragraph on problem-solving techniques

²⁰⁰ *ibid*, p. 248

²⁰¹ G. R. Berridge, *Diplomacy – Theory and Practice*, p. 44

of multi-track diplomacy as appropriate types of conflict resolution during constructive engagement.

While in a single PD, cooperative choices are less frequent when respective gains and losses are not known, findings of iterated PD established that the exchange of information and the coordination of preferences leads to cooperation.²⁰² Equally outside the laboratory, it has been established that the more negotiators know about each other's gains and losses, the higher they raise their joint gains.²⁰³ Hence, it would seem that a technique of information exchange is an effective way to build integrative agreements during constructive engagement. In a problem solving orientation on negotiation, it is precisely the exchange of information, i.e. the sharing of mutual interests and preferences which achieves the discovery of new possibilities of gains and the creation of win-win solutions. As Peek puts it:

In a problem solving approach, the focus of negotiation and the starting point for generating possible solutions are the parties' interests. Interests represent the real motivation of parties - the needs, wants, fears and concerns of each side which lie behind their positions ... Interests may... have multiple layers, with more superficial interests or aspirations as well as deeper concerns representing basic human needs which are common to all. [...] Thus, it is these deeper interests which must be understood and addressed if conflict prevention or resolution is to be effective.²⁰⁴

The formidable challenge of a problem solving orientation on negotiation, which covers the phase of prenegotiation and actual negotiation, is to reflect on the causes of conflict to arrive at a common definition and joint solutions that satisfy the basic needs of all sides. A problem solving orientation focused on information exchange, therefore, seeks to eliminate undermining factors such as mistrust among the parties, selective and distorted perceptions, negative attitudes and images, poor communication and a competitive win-lose orientation that attempts to force or extract

²⁰² see Anatol Rapoport, N-person game theory: concepts and applications (Ann Arbor, University of Michigan Press, 1970)

²⁰³ S. Siegel and L.E. Fouraker, "Bargaining and Group Decision Making: Experiments in Bilateral Monopoly" (New York, Mc Graw-Hill, 1960) cited in Victor A. Kremenyuk, (ed.) International Negotiation – Analysis, Approaches, Issues (2nd edition) (San Francisco, Jossey-Bass, 2002), p. 53

²⁰⁴ Connie Peck, The United Nations as a dispute settlement system: improving mechanisms for the prevention and the resolution of conflict (Boston, Kluwer Law International, 1996), pp.38-39

capitulation from the adversary.²⁰⁵ There are two fundamental parts of the problem-solving process most applicable to constructive engagement:

1. Diagnosing the conflicting demand or concern (figuring out what the cause of the “stickiness” is, or identifying the problem)
2. Developing alternative solutions to the problem through a joint effort acceptable to both parties²⁰⁶

The shift towards a co-operative win-win orientation begins by allowing representatives of the parties “to talk freely to one another, to exchange information about their interests and priorities and to work together to identify the issues dividing them, brainstorm in search of alternatives that bridge their opposing interests, and collectively evaluate those alternatives from the viewpoint of their mutual welfare.”²⁰⁷

An important way of approaching negotiations is what Fischer and Ury call “principled negotiation”, which suggests that one looks for mutual gains wherever possible, and that where your interests conflict, you should insist that the result be based on the same fair standards independent of the will of either side.”²⁰⁸ Claiming that “principled negotiation” is a technique designed to produce wise outcomes efficiently and amicably which can be used under almost every circumstance, in particular when dealing with another culture, Fischer and Ury list four basic points to follow:

People: Separate the people from the problem

Interests: Focus on interests, not on positions

Options: Generate a variety of possibilities before deciding what to do

²⁰⁵ Ronald J. Fischer, “Prenegotiation problem – solving discussions: enhancing the potential for successful negotiation”, in Robert Matthews, Charles Pentland (ed.) *Getting to the table: Processes of international prenegotiation*, *International Journal*, p. 442

²⁰⁶ Eben A. Weitzman and Patricia Flynn Weitzman, “Problem Solving and Decision Making in Conflict Resolution”, *The Handbook of Conflict Resolution – Theory and Practice* (San Francisco, Jossey-Bass Publishers, 2000), p.188

²⁰⁷ J.Z. Rubin, D.G. Pruitt, *Social Conflict: Escalation, Stalemate and Settlement* (New York, McGraw, 1994), p.169

²⁰⁸ Roger Fischer and William Ury, “Getting to Yes” in David P. Barash (ed.) *Approaches to Peace – A Reader in Peace Studies* (Oxford, Oxford University Press, 2000), p. 71

Criteria: Insist that the result be based on some objective standard.²⁰⁹

The first point responds to the fact emotions and beliefs become entangled with the objective merits of the problem. Taking positions makes it worse because people's egos become identified with their positions and should therefore be disentangled from it. While this suggests that people should come to see themselves as working on a solution attacking the problem not each other, for constructive engagement it also means choosing the right negotiation partner, who is least emotionally attached to the respective problem or demand. The second point is designed to overcome the drawback of focusing on stated positions rather on the underlying interests, which once discovered and expressed would produce an agreement which will effectively take care of the human needs that led people to adopt those positions in the first place. The third recommendation responds to the difficulty of designing optional solutions while under pressure. So, rather than pushing one's own demands against the adversary, one should beforehand come up with a wide range of possible solutions that advance shared interests and creatively reconcile differing interests. In fact the notion of inventing options for mutual gain is nothing new as it clearly corresponds to Homans' theorem which says that "the more the items at stake can be divided into goods valued more by one party than they cost to the other and goods valued more by the other party than they cost to the first, the greater the chances of successful outcomes."²¹⁰ Constructive engagement rests precisely on this mechanism. Not only does the sender state generate a variety of options, it is the knowledge about certain asymmetries that will allow the sender to play the card of rewarding, that is, delivering a good which is highly valued by the target. The insistence on objective criteria simply means that the standards selected are fair and based on standards such as market value, expert opinion, custom or law. Clearly, constructive engagement which ultimately seeks the target state's allegiance to an international normative regime to which the sender is subject itself, insists on such a fair standard.²¹¹ In sum, problem-solving

²⁰⁹ *ibid*, p. 74

²¹⁰ George Caspar Homans, *Social Behaviour – Its Elementary Forms*, (New York, Harcourt Brace Jovanovich, 1961), p. 62

²¹¹ *see* Roger Fischer and William Ury, "Getting to Yes" pp.74-75

workshops during prenegotiation can provide the sender with an opportunity to demonstrate the feasibility of more formal negotiations and determine the basis for future joint activity. These workshops provide unique forums for low risk exchange.

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The discourse on implementing a strategy of constructive engagement has so far been confined to actors of official diplomacy between governments. However, the ever-increasing positive potential of multi-track diplomacy in the field of conflict resolution is equally relevant to constructive engagement. The term multi-track diplomacy refers to a conceptual framework designed to reflect the variety of activities that contribute to international peacemaking and peace building.²¹³ The concept really is an expansion of the “Track One, Track Two” paradigm. While the Track One describes the realm of official diplomacy between governments, the phrase Track Two diplomacy was first coined by Montville in 1982 and is the “unofficial, informal interaction between members of adversary groups or nations which aims to develop strategies, influence public opinion, and organize human and material resources in ways that might help resolve their conflict.”²¹⁴ The activities of Track Two have three broad objectives:

- To reduce or resolve conflict between groups or nations by improving communication, understanding, and relationships
- To decrease tension, anger, fear, or misunderstanding by humanizing the “face of the enemy” and giving people direct personal experience of one another;
- To affect the thinking and action of Track One by addressing root causes, feelings, and any needs by exploring diplomatic options without prejudice,

²¹² Ronald J. Fischer, “Prenegotiation problem – solving discussions: enhancing the potential for successful negotiation”, p. 443

²¹³ Louise Diamond, John McDonald, Multi-Track Diplomacy – A Systems Approach to Peace (West Hartford, Kumarian Press, 1996), p. 1

²¹⁴ John W. MacDonald and Diane B. Bendahamne, Conflict Resolution – Track Two Diplomacy (Washington, D.C., Institute for Multi-Track-Diplomacy, 1995), p. 9

thereby laying the groundwork for more formal negotiations or for reframing policies.²¹⁵

In fact studies on multi track contributions to conventional diplomacy and international relations imply that diplomats actually welcome the outsourcing of some functions of conventional diplomacy and extending the reach of diplomacy.²¹⁶ It is argued that the vast and growing network of business connections and institutions on the ground, in addition to academics and NGOs are considered the most effective avenues for outsourcing.²¹⁷

Of particular importance is the observation that some diplomats equated multi track diplomacy with initiatives advanced in the interest of the private business sector, taking the example of unofficial diplomatic conduct by American oil companies in Kazakhstan and China, a development, which is commonly referred to as Track Three.²¹⁸ Within the context of constructive engagement, the technical expertise of multinational companies could therefore not only be used as an incentive to come to an agreement but also a major vehicle through which any existing interdependence is enhanced, thus creating a doorway to mutually beneficial relations, which would be increasingly uneconomical to jeopardize. Being deeply embedded in the respective domestic economic structure of the sender and target country is only one aspect of this sort of business diplomacy. While the mainstream business community is traditionally conservative, profit orientated, and competitive, there is also a growing group of socially conscious businesses that come from a more progressive culture, which could be described as more liberal, environmentally conscious, peace and justice orientated, and cooperative.²¹⁹ Hence, any

²¹⁵ Louise Diamond, John McDonald, Multi-Track Diplomacy – A Systems Approach to Peace, p. 2

²¹⁶ Cynthia Chataway, “Track II Diplomacy From a Track I Perspective”, in Negotiation Journal, (July 1998), p.270; Former British Foreign and Commonwealth Under Secretary John Coles demands that Track One should increasingly engage in harnessing external advice from NGOs, businesses and academia in order to stimulate a debate about foreign policy making but also to assist conventional British diplomacy to better serve British interests. *see* John Coles, Making Foreign Policy – A certain idea of Britain (London, John Murray Publishers, 2000), p. 127

²¹⁷ *ibid*, 270

²¹⁸ *ibid*, p .273 ; This refers to the impact of private business relationships on the gradual establishment of domestic legal frameworks for contracts and economic predictability.

²¹⁹ Louise Diamond, John McDonald, Multi-Track Diplomacy – A Systems Approach to Peace, p. 53

government pursuing a foreign policy of constructive engagement should not only use multinationals as incentives but actually encourage and facilitate their role in creating strong bonds of relationships, understanding and communication between unofficial representatives of the sender and target state. Especially those operating in less developed countries can provide opportunities for schooling, health care, career training and development, and other related public and private services. Whilst acknowledging that most multinational companies produce for world markets rather than contribute extensively for the host economy, continue to concentrate and centralize financial resources in the core and have considerably contributed to the emergence of a new international division of labour, the potential of Track Three during constructive engagement lies in recognizing and facilitating the untapped financial and social capabilities of the international business community.

Another crucial track for constructive engagement is the work of the activist community who see their task in changing institutions, attitudes, and policies through political action.²²⁰ Particularly, promoting human rights is seen as burden on diplomat's and seems increasingly being outsourced to international NGOs who, free of government constraints, often develop new ideas and alternative approaches in advancing this goal. The reasons for the increasing transition of responsibilities from the state to NGOs are mainly due to their humanitarian and constitutional foundations, which work for and through the people. Therefore, the public service that once was associated with the government is gradually being transferred to NGOs on the belief that they enjoy greater credibility with individual communities than governments have shown in the past. "Their relationship with the 'people' is seen as giving them greater public legitimacy than the government"²²¹. Hence, their development work in areas of human rights are not only significant for the community as a whole but also for each of the individuals concerned as each abuse directed towards them are accounted for and dealt with. Their role in slowly taking over societal and humanitarian areas of global politics and especially the issues

²²⁰ *ibid*, p. 87

²²¹ Edwards, M., and D. Hulme, (eds.), Making a Difference: NGOs and Development in a Changing World, (London: Earthscan, 1992), p.17

concerning global human rights has had a great effect on the general perception of human rights and its importance worldwide.

[...] NGOs are rapidly taking over many of the functions traditionally viewed as the responsibilities of governments, and are thus creating a new international system of governance that to a large extent bypasses the nation-state system. In particular, human rights NGOs have taken over from reluctant governments the function of documenting compliance with international human rights standards, and by documenting ongoing violations and abuses, provide the 'moral spurs' that drive the community of nations toward the fuller realisation of rights for all ²²².

The ways in which they influence and set direction for social change is through protest, education, advocacy, support and documentation. Thus, NGOs work with or against governments in developing agendas for action; in standard setting (that is establishing international norms for state behaviour, set forth in legally binding treaties that have been negotiated and ratified by governments); in preparing and providing information about abuses based on research and investigation; in lobbying officials and the media; and in providing direct assistance to victims of human rights abuses. ²²³ Working at the grassroots level, that is, organizing its constituents, supporting victims, and educating and mobilizing citizens, as well as working at a strategic level, that is, engaging with elites at home and abroad makes "Track Six" a system which understands how to effectively influence opinions of policy makers as well as the public. ²²⁴ Sophisticated methodologies exist for one-to-one relationship building and networking and like other organizations in the field (e.g. think tanks) NGOs have their contacts in government, the media and other higher ranks and know how to work the system to maximise their influence. ²²⁵ In fact international relations literature supports the argument that NGOs have influenced international politics to a great extent and certainly have played a significant role in bringing about some historical changes:

²²² Winston, M.E., 'Assessing the Effectiveness of International Human Rights NGOs', p.26

²²³ Claude E. Welch (ed.), NGOs and Human Rights: Promise and Performance (Pennsylvania: University of Pennsylvania Press, 2001), p.3

²²⁴ Mc Donald and Diamond list efforts by private citizens as Track Four and academic as Track Five, see Louise Diamond, John McDonald, Multi-Track Diplomacy – A Systems Approach to Peace, pp.80-87

²²⁵ *ibid*, p. 89

[...], international human rights NGOs have also been largely responsible for placing the topic of human rights firmly in the centre of the political agenda, creating new international legal standards, building international enforcement institutions, mobilising public opinion to oppose violations, and even bringing about major historical changes, such as the collapse of the Soviet Union, the fall of the Berlin Wall, and the end of apartheid in South Africa ²²⁶.

It is their unorthodox and independent way that makes NGO significant in promoting human rights and therefore viable for a government to rely on during constructive engagement. However whilst Track Six provides a necessary counterbalance to the state, the negative side of their activist character, which is useful most of the time, may also feed conflict and adversarial thinking, which tends to lock people into positions rather than fostering communication and synthesis. A government pursuing a policy of constructive engagement should work closely with NGOs that have the same agenda, thus allowing criticism and scrutiny but also making sure that any diplomatic momentum is not lost in the joint search for an agreement with the target state.

2.2 Defining Solutions: The Formula Phase

If prenegotiations are successfully concluded, the next task for sender and target state would be to move into “around the table mode”. For constructive engagement this means that the negotiators try to agree on basic principles of a settlement: “the formula stage”. ²²⁷ Once this important point has been reached: that is the perception by each side that the other is serious about finding a negotiated solution, each side must now decide how to present the case in the most convincing and tactically advantageous light. While most scholars on negotiation assume a universal diplomatic culture, ²²⁸ negotiators, however, maintain that culture and language are formative concerning methods of approaching the formula. Hence, two basic styles of persuasion can be identified. The “factual-inductive” which draws conclusions on the basis of factual evidence: eschewing a grand philosophical debate, it plunges straight into discussion

²²⁶ Morton E. Winston, “Assessing the Effectiveness of International Human Rights NGOs”, in Claude E. Welch (ed.), NGOs and Human Rights: Promise and Performance (Pennsylvania: University of Pennsylvania Press, 2001), p.27

²²⁷ G. R. Berridge, Diplomacy – Theory and Practice, p. 46

²²⁸ Zartman and Berman argue that cross cultural idiosyncratic differences can be accommodated within a general model of negotiation. *see* I. William Zartman and Maureen R. Berman, The Practical Negotiator, pp.225-228

of concrete detail, building an agreement primarily through mutual compromise of exchanged concessions. This style is the Anglo-Saxon pragmatic tradition of the common law on which most western diplomats rely and which is also consistent with the legal training that most public officials have received.²²⁹ The second approach is the “axiomatic-deductive” style which first establishes the principles, or formula, governing the issues susceptible of a solution and then works out the implementing details. Zartman argues that the deductive approach based on a formula is both present and desirable in successful negotiations²³⁰ and it is therefore viable for constructive engagement. This approach is particularly useful for cross-cultural negotiations, reconciling a high context²³¹ approach of first agreeing on axioms and philosophical principles with a low-context²³² pragmatic approach of concession and compromise.²³³

Recognizing a formula is essentially sharing a perception or definition of the conflict and establishing the cognitive structure of reference for a solution. A formula involves general considerations rather than precise measures, and therefore leaves room for manoeuvring in the final determination of details. But it also supplies guidelines for recognizing when detailed bargaining on specifics went beyond simple bargaining and instead implied an agreement on a different notion of justice or allocation.²³⁴ Finding a formula during constructive engagement means confronting the basic elements of demands and rewards. Trial and error is still the best way of reaching an agreement,

²²⁹ Raymond Cohen, Negotiating across cultures – International Communication in an Interdependent World, (Washington D.C., US Institute of Peace Press, 2000), p. 100

²³⁰ I. William Zartman and Maureen R. Berman, The Practical Negotiator, p. 93

²³¹ A high context culture communicates allusively rather than directly. As important as the explicit content of a message is the context in which it occurs, surrounding non-verbal cues, and hinted-at nuances of meaning. Loss of face (humiliation before the group) is an excruciating penalty to be avoided at all costs. This negotiation style is therefore shame orientated rather than guilt orientated. Directness and especially contradiction are much disliked. It is also hard for speakers of this kind of culture to deliver a blunt no. see Raymond Cohen, Negotiating across cultures – International Communication in an Interdependent World, p.32

²³² Low context culture exemplified by the United States and Europe reserve a different role for language. What has to be said is stated explicitly. While politeness is obviously not precluded but negotiators of low context cultures hardly see the need for contrived formulas and verbal embellishments. Hence, guilt not shame is the psychological price paid for misdemeanour. Ibid ,p.32

²³³ Raymond Cohen, Negotiating across cultures – International Communication in an Interdependent World, p.106

²³⁴ I. William Zartman and Maureen R. Berman, The Practical Negotiator, pp.95 - 108

according to Zartman.²³⁵ The sender may come up with a framework for agreement that is comprehensive, relevant, balanced, flexible and seemingly irreplaceable, and still the target turns it down. The only way is to try again. While both sides are trying to make positions plain, the search for referents, criteria, perceptions, definitions, and principles rooted in each party's stand goes on. Working on this level, it becomes much easier to find the elements needed to formulate a framework for the solution.²³⁶ The process of proposing and the tactics of trial and error can be improved by first preparing alternative formulas as well as simply gathering information. These alternative formulas should include possible offers that the target may come up with, along with alternatives the sender might find equally attractive followed by any other proposal that may be salient at the moment. The greatest advantage of preparing alternative formulas is not in seizing the other party's acceptable proposals, but in being ready to counter his unacceptable ones and to shift to a new proposal if the first fails – that is what Zartman refers to as trials and errors.²³⁷ A crucial part of the process of making the target accept a certain formula is the way inducements are presented. Particularly at this stage, the sender has to make it clear that good outcomes will follow from accepting the formula. Similarly, warnings that defection of too many proposals for a formula will naturally leave both parties with undesirable outcomes can help shape the target's perception or alternatives, although if too coercive they may instead contribute to increased resistance.²³⁸ Once sender and target agreed on a formula either by joint discovery or by the sender's proposal, the search for detailed agreements can begin.

²³⁵ *ibid*, p. 118

²³⁶ *ibid*, p. 120

²³⁷ *ibid*, p. 121

²³⁸ *ibid*, pp. 127-128

2.3 Working out Agreements: The Details Phase

If the parties have agreed to a formula, the final stage involves fleshing it out – agreeing the details. For negotiations surrounding constructive engagement this stage is by no means as simple as it sounds. Indeed, insofar as it is possible to generalize about negotiations during constructive engagement, conventional strategies and tactics of this phase give us merely a broad idea of how the final stage may be implemented by sender and target. It is at this stage that the concept of tit-for-tat dictates the parties' moves. Negotiators respond to the other party's previous move but they also respond to their own previous move and then try to make signals to the other party. As a result negotiators: teach, learn and communicate "as they make each move, while at the same time acting within the context of outside considerations – formulas, referents, contexts and principles – which give meaning to and govern the magnitude of their individual propositions."²³⁹ Parties continue to communicate information selectively about their own positions during this stage. As negotiations focus more on precise points of disagreements, each party has to continue to try to get across information about what it wants and what it is willing to give up and why, but often without telling what it does not want or does not care that the other side gets.²⁴⁰ Hence, it is a process of wearing down the other party's expectations and demands so that they can fit an agreement. A more common term for this process is "bluffing". Essentially, both parties want to dissimulate their real aims and demands, so that it may appear to give in reluctantly on things it ostensibly values in order to achieve things it really wants. The art of bluffing then refers to various types of communications: reality of information, hierarchy of values and degree of commitment.²⁴¹

Equally parties learn from each other's past positions and movements. Each party observes the ways in which the other moves from initial positions. Knowing how the

²³⁹ *ibid*, p. 149

²⁴⁰ G. R. Berridge, *Diplomacy – Theory and Practice*, p. 52

²⁴¹ I. William Zartman and Maureen R. Berman, *The Practical Negotiator*, pp. 152 – 153; *see also* Raymond Cohen, *Theatre of power: the art of diplomatic signalling* (London, Longman, 1987), pp. 212-224

other party acts or is acting in this case, one can respond properly to obtain the most favourable outcome possible.²⁴²

Finally each party rewards and punishes the responses of the other party. Since during constructive engagement the target state is being approached and does not necessarily have an incentive to reward rather than passively receive and actively concede, it is the sender state who must be able to offer what may be called a climax of incentives for the target willing to continue his concessions. Obviously, concessions are a major component of this process dynamic due to the belief that they will elicit reciprocal concession from the other party. The nature and size of concessions give information about the bargainer's subjective utilities and are indications about one's perception of the opponent. A common strategy is for the sender to use concessions as a device to misrepresent real needs, demands or preferences as well as to exchange goods valued more by the target than they cost to the sender with goods valued more by the sender than they cost to the target.²⁴³ The sender state should be tough on the issues of greatest importance to them, but can use this toughness to generate concessions and then reward and reciprocate with own concessions on other matters less important. Thus, in general the sender should be tough on demand and soft to reward.²⁴⁴ Zartman argues that at some point during the bargaining a "crest" occurs after which the rest of the outstanding issues are rapidly resolved and the general feeling is one being in the "home stretch".²⁴⁵ This crest may be described in various ways: it is the point where enough is agreed upon to constitute an acceptable accord, which the parties have invested in, even if the remaining points are unresolved, or the point where enough is agreed on favourably to outweigh any remaining disagreements or non-agreements.²⁴⁶ Essentially negotiations end when sender and target have exchanged agreement's on each other's positions or when, through concession or through joint discovery of implementing details, they have both moved to a point which they feel is the best they

²⁴² I. William Zartman and Maureen R. Berman, The Practical Negotiator, p. 158

²⁴³ Christopher Dupont, Guy- Olivier Faure, "The Negotiation Process" in Victor A . Kremenyuk, (ed.) International Negotiation – Analysis, Approaches, Issues, p. 46; also see George Caspar Homans, Social Behaviour – Its Elementary Forms, (New York, Harcourt Brace Jovanovich, 1961), p. 62

²⁴⁴ I. William Zartman and Maureen R. Berman, The Practical Negotiator, p. 171

²⁴⁵ *ibid*, p. 188

²⁴⁶ *ibid*, p. 188

can do under the circumstances. Agreement can come about simply through a full working schedule that has carefully considered all the angles and resolved all possible points of dispute.²⁴⁷ Once sender and target reached this diplomatic momentum²⁴⁸ packaging agreements vary from “treaties”, “final acts”, “protocols”, “exchanges of notes” or even simply “agreements”.

3. Constructive Engagement: Hypotheses and Variables

It has been shown that diplomatic reality of constructive engagement can largely draw on conflict resolution theory. Negotiation, in particular, a core function of diplomacy, has been identified as the main pillar of constructive engagement. It has been shown that the exchange of information between conflict parties of how to reach a win-win outcome has the potential to achieve harmony as Keohane sees it. Since the point of constructive engagement is to change the behaviour of the target state in a peaceful way, the function of diplomacy is fundamental. By the same token, however, a commitment to non-coercive measures and a tactic of negotiation in an interdependent relationship is susceptible to changing realities of power between State A and State B. Given this condition it is possible to propose following hypotheses and variables:

- A. Most fundamentally, states are recognized as rational egoists, which can resolve conflict through a policy of “constructive engagement”. Constructive engagement is recognized as a policy, which is best suited at resolving conflict between states as well as for bringing so called “rogue” or “outlaw” states to conform to what are held by the great powers to be legitimate international norms; in this case human rights.
 1. Conditionality in the form of “cooperative moves” (referring to economic incentives or political support) are used to initiate a “positive cycle of

²⁴⁷ *ibid*, p. 191

²⁴⁸ A traditional device regularly employed by negotiators in order to keep up the momentum of their negotiations is to employ deadlines, that is, calendar dates by which either some partial, interim, or final agreement must be reached. *see* G. R. Berridge, Diplomacy – Theory and Practice, p. 58

- reciprocity”, commonly referred to in political science literature as TIT FOR TATT (TFT). In diplomatic reality, TFT implies the exchange of information and the search for alternative solutions to the problem. Both parties shift from respective positions to focus on common interests.
2. TFT results in harmony, as defined by Keohane, and both parties agree to a “win-win” outcome. Rewards are exchanged for political concessions, which in this case refers to improvements in human rights (resolution of the *fatwa*.)
- B. Asymmetries in an interdependent relationship, which can refer to perceived or objective political or economic leverages, are sources of power.
1. State B’s vulnerability to state A being capable of making changes in their relationship, makes A more powerful than B. Thus, A is able to transform this leverage into “cooperative moves” which influence B’s actions or decisions.
 2. State B reciprocates A’s “cooperative moves” and TFT follows, which results in B meeting A’s demands.²⁴⁹
- C. Shifts or fluctuations in an interdependent relationship affect power relations and ultimately affects A’s ability to sway B.
1. A’s perceived or objective *sensitivity* to any changes in the relationship allows B to defect or even influence A’s actions or decisions. A’s perceived or objective vulnerability to changes in the relationship impedes any of A’s efforts to influence B.
 2. State A may be unable or restricted in its ability to sway or influence B. On the contrary B may be in the position to influence A’s decisions or actions.

²⁴⁹ *Ceteris paribus*. “Uncooperative moves” will be punished and reciprocated with “uncooperative moves.”

- D. All negotiations and efforts to influence are subject to respective domestic constituents. Thus, any successful Level I negotiation or even the attempt to initiate dialogue requires domestic consent.
1. a) Level II (domestic) “win-sets” are supported by “internationalist forces”, but because the “isolationist” camp enjoys more influence on the domestic front, it is able to constrain or jeopardize efforts by the “internationalists.” The more coercive “Level I diplomacy” on the part of A, the more constraints will be imposed on “internationalists”, thus empowering “isolationists.”
b) State B may be forced to defect from A’s “cooperative moves” on Level I negotiations. Involuntary defection obstructs any of A and B’s efforts to come to an agreement or even engage in negotiations.
 2. a) Because “internationalists” have more influence over the “isolationists”, all domestic camps support the “win-set.” A policy of constructive engagement is more likely to empower “internationalist” forces by pursuing a non-coercive diplomacy, thus making it harder for “isolationists” to jeopardize their efforts.
b) State B can reciprocate A’s efforts at dialogue, which will end in successful negotiations reaching a “win-win” outcome.²⁵⁰

²⁵⁰ *Ceteris paribus*. All Level II constraints apply equally to state A.

Constructive Engagement: Hypotheses and Variables

Hypothesis	Independent Variable	Dependent Variable
A. States are rational egoists and can resolve conflict through a policy of “constructive engagement”. It is a policy of “constructive engagement” which is best suited at promoting human rights.	Inducements or “cooperative moves” (referring to economic incentives or political support) are used to initiate a “ positive cycle of reciprocity” commonly referred to as Tit For Tat (TFT).	TFT results in harmony (as defined by Keohane) and both parties agree to a “win-win” outcome. ⇒ Rewards are exchanged for political concessions (i.e. improvements in human rights)
B. Asymmetries in an interdependent relationship (both political and economic) are sources of power.	State B’s <i>vulnerability</i> to state A being capable of making changes in their relationship, makes A more powerful than B. This allows A to initiate “cooperative moves”, which influence B’s actions or decisions.	State B reciprocates A’s “cooperative moves” ⇒ TFT follows. B meets A’s demands. ¹
C. Shifts or fluctuations in interdependent relations affect power relations and ultimately affects A’s ability to sway B.	State A’s perceived or objective <i>sensitivity</i> to changes in the relationship allows B to defect or even influence A’s actions or decisions. A’s perceived or objective <i>vulnerability</i> to changes in the relationship completely impedes any of A’s efforts to influence B.	State A is unable or restricted to sway or influence B. On the contrary, state B may be in the position to influence A’s decisions or actions.
D. Level I negotiations are subject to respective domestic constituents. Any successful Level I negotiation requires domestic consent.	a) Level II (domestic) “win-sets” are supported by “internationalist forces”, but are constrained by the “isolationist” camp. The latter enjoys more influence over the former. The more coercive “Level I diplomacy” on the part of A, the more constraints will be imposed on “internationalists”, thus empowering “isolationists.”	State B is forced to defect from A’s “cooperative moves” on Level I negotiations. These involuntary defection obstruct A and B’s efforts to come to an agreement.
	b) All domestic camps support Level II “win-sets”. “Internationalists” enjoy more influence over “isolationists.” A policy of constructive engagement is more likely to empower “internationalists”, thus making it harder for isolationists to wreck negotiations.	State B can successfully negotiate with A on Level I and agrees to a “win-win” outcome. ²

¹ *Ceteris paribus*. “Uncooperative moves” will be punished and reciprocated with “uncooperative moves” resulting in a “negative cycle of reciprocity.”

² *Ceteris paribus*. All Level II constraints apply equally to state A.

CHAPTER THREE

THE HUMAN RIGHTS DISCOURSE, HUMAN RIGHTS DIPLOMACY AND CONSTRUCTIVE ENGAGEMENT WITH IRAN

1. Introduction: The Concept of Human Rights

Before elaborating on the interaction between Britain and Iran, the research specific focus on the human rights aspect of constructive engagement demands that we explore more closely the concept of human rights as well its relation to foreign policy.

Human rights are literally, the rights that one has simply because one is a human being²⁵¹, they are equally enjoyed by everyone, are inalienable and universal. However, they are not merely abstract values such as liberty, equality, and security. Rather they are considered rights, particularly, social practices to realize those values. Traditionally, human rights have been thought of as moral rights of the highest order, but have also become international (and in some cases national and regional) legal rights, making the object of human rights an ordinary legal right in most national legal systems.²⁵² Human rights are needed not for life but for a life of dignity. Thus, theories and documents on human rights point beyond actual conditions of existence – beyond the “real” in the sense of what has already been realized – to the possible, which is viewed as a deeper human moral reality. In this light of reasoning, they are less about the way people “are” than about what they might become. Essentially, they are about moral rather than natural or juridical right holders.²⁵³ Promoting human rights at home or abroad means demanding the social changes required to realize the underlying vision of human nature. Human rights are both a utopian ideal and a realistic practice for implementing that ideal.²⁵⁴ As Donnelly puts it:

Human rights seek to fuse moral vision and political practice. The relationship between human nature, human rights, and political society is “dialectical”. Human rights shape political society, so

²⁵¹ *see* Universal Declaration of Human Rights, adopted and proclaimed by General Assembly Resolution 217 A (III) of 10 December 1948

²⁵² Jack Donnelly, Universal Human Rights – in Theory and Practice, (Ithaca, Cornell University Press, 2003) p. 11

²⁵³ *ibid*, p. 15

²⁵⁴ *ibid*, p. 15

as to shape human beings, so as to realize the possibilities of human nature, which provided the basis for the rights in the first place.²⁵⁵

Historical notions and foundational appeals, such as the *Declaration of the Rights of Man and of the Citizen* of 1789, were attempts to converge theory and practice and produced an impressive body of texts appealing to the inherent dignity of the human person. Ultimately, the Universal Declaration Of Human Rights of 1948 codified the idea of human rights. Early statements in the Universal Declaration concentrated on *First Generation rights*, such as freedom of speech and assembly and the right to take part in the government of his (sic) country, directly or through freely chosen representatives (Art. 21).²⁵⁶ The same declaration also recognized *Second Generation rights* and states that “economic, social, and cultural rights are indispensable for his dignity and the free development of his personality.” (Art.22). The right bearer in both *First* and *Second Generation* rights are, in essence, individuals. *Third Generation rights* build on a collective dimension and concerns the rights of “peoples” and grants them to freely dispose of their wealth and natural resources. (The African Charter on Human and Peoples Rights of 1981, Art. 21 (1))²⁵⁷ According to Donnelly , this International Human Rights regime treats internationally recognized human rights holistically, as an indivisible structure in which the value of each right is significantly interrelated. As Art. 5 of the 1993 Vienna Declaration puts it: “All human rights are universal, indivisible and interdependent and interrelated.”²⁵⁸ Just as human rights are both negative rights, in as they require forbearance on the part of others, as well as positive rights, in as they require others to provide goods, services or opportunities,²⁵⁹ so ought states uphold them at home and promote them abroad. Obviously, this raises foreign policy issues, notably whether it is either practicable or prudent to make compliance with human rights law a touchstone of one’s foreign relations.²⁶⁰

²⁵⁵ *ibid*, pp. 15-16

²⁵⁶ John Baylis and Steve Smith, The Globalization of World Politics, (Oxford, Oxford University Press, 2001) p. 600

²⁵⁷ *ibid*, p.600

²⁵⁸ Jack Donnelly, Universal Human Rights – in Theory and Practice, p.27

²⁵⁹ *ibid*, p. 30

²⁶⁰ John Baylis and Steve Smith, The Globalization of World Politics, p. 601

There seems to be an inescapable tension between human rights of individuals and state sovereignty. As Vincent argues: “Their constituents are different. The society of all humankind opposed to the club of states, and one of the primary rules of the latter has been to deny membership to the former.”²⁶¹ Nonetheless, since the Universal Declaration of Human Rights in 1948, human rights have become a significant part of foreign policy, thus challenging the principle of state sovereignty and gradually eroding the sanctity of the boundaries of domestic jurisdiction. In fact, numerous international agreements and conventions on human rights, initiated a process by which the assumed sovereignty of the territorial state has given way to shared authority and power between the state and international organizations and the promotion and protection of human rights across borders has inevitably become *ius cogens* between states.²⁶² Authoritative texts on human rights, such as most notably the Covenant on Civil and Political Rights,²⁶³ established both legally binding global human rights regimes with treaty-reporting and monitoring mechanisms through the UN, as well as a legitimate duty for governments to incorporate human rights in their foreign policy considerations. Hence, according to the conventions of positivist international law, by their explicit agreements and by custom and practice, foreign offices are essentially bound to pay attention to human rights.²⁶⁴ According to Hill, in the international political system it is not enough to announce a new principle; it

²⁶¹ R.J. Vincent, Universal Human Rights and International Relations, (Cambridge, Cambridge University Press, 2001), p.129

²⁶² Thomas G. Weiss, David P. Forsythe, Roger A. Coate, The United Nations and Changing World Politics (Oxford, Westview Press, 2001), p. 141

²⁶³ *see* International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, *entry into force* 23 March 1976, in accordance with Article 49; International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966 *entry into force* 3 January 1976, in accordance with article 27; International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965, *entry into force* 4 January 1969, in accordance with Article 19; Convention on the Elimination of All Forms of Discrimination against Women, adopted and opened for signature, ratification and accession by General Assembly Resolution 34/180 of 18 December 1979, *entry into force* 3 September 1981, in accordance with article 27(1); Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly Resolution 39/46 of 10 December 1984, *entry into force* 26 June 1987, in accordance with article 27 (1); Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989, *entry into force* 2 September 1990, in accordance with article 49

²⁶⁴ R.J. Vincent, Human Rights and International Relations, p.130

has to become internalized and achieve a consensus before it will appear in actions. That happens dialectically through the slow process of interaction between governments, some keener than others, and private groups.”²⁶⁵

The international law of human rights actually provides a legal duty for governments to show concern for human rights violations in other countries.

The concept of implementing moral concerns in foreign policy predates contemporary declarations and covenants. There are several normative traditions, which support the concept of human rights. Particularly Kant and Locke’s treatises on rights represent arguably the most authoritative accounts that present us with a defence of inalienable natural rights.

Similar to civil or political rights, Kant’s international rights of nations conceived within the legal framework of a federation of states are based upon shared laws to which each member state is subject. According to Kant, the nature of international rights

[...] involves not only the relationship between one state and another [state] within a larger whole, but also the relationship between individual persons in one state and individuals in the other [state] or between such individuals and the other state as a whole.²⁶⁶

Kant’s categorical imperative ultimately demands that states ought to conduct “foreign affairs” as if they were moral persons since “on the cosmopolitan level... whatever reason shows to be valid in theory is also valid in practice.”²⁶⁷ Hence, the underlying nature of republican constitutionalism and the federal contract between states, ultimately implies that “a violation of rights in one part of the world is felt everywhere, the idea of a cosmopolitan rights is therefore not fantastic and overestimated; it is a necessary complement to the unwritten code of political and international right, transforming it into a universal right of humanity.”²⁶⁸ As far as the contemporary human rights discourse is

²⁶⁵ Christopher Hill, The Changing Politics of Foreign Policy, (Basingstoke, Palgrave MacMillan, 2003), p. 179

²⁶⁶ Immanuel Kant, H. S. Reiss (ed.) Kant: Political Writings (Cambridge, Cambridge University, 1991), p. 165

²⁶⁷ *ibid*, p. 92

²⁶⁸ *ibid*, pp. 107-108

concerned, Kant's ethical absolutism and his rigorous insistence on an egalitarian state of international relations with inherent moral precepts and formal principles for states to observe would be expressed in terms of today's idea of human rights diplomacy. Since Kant's concept of human rights as well as today's notion of human rights are both grounded on the same principle of morality and the duty to defend those rights,²⁶⁹ diplomats charged with the promotion and protection of human rights essentially aim to realize this vision of human beings as equal and autonomous individuals living in states that treat citizens with equal concern and respect. Human rights diplomacy then promotes principles that are widely accepted as authoritative within the society of states. Efforts to protect human rights emphasize individual liberty and state restraint, thus safeguarding individuals from arbitrary rule. In line with contractarians, such as Locke and Kant two principal dimensions of the human rights strategy of control over the state can be identified:

1. Negatively, it prohibits a wide range of state interference in the personal, social and political lives of citizens, acting both individually and collectively
2. Positively, human rights place the people above and in positive control of their government. Thus, political authority is vested in a free citizenry endowed with extensive rights of political participation (i.e. rights to vote, freedom of association, free speech, freedom of religion etc.)²⁷⁰

In the "Second Treatise" Locke argues that "voluntary union" of men "gives [...] political power to governors for the benefit of their subjects." Accordingly, a legitimate civil government is instituted by the explicit consent of those governed. Those who make this agreement transfer to the civil government their right of executing the law of nature and judging their own case. Essentially, each individual cedes his or her right to this authority to protect his or her right from being abused.²⁷¹

²⁶⁹ see Kant's principle of obligation, Marcus G. Singer, "The Categorical Imperative", The Philosophical Review, Vol. 63, No. 4 (Oct. 1954), p. 882

²⁷⁰ Jack Donnelly, Universal Human Rights – in Theory and Practice, p. 35

²⁷¹ Patrick Riley, "Locke on "Voluntary Agreement" and Political Power, The Western Political Quarterly, Vol.29, No.1 (March, 1976), p. 137; see also Ruth Grant, John Locke's Liberalism, (Chicago, University of Chicago Press, 1987), pp. 133-117

Kant's debt to Lockean contractarianism is particularly evident in *Rechtslehre*, in which he argues that "the legitimate [or sovereign] authority can be attributed only to the united will of the people. Because all right and justice is supposed to proceed from this authority, it can do absolutely no injustice to anyone."²⁷² Insisting on (indirect) consent through a representative system, Kant also calls for the executive to rule on the basis of the rule of law, which in turn reflects the united will of the people. A true republic, Kant argues, "is and can be nothing else than a representative system of the people if it is to project the rights of the citizens in the name of the people."²⁷³

Whilst it is true that the concept of "right-holders" is indebted to the contractarian school of thought, Kant and Locke's respective visions of republicanism are not confined to this legal aspect of individual rights. Since rights also express a deeper concern for human dignity, they also point to the capacity of individuals to act responsibly, a capacity, which Kant recognizes as the human awareness of duty. For Kant, it is the awareness of duty, which opens up the way to a profound understanding of human freedom.²⁷⁴ Equally, a crucial tenet in Locke's theory, is that for every duty there is a correlative right to the performance of that duty, held by another; and that for every right (excluding liberties, there is a correlative duty on others to allow the exercise of this right.²⁷⁵ Duty, according to Kant is, however, also more than this mutual respect between individuals, as it refers to one's duty to strive for emancipation (referring to man's self-incurred immaturity [*Unmündigkeit*]).²⁷⁶ Accordingly, because of the individual's duty to respect human dignity, people are duty bound to establish an order of legal justice by which everyone's right to equal freedom can be guaranteed.²⁷⁷

²⁷² Patrick Riley, "On Kant as the Most Adequate Social Contract Theorist", *Political Theory*, Vol.1, No.4 (Nov., 1973), p. 465

²⁷³ *ibid*, It should be noted that Kant emphasizes the subordination of the government to the rule of law. Accordingly, the executive ought only carry out laws, which were legislated by parliament. The separation between these two powers is, according to Kant, a prerequisite for a constitutional republic.

²⁷⁴ Heiner Bielefeldt, "Autonomy and Republicanism: Immanuel Kant's Philosophy of Freedom" *Political Theory*, Vol.25, No.4 (Aug., 1997), p.526

²⁷⁵ A. John Simmons, "Inalienable Rights and Locke's Treatises", *Philosophy and Public Affairs*, Vo.12, No.3 (Summer, 1983), pp, 194-195

²⁷⁶ Heiner Bielefeldt, "Autonomy and Republicanism: Immanuel Kant's Philosophy of Freedom", p.527

²⁷⁷ *ibid*, p. 540

Our modern understanding of human rights seems greatly indebted to the Enlightenment and the legal-political order associated with contractarian accounts. Both Locke and Kant start from the premise of inherent and inalienable human dignity and equality and demand a contractarian union between subjects and a government in order to safeguard those rights.

Hegel's vision of history, however, argues that it is liberal societies in the West that have been the freest and most generally congenial societies in history, but not because they were built on the basis of rights in a contractarian sense. Rather because these societies were, in certain respects, ethical communities in which "rights were widely honored and respected". In his view, "a successful rights-based politics is parasitic on features of the polity that have nothing to do with rights."²⁷⁸ The three elements of an *ethical community* from Hegel's "Philosophy of Right": the family, civil society and the state, "constitute individuality, that (...) construct(s) the kind of individual that liberal rights-based thought takes as given."²⁷⁹ Broadly, the realm of family and civil society provide an environment, where the individual can act in a context where law and government are seen as external forces. The state is seen as the sphere, where these individuals come to see their competitors as fellow-citizens, and to realise that the laws that bind them together are self-made rather than an exogenous phenomenon.²⁸⁰ Thus, the idea is that the rights the community assigns each other are not the manifestations of a general moral code or the product of universal reasoning; rather they are more like reminders that the community gives itself as to what is regarded as proper conduct. According to Hegel, they are enforceable against the government, the police and the corporations, but not

²⁷⁸ Tim Dunne and Nicholas J. Wheeler, Human Rights in Global Politics (Cambridge, Cambridge University Press, 1999), p. 111

²⁷⁹ *ibid*, pp.111-112

²⁸⁰ Hegel refers to civil society also as the "system" of needs, which transforms natural impulses, needs and wants, by modifying and multiplying those needs and wants. Analysing the coordination of practices among individuals, Hegel asserts that universal principles derive their content from the end and actions of individuals who determine for themselves what to do. According to Hegel, this aspect in the realm of civil society grants the most fundamental role individuals have in developing the content of principles of right. Legitimate law simply codifies those practices that require legal protection in order to remain effective. *see* Kenneth Westphal, "The basic context and structure of Hegel's Philosophy of Right" in Frederick C. Beiser (ed.), The Cambridge Companion to Hegel (Cambridge, Cambridge University Press, 1993), pp.256-259

against the state as such, that is the state in its role as the expression of a higher unity.²⁸¹ Thus, instead of a standard stock of rights with which all people emerge from the state of nature, the development and emergence of rights reflects the many outcomes of freedom, as individuals play a role in forming the content of law by maintaining and modifying social practices as needed to secure their freedom and their individual ends. Contrary to contractarians, Hegel argued, “achieving community and actualizing freedom are based on recognizing this common mutual interdependence. Effecting this recognition and its attendant freedom is the very point and purpose of the social and political institutions in Hegel’s theory of the state.”²⁸² Unlike the Lockean “state of nature” freedom, human autonomy is achieved through individuals acting as self-legislators, assigning themselves their own principles. Hegel focuses on the moral, social and political issue of bringing people to understand how (in a well-ordered) society their needs, aspirations, and principles form a rationally acceptable system. Ultimately, such a system leads to integrated personal lives, where individual lives are integrated into a network of social institutions.²⁸³ For Brown the rational, ethical community, is the answer to the question: “How can we live rational ethical lives in societies characterised by mass membership, and extended and complex division of labour and, if we are fortunate enough, some kind of representative government?”²⁸⁴ The *ethical community* provides us with an ideal against which existing societies can be measured, but more importantly, it represents a communitarian concept of rights providing a universal model of human rights, as they are constructed by civil society - which has been superseded by the movement of *Geist* - rather than on rights-based individualism.²⁸⁵

But how do we put the Hegelian notion of the absolute morality of the movement of the *Geist* into context of contemporary human rights diplomacy? Postmodernist Richard Rorty manages to demythologise such Hegelian concepts. Whilst opposing foundationalist accounts of rights, he argues that rights act to “summarize our culturally influenced intuitions about the right thing to do in various situations” thus “heightening

²⁸¹ Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, p.112

²⁸² Frederick C. Beiser (ed.), *The Cambridge Companion to Hegel* p. 244

²⁸³ *ibid*, p. 245

²⁸⁴ Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, p.112

²⁸⁵ *ibid*, pp.112-113

the sense of shared moral identity with brings us together as a moral community”.²⁸⁶ Since the Enlightenment, western political thought has created a “human rights culture” and thereby extended the scope of this shared moral identity.²⁸⁷ Rorty traces this achievement back to a sense of “security” - conditions of life sufficiently risk-free as to make one’s difference from others inessential to one’s self-respect, one’s sense of worth”- and “sympathy”, the ability to put one’s self in another’s shoes, i.e. to perceive the Other as a fellow human being.²⁸⁸ What should one do then when confronted with torture, racist policies, genocide, perpetuated because certain groups are not regarded as fellow human beings, or even with a religious death penalty as a response to apostasy? Rather than condemning such “human rights violators” as “wrong” or “irrational”, Rorty suggests to see them as “deprived” of the security and sympathy that has allowed us to create a culture in which rights make sense. Highlighting that rights are best seen as a by-product of a functioning ethical community and not as a phenomenon that can be taken out of this context and promoted as a universal solution to the political ills of the world, he suggests to promote human rights as a culture, and not as a movement which forces people to be free.

This difference between Hegel’s account and that of Kant or Locke is particularly evident in the ongoing debate on the universality of human rights. The approval of the Universal Declaration of Human Rights in 1948 and both international covenants in 1966 were based on the conviction that human rights reflect universally accepted norms. However, this assumption is often criticized on grounds that the contemporary human rights regime is essentially a contemporary internationalised and universalised version of the liberal position on rights.²⁸⁹ Adherents of the school of cultural relativism argue that the rights contained in the Universal Declaration mainly reflect western values and norms and assert that “local or regional cultural traditions in the fields of religion, politics, economics and law determine the existence and scope of civil and political rights enjoyed

²⁸⁶ *ibid*, p. 119

²⁸⁷ *ibid*, p. 119

²⁸⁸ *ibid*, p. 119

²⁸⁹ Tim Dunne and Nicholas J. Wheeler, Human Rights in Global Politics , p. 105

by individuals in a given society.”²⁹⁰ Similar to the Hegelian notion of a communitarian based concept of rights, the basic doctrine of cultural relativism contends that rules about morality vary from place to place and that the way to understand this variety is to place a right in its cultural context. Essentially, moral claims derive from, and are enmeshed in, a cultural context, which is itself the source of their validity.²⁹¹

An argument against the cultural relativist critique is Donnelly’s account, which, whilst universalist in its core conviction, is still sensitive to cultural claims. Like all advocates and defenders of international human rights, Donnelly believes that the Universal Declaration of Human Rights of 1948 (UDHR) embodies a genuine substantive consensus that encompasses the leading world cultures, arguing in effect, that there are no crucial issues of substantive difference.²⁹² There exists what Donnelly, following John Rawls, describes as a “realistic utopia”, and “overlapping consensus” as to norms that lends validity to claims of universally associated with the UDHR.²⁹³ Claims such as those in the Covenants that “these rights derive from the inherent dignity of the human person” or in the Vienna Declaration that “all human rights derive from the dignity and worth inherent in the human person” set the range of possible comprehensive doctrines with an overlapping consensus.²⁹⁴ Whilst history has shown that all major civilizations have at times been dominated by views that treated some groups of human beings as outsiders who were not entitled to equal rights, today the basic moral equality of all human beings is not merely accepted but strongly endorsed by all leading comprehensive doctrines in all regions of the world.²⁹⁵ To many advocates of universal human rights, the central achievement of the human rights movement has been to discredit moral or political doctrines based on fundamental inequalities between human beings leading to “social orders based on fixed status hierarchies have been replaced – in theory at least, and in most countries to a considerable degree in practice as well- by orders based on the

²⁹⁰ Peter R. Baehr, *The Role of Human Rights in Foreign Policy*, (Houndsmill, MacMillan, 1994), p.14

²⁹¹ R.J. Vincent, *Human Rights and International Relations*, p.38

²⁹² *ibid*, p. 22

²⁹³ *ibid*, p.90

²⁹⁴ *ibid*. p 41

²⁹⁵ *ibid*, p.41

fundamental equality of all citizens.”²⁹⁶ Contrary to liberal emphasis on individual liberty and in line with a Hegelian communitarian notion, it is the radical political egalitarianism of human rights that has had the most profound implications, both nationally and internationally.

Arguably, the strength of the Universal Declaration model in defending universal human rights is that it reflects to what extent different political traditions and historical experiences have elaborated different components of human rights. Rene Cassin, one of the main drafters of the document, drawing on the battle cry of the French revolution, identified the four pillars of the declaration as “dignity, liberty, equality, and brotherhood”. The twenty-seven articles were divided among these four pillars. The first, covered in the first two articles, stands for human dignity, which is shared by all individuals regardless of race, religion, creed, nationality, social origin or sex, the second specified in articles 3-19 invokes the first generation of civil liberties, which emerged during the Enlightenment; the third, laid out in articles 20-26, addresses the second generation of rights, that is, those related to political, social, and economic equity and fought for during the industrial revolution; the fourth outlined in articles 27-28, focuses on the third generation of rights as advocated during the late nineteenth century and early twentieth century and throughout the post-colonial era. In a sense, the sequence of the articles corresponds to the changing visions of universal right throughout history.²⁹⁷

The charge of cultural imperialism against human rights achieves even greater potency when it is made on the basis of religion. Essentially, the question really is, whether there is a synthesis between these two normative concepts. If we put aside the contested ontological debate on divine revelation, all religious texts incorporate a notion of universalism containing altruistic guidelines that could apply if not to all individuals, as contemporary definition would require, then to a substantial portion of humanity.²⁹⁸

²⁹⁶ Jack Donnelly, “Social Construction of International Human Rights” in Tim Dunne and Nicholas J. Wheeler, *Human Rights in Global Politics*, p.96

²⁹⁷ Micheline R. Ishay, *The History of Human Rights – From Ancient Times to the Globalization Era*, (Berkeley, University of California Press, 2004), pp. 3-4

²⁹⁸ Micheline R. Ishay, *The History of Human Rights – From Ancient Times to the Globalization Era*, pp.18-19

Contrary to approaches that regard religion as a complicating factor in the global human rights discourse, leading scholars in the field of human rights and divinity in fact argue that “religion must be seen as a vital dimension of any legal regime of human rights [.....] Religions will not be easy allies to engage, but the struggle for human rights cannot be won without them.”²⁹⁹ At first such a conciliatory claim seems inappropriate given that human rights are supposed to represent an irreligious and apolitical duty and rights based system and, moreover, because history has shown that “the most fanatical, the cruellest political struggles are those that have been coloured, inspired and legitimized by religion.”³⁰⁰ The value of the engagement of human rights with religion becomes evident “when the need for nurturing a culture of human rights is appreciated.” Ghanea argues that “as human vision can be significantly informed through visions of faith, religion plays a significant role in deepening the vision of universal human rights [...] and the “rooting of human rights in religion will assist in widening of both the enforcement and effectiveness of human rights.”³⁰¹ If the global human rights regime is to regulate behaviour between the state and the individuals as well as between the multiplicity of groups with different religions, histories, cultures, laws and languages, it “cannot be imposed on a void”. In line with Hegel’s notion, “it needs pillars to uphold it, genuine links that associate it with particular groups and a congruous platform which connects it to specific peoples.”³⁰²

What are then the implications of this normative debate for human rights diplomacy?

The contractarian account presents us with the concept of positive and negative rights, which emphasise individual liberty, state restraint and, thus imply a safeguard from arbitrary rule, or to use Kants’ term, from despotism. Along this line of reasoning, political rule is subject to a voluntary agreement between individuals and the government, which in itself is subject to the rule of law. The Hegelian notion, however, focuses on the emergence on individual liberties and rights as a by-product of a

²⁹⁹ Nazila Ghanea, Human Rights, the UN & the Baha’is in Iran (Oxford, George Ronald Press, 2002), p.28

³⁰⁰ *ibid*, p.28

³⁰¹ *ibid*, p.29

³⁰² *ibid*, p.29

functioning ethical community. Here, individuals, which became aware of their communal interdependence, acted as self-legislators and formed the law by maintaining and modifying social practices. Particularly with the perceived normative challenge religion is posing to the promotion and protection of universally perceived human rights, Hegel's communitarian concept of rights could be seen as an appropriate approach for conceptualizing modern human rights diplomacy.

Ultimately, the challenge of human rights diplomacy is to allow rights "to transcend all differences in the subjectiveness and practices of peoples whilst also mediating international human rights through the web of cultural circumstances."³⁰³ Seeing rights as a by-product of a functioning and rational Hegelian "ethical community", the short-term objective of human rights diplomacy should be to instil, in the "target country", a communitarian spirit of solidarity [i.e. *Geist*], which will allow individuals to assign themselves laws as well as duties. In this community rights are a product of the correlation between individuals' respective duties and rights. Bound by this solidarity, any rights-bearer in such a community is duty-bound to uphold this nexus of recognition and must know and follow the network of rules of the community. The realization of such a community in which rights make sense will ultimately lead to the establishment of a political framework, in which the state is responsible for strengthening these bonds of community. Thus, in the long-term, human rights diplomacy may contribute to the emergence of the concept of positive and negative rights, not necessarily in the contractarian sense of the individual's protection *against* the state, but rather in a Hegelian sense of the state being *responsible* for the maintenance and protection of the ethical community.³⁰⁴ In a true Hegelian sense, "[...] if human rights do not entail a claim of natural man *against* the state, if humans rights are in truth inseparable from integral membership in a collectivity, then its members have deeper obligations to one another and [...] than the liberal model [contractarian] would indicate."³⁰⁵ Essentially, the promotion of human rights in foreign policy is more likely to achieve a sustainable

³⁰³ *ibid*, p. 53

³⁰⁴ *see* Lewis P. Hinchman, "The Origins of Human Rights: A Hegelian Perspective", *The Western Political Quarterly*, Vol 37, No.1 (March, 1984), pp. 26-29

³⁰⁵ *ibid*, p. 28

political-legal framework as well as institutions in conformity with international human rights standards, if such a communitarian spirit had been nurtured both from within society as well as with outside assistance.

In order to achieve this, religion, in particular could be seen as an ethical foundation on which such “Hegelian diplomacy” could build on. Seeing it as a cooperative process with a common objective “religions and human rights will be able to collaborate, allowing religions to give human rights law their spirit – the sanctity and authority they need to command obedience and respect [...] its structural fairness, its inner morality.”³⁰⁶ Ghanea’s discourse on “faith in human rights, human rights in faith” convincingly concludes that “obedience to a norm because of legal compulsion and not by virtue of personal persuasion loses its moral significance”. A religious foundation for human rights could not only strengthen its appeal but also rather contribute to translating human rights into a universal culture in international society. Essentially, “the regime of law, democracy, and human rights needs religion to survive.”³⁰⁷ This premise illustrates that promoting human rights is unlikely to be effective if a coercive diplomacy is pursued or negative sanctions are employed. Cultural engagement, on the other hand, takes the time “to learn how other view the world, to understand what is important to them, and to determine what can realistically be done to help them realize their legitimate aspirations.” Particularly with regards to Iran, because “Islamic law emphasizes faith-based interactions rather than those among states, logic suggests that one of the more effective ways to engage Islam would be a new form of diplomacy that effectively brings to bear the transcendent aspects of religious faith in addressing the secular obstacles to peace.”³⁰⁸ In a true Hegelian spirit, “if the ultimate aim of human rights diplomacy is to persuade others of the value of human rights, it is more likely that the struggle to promote human rights can be won if it is fought in ways that build on, rather than challenge local traditions.”³⁰⁹

³⁰⁶ Nazila Ghanea, Human Rights, the UN & the Baha’is in Iran, p. 53

³⁰⁷ *ibid* p. 53

³⁰⁸ Douglas Johnston, Faith-Based Diplomacy- Trumping Realpolitik (Oxford, Oxford University Press, 2003), p.9

³⁰⁹ Jack Donnelly, Human Rights – in Theory and Practice, p. 70

2. Human Rights in Islam

It is a common belief that an Islamic based government, when serving as an ideological foundation for political rule, is poorly equipped to uphold and protect human rights. One step in testing this claim would be to exam Islam's basic sources (*Qu'ran, Sunna, Hadith*) and Islamic law (*Shari'a*) in their relation to human rights, to see whether there is evidence that Islam had laid down some universal rights for humanity as a whole, which are to be respected and observed under all circumstances. The vital question, really, which troubles Western and Islamic legal experts, is whether human rights can be in accord with Islamic insight. Is the manifestation of prophecy greater than the reason of man? Does the promotion of human rights in the Muslim world have to be approached from a secular normative premise or does it have roots in Islam.

In order to answer these questions, it seems reasonable to approach the issue of human rights and Islam from within an Islamic discourse. This has been distilled by Halliday into five responses: assimilation: the argument that there is no problem about reconciling Islam with theories of human rights; appropriation: the claim that it is only under Islamic laws that they can be fully realized; particularism: the specific cultural and historical context of individual Islamic societies; confrontation: the argument that international human rights are to be rejected as some kind of ethnocentric project; incompatibility: the claim that somehow Islam itself is irreconcilable with human rights or democratic principles.³¹⁰

There are numerous Islamic scholars, which assert that human rights have an important place in Islam. For example, Abdul A'la Mawdui argues that "Islam has laid down some universal fundamental rights for humanity as a whole, which are to be observed and respected under all circumstances... fundamental rights for every man by virtue of his status as human being."³¹¹ Some scholars have gone so far as to assert that "the basic

³¹⁰ see Fred Halliday, "Relativism and Universalism in Human Rights: The Case of the Islamic Middle East", *Political Studies*, (Summer, 1995), No. 43, pp.154-155

³¹¹ Jack Donnelly, "Human Rights and Human Dignity: An Analytic Critique of non-Western Conception of Human Rights", *The American Political Science Review*, Vol.76, No.2 (June, 1982), p. 306

concepts and principles of human rights had from the very beginning been embodied in Islamic Law.” Nadvi and Tabendeh conclude that contemporary human rights are merely giving recognition to 1400-year-old Islamic ideas.³¹² Ayatollah Abdullah Javadi Amuli too supports the idea that human rights are recognized in Islam. According to the *sura* of the Night Journey, Verse 70 of the *Qur’an* man is, in essence, regarded as valuable and worthy, as man is the manifestation of all divine qualities and consequently, God’s viceroy on earth. He concludes that “When we admit that man is in essence valuable and worthy, we are consciously or unconsciously induced to believe that [not only] freedom, security and so on [are] his right[s] but they should be designed in such a way which might correspond with his dignity. “³¹³ This conception of basic rights of human subjects created in the image of God is best addressed in Malkum Khan’s 1881 essay *Sirat al-Mustaqim* (The Straight Path), in which he asserts that the four basic principles of human rights were security, freedom (*ekhtiyar* or *azadi*), equality, and achieved status, dividing security into the security of the person and that of property. Further elaborating on the concept of freedom, he distinguished such categories as the freedom of the body, speech, pen, thought, business (*kasb*) and association. In line with Islamic thought, Khan’s conceptualization of freedom was based on an ontological foundation of human subjectivity:³¹⁴

“The nobility of our creation lies in [God’s] having created us as subjects [*fa’el mokhtar*] and because of his nobility [he] has made us agents, who through our reason and effort [*ijihad*] are owners and protectors of our rights of humanness [i.e. human rights]³¹⁵

Equally, Abdul Aziz Said claims “to identify precepts that establish human rights in the Islamic tradition” and argues that in Islam “human beings have certain God granted rights.”³¹⁶ However, all of the regulating precepts of an Islamic political system that Said lists involve either a rights-less duty or are rights held because one has certain legal or

³¹² *ibid*, p. 306

³¹³ Ayatollah Abdullah Javadi Amuli, “Sources of Human Rights in Islam” in Organization for Islamic Culture and Communications, Directorate of Research and Education, Islamic Views on Human rights – Viewpoints of Iranian Scholars, (London, Al-Hoda, 2001), pp.1-2

³¹⁴ Farzin Vahdat, God and Juggernaut – Iran’s Intellectual Encounter with Modernity (New York, Syracuse University Press, 2002), p. 34

³¹⁵ *ibid*, p. 34

³¹⁶ Jack Donnelly, Universal Human Rights- in Theory and Practice, p. 73

spiritual status, not simply because one is a human being.³¹⁷ Initially, the main divide between Islamic and Western approaches to human rights, seems to be with the modern, secular tradition notion of “rights-carriers” as opposed to the “duty-bound” individual, one finds in religion. Liberalism ‘s overwhelming concern is protecting the rights of individuals from intrusive government. As illustrated earlier, the overriding concern with safeguarding individual liberties is represented in the Universal Declaration as well as in the Covenants. In contrast, Mayer argues that the human rights listed in the Universal Islamic Declaration of Human Rights (UIDHR) (1981) and the Draft of the Islamic Constitution (1979), published by the Islamic Research Academy of AL-Azhar Academy, are really obligations.³¹⁸ However, given Islam’s hermeneutic heterogeneity, these declarations do not constitute a single authoritative or representative Islamic conceptualization of human rights. Treatises on rights by Soroush, Kamali and Montazeri deconstruct the relationship between the individual and God in such ways as to show that the believer in Islam is in fact of greatest importance and its God-given characteristics are merely subject to divine guidance rather than restrained by religious duties. Similar to the Hegelian notion, the *umma* is thought as an ethical community in which religion provides for the moral code and framework of behaviour, but is still subject to realities of human life.

Soroush’s hermeneutics focus on the aspect of justice in *Shi’a fiq* and sees religion as the normative basis on which a society ought to be governed. Essentially, Soroush’s arguments centres around his belief that human rights are dictated by reason, and as such,

³¹⁷ *ibid*, p. 73

³¹⁸ Daniel Price, “Islam and Human Rights: A Case of Deceptive First Appearances”, Journal for the Scientific Study of Religion Vol. 41, No. 2 (2002), p. 214 With regards to Islamic human rights schemes, Mayer’s assessment identifies no real protection of individual rights and freedoms. Rather many, including the Iranian Constitution and the UIDHR, accord priority to rationalizing governmental repression, protecting and promoting social cohesion, and perpetuating traditional hierarchies in society, which ultimately results in the institutionalised discrimination against non-Muslims and women. Rather than providing security from the state, they call for obedience to authority and give political leaders complete leeway in determining the scope of permissible freedoms. Hence, governmental authorities are allowed to curb rights and freedoms by reference to vague Islamic criteria, which are ill defined. By basing these constitutions and schemes on the supremacy of Islamic principles in all areas relevant for the protection of human rights, state elites override international human rights standards by reference to “Islam”. *see* Ann Elizabeth Mayer, Islam and Human Rights- Tradition and Politics (Boulder, Westview Press, 1995), p. 163

cannot be in conflict with religion since religious jurisprudence has always been subject to human rationality.

The *Qur'an*, as well as the laws laid out in the *shari'a*, Soroush criticises reflect the language of duties, not rights, giving commandments by a supreme divine authority. Human beings are required to believe, pray, be charitable, and conduct themselves in such matters as matrimony and inheritance in accordance with prescribed guidelines.³¹⁹ The fact that the modern concept of human rights reflects the evolution from rights to demands and that governments were accordingly charged with new tasks and responsibilities, is, according to Soroush, one of the main reasons behind the failure of the modern world to comprehend the principles of guardianship of the juristconsult [*velayate-e faqih*] and the Islamic government [*hokoumat-e Islami*] that prevail in contemporary Iran. In western political thought, people are endowed with rights and exert them by electing their leader to a government, which guarantees to protect the public good. By contrast, the government based on the *velayate-e faqih* is based on duties. This is because some Islamic interpretations, including that of Khomeini, view human beings as duty-bound. Everything starts with obligations: people are obliged to vote, obey the leader, and form a government because they have already accepted a series of religious principles and injunctions.³²⁰ He goes on and states that, “the guiding principle of [the duty to have a religion] is performing (as in performing prayers), while the right to have a religion is based on the prospect of realizing a certain aim (as in realizing profits). With the assumption of duties the society is seen as a temple whose purpose is to please its creator. The viewpoint of rights envisions society as a marketplace where the aim is satisfying the members. The former pursues the satisfaction of the creator, the latter of the people.”³²¹

It is obvious that the problem now for any religious government lies in whether it recognizes the rights of people on a basis that is in accordance with religious law.

³¹⁹ Mahmoud Sadri, Ahmad Sadri, Reason, *Freedom, and Democracy in Islam – Essential Writings of Abdolkarim Soroush*, (Oxford, Oxford University Press, 2000), p. 62

³²⁰ *ibid*, p. 63

³²¹ *ibid*, pp. 63-64

According to Soroush, the issue of choosing between the guardian *velayat* and representation *vekalat* ultimately is that of two conflicting societal concepts: the former is consistent with a duty-bound society; the latter is consistent with a rights-based society.³²² Criticising Khomeini's construct of the *velayat-e faqih* from within an Islamic discourse, Soroush's concept of an Islamic democracy centred around the argument that "the association of religious scholarship with political and economic power was bound to affect that scholarship and could not be considered in the best interests of the theological and philosophical investigation." He claimed "that religion was greater than the ulema", and "that Islam as a faith was greater than the jurisprudence [*fiqh*] and that its interpretation could not be dependent on a class who were themselves dependent on maintaining a particular interpretation which could sustain them."³²³ Whilst this rejection of the legitimacy of the *velayate-faqih* formed the very basis for his model of Islamic democracy, it also manages to combine the secular idea of the rights with that of Islamic idea of duty. As he concludes

"Religion forbids us from assuming a God-like character. Religion also commits us to serving God. So, the place of the believer falls somewhere between negating the former and engaging in the latter. [...] modern humanity does not tolerate the presumption of God-like character. This is especially true in politics and government where limiting the power of the state, division of powers, and the doctrine of checks and balances are established in order to prevent accumulation of power that might lead to such Godly claims. Therefore, while lightening the burden of duties, the modern world has also undermined a right that has always been a source of evil and corruption: that is, the right to act as a God-like potentate with unlimited powers."³²⁴

It is evident that Soroush's hermeneutics demands the separation of powers, but rather than calling for secular state, he argues that "democracy [...] – of all possible forms of government- [is] the one that best protects religion and, accordingly, God's rights." Insisting on the need "to protect religion from being misused by "supposed men of God" for purposes contrary to the will of the Creator, Soroush contends that democracy can do

³²² *ibid*, p. 64

³²³ Ali M Ansari, Islam, Iran and Democracy – The Politics of Managing Change (London, Royal Institute of International Affairs, 2000), p. 72

³²⁴ Mahmoud Sadri, Ahmad Sadri, Reason, Freedom, and Democracy in Islam – Essential Writings of Abdolkarim Soroush, p. 64

just that because it monitors the observance of human rights. “Where human rights are observed”, he argues, “religion cannot be misused.” Thus, Soroush’s ideal government is not just democratic, it is also religious – because it creates the conditions needed for people to devote themselves to their faith.³²⁵ Whilst this form of government bears contractarian elements, it is Hegelian at its core. Religion becomes the handmaiden of democracy and the body of laws and rights, rather than being imposed from without or from above, constitutes the “normative product” of this religious community.

Clearly, his interpretation of Islamic democracy directly corresponds to the Islamic notion that whilst the ruler is responsible for the enforcement of Islamic law, he is subject to the law himself. As such, the ruler’s position is not inviolable, but subject to accountability, and he could even be deposed if he failed to adhere to the laws.³²⁶ It is this aspect of *justice*, which is fundamental for Soroush in conceptualizing human rights within an Islamic discourse. With reference to Mowlana Jalal-al Din Rumi’s verse “O kings, we’ve killed the enemy without, but a more evil enemy resides within” Soroush asserts that the *ulema* used to believe that if the ruler was just, he will extend this justice over society and over every single individual, and will bring them into the orbit of this justice. The notion of democracy and separation of powers, however, changed this common conception. In a democracy, it was no longer sufficient for the ruler to be just. According to Soroush, democracy can be achieved in three steps: “installing rulers, criticising rulers and dismissing rulers. When the people can exercise these three steps, we can say that we have justice.”³²⁷ Concerning this notion, many contemporary interpretations point to the *Qur’anic* concept of *shura*, whereby the ruler is supposed to consult with the leading members the community on the affairs of the state which support

³²⁵ Katajun Amirpur, “Abdolkarim Soroush’s Rays of Hope”
http://www.drSORoush.com/English/On_DrSORoush/E-CMO-20040200-Abdolkarim_Soroushs_rays_of_hope_By_Katajun_Amirpur.html, accessed on 2 December 2006

³²⁶ It should be also noted that no democratic institution was foreseen to depose the ruler if in violation with the law, *see* Katerina Dalacoura, *Islam, Liberalism & Human Rights* (London, I.B. Tauris, 2003), p.45

³²⁷ Ali Asghar Seyyedabadi, “Democracy, Justice, Fundamentalism and Religious Intellectualism – An Interview with Abdolkarim Soroush” on <http://www.drSORoush.com/English/INterviews/E-INT-DemocracyJusticeFundamentalismNReligiousIntellectualism.html>, accessed on 20 December 2006; *see also* Mahnoud Sadri, “Sacral Defense of Secularism: The Political Theologies of Soroush, Shabestari, and Kadivar” in *International Journal of Politics, Culture and Society*, Vo.15, No. 2 (Winter, 2001), pp. 259-260

a constitutional and representative system in order to scrutinize the ruler as well as safeguard the rule of law. Reference is often made to verses 3:110, 3:112 and 22:41 which describe believers as “commanding good and prohibiting evil” in support of the interpretation of the duty to command good and prohibit evil in government.³²⁸

For Soroush, the rule of law itself derives from the concept of reasoning in *Shi’a* jurisprudence. Recognizing that human rights are dictated by reason, and as such may constitute a human invention, Soroush contends that, by the same token, they do not impinge on God’s rights either. For him, human rights cannot be in conflict with religion because God’s will can never be unreasonable. Pointing to the repeal of many laws currently in place in Muslim polities (e.g. the Islamic Penal Code) Soroush reminds us that Islamic jurisprudence is primarily based on logic. Furthermore, religious laws concerning social transactions [*mo’amelat*], he asserts, “are susceptible to worldly rationalization and calculation ; they would be useless otherwise. That which is worldly, natural and human should be treated as such.” Therefore, he concludes “ natural and secular norms and principles of rationality [...] are all applicable to religious jurisprudence.”³²⁹ According to Soroush, “religious jurisprudence, however divine and historical, inevitably becomes historical and assumes a worldly application”. Ultimately, religious judges must be subject to public scrutiny and transparency, “so that their lapses of policy and deliberations are minimized and their transgressions are democratically restituted or retributed.” As such government is “established and demolished through the will of the people”. This will is, according to Soroush “in a religious society, nurtured and inspired by religion and religious reason, but the religious edification and inspiration does not diminish the democratic nature of the religious government in the least.”³³⁰

Soroush’s discourse on Islamic jurisprudence is fundamental for bridging Islamic law and notions of human rights. At first, the conflict between human rights and the *shari’a* is obvious. Human rights are conceived as rights, which demand the social

³²⁸ Abdullahi Ahmed An-Na’im, Toward and Islamic Reformation – Civil Liberties, Human Rights, and International Law (Syracuse, Syracuse University Press, 1990), pp.78-80

³²⁹ Abdolkarim Soroush, Reason, Freedom and Democracy– Essential Writings of Abdolkarim Soroush, p. 149

³³⁰ *ibid*, pp. 150-152

changes required to realize the underlying moral vision of human nature, whereas the rules of the *shar'ia* become valid “ by virtue of their existence and not [necessarily] because of their rationality.”³³¹ However, if we attempt to find human rights purely within the teachings of Islam, one should be aware that the only parts of the Islamic traditional texts that are sacred are the *Qur'an* itself, which is said to be of the Prophet Mohammed's divine revelation, and the *hadith*, or sayings of the Prophet as subsequently codified.³³² The term *shari'a* literally “path” or “way” did not initially denote a legal code at all. Rather the interpretation of this divinely sanctioned material and its elaboration into a set of comprehensive legal code is known as *fiq* (jurisprudence) and was, therefore, gradually codified into law, subject to human understanding rather than divine revelation.³³³

Thus, contrary to common belief, the progressive nature of Islamic jurisprudence provides indeed a legal-political framework that is susceptible the protection of human rights. This is particular true for *Shi'a* jurisprudence, which, in response to the crisis created by the occultation of the Imam, developed a legal and political framework, in which the faculty of reason (*al-aql*) enjoyed a prominent place. Whilst the Imamates regarded the revelation as all comprehensive, there was a recognition of the fact that reason acknowledged the comprehensives of the revelation by engaging in its interpretation and discovering all the principles that the Imamates needed to know. More than that, “there was a recognition of a fundamental need of interpretation of the revelation by reason [*ijtihad*], all the more when the authority invested with divine knowledge was in occultation.”³³⁴ Thus, Muslims jurists who are charged with the implementation of Islamic Law have to guard both temporal and divine values by

³³¹ Joseph Schacht, *An Introduction to Islamic Law* (Oxford, Oxford University Press, 1964), p. 203

³³² Fred Halliday, *Islam and the Myth of Confrontation*, (London, IB Taurus, 2003), p. 148

³³³ *ibid*, p. 148; Following the conquest of Syria, Egypt and Persia, Muslim soldiers had to contend with ancient local customs and laws. In order to smooth over the conflict between inherited rights and newly acquired rights, Goldziher argues that “Islamic legal practice, religious and civil alike, had to be subjected to regulation. The guiding principles of the *Qur'an* itself were not sufficient, for the *Qur'anic* statutes could not take care of the unforeseen conditions brought about by conquest. The provisions made in the *Qur'an* were occasional and limited to the primitive conditions of Arabia. They were not adequate for dealing with the new situation.” Ignaz Goldziher, *Introduction to Islamic Theology and Law* (Princeton, Princeton University Press, 1981), p.36

³³⁴ Abdulaziz Abdulhussein, *The Just Ruler in Shi'ite Islam – The Comprehensive Authority of the Jurist in Imamite Jurisprudence* (Oxford, Oxford University Press, 1988), pp. 4-5

managing to resolve the very conflicts between divine command, order and justice. In this context, most Muslim jurists “contend that the very purpose and function of the *shar’ia* is to fulfil the interests and welfare of the people in worldly life and hereafter [*tahqiq masalih al-ibad fi al-ma’ash wq al-ma’ad*]. They would further argue that the values, which the *shar’ia* aims to safeguard, are regarded as necessities (*daruiyyat*), needs (*hajiyyat*) and luxuries (*tahsiniyyat*).³³⁵

Whilst Soroush’s political thought provides for an Islamic democracy in which both the notion of reason and religion enjoy pivotal roles, the dichotomy of rights and duties seems to be convincingly bridged by Montazeri and Kamali.

Montazeri’s treatises on human rights centred on a conviction that the very essence of being human, irrespective of being Muslim or not, entitled humans to bear rights. He bases this claim on the *Qu’ranic* teachings and the *Hadith*; one reference for which, according to Montazeri, would be the verse “Verily we have honored the children of Adam. We carry them on the land [and the sea], and have made provision of good things for them, and have preferred them above many of those whom We created with a marked preferment” [*The Qur’an*, XVII, The Children of Israel: 70]³³⁶ Contrary to other Islamic jurists who only attribute Muslim believers “*M u’minun*” certain rights, Montazeri asserts that humans carry an inherent dignity and as such are to be respected (*insan mohtarameh*). Montazeri refers here to the *Qu’ranic* verse “*wa laqad karramna bani Adama*” (“Verily we have honored the children of Adam”). According to Montazeri’s hermeneutics, God ordered the angels to prostrate to Adam, because humans have the capacity to grow, then by that virtue humans are to be respected. The very essence of humanity, which is capable of growth, is the cause for respecting humans, so much so that humans can be even higher than angels. And that is why God, according to Montazeri, ordered the angels to prostrate to Adam, namely to honor Adam’s dignity.³³⁷

³³⁵ Khaled Abou El Fadl, *Rebellion and Violence in Islamic Law* (Cambridge, Cambridge University Press, 2001), p. 27

³³⁶ Interview with Ayatollah Montazeri, <http://www.iranian.com/Bashi/2006/March/Montazeri/index.html> accessed on 20 June, 2006

³³⁷ *ibid*

Following Montazeri's emphasis on inherent human dignity, Kamali stresses the notion of freedom in Islam, which manifests itself throughout the *Qur'an* and the *hadith* and which, in his interpretation, correlates directly to rights. For Kamali, the notion of freedom constitutes a basic norm in the *shar'ia* as well as is upheld in the *hadith* wherein the Prophet declares that 'every child is born in the natural state of [freedom].'³³⁸ For Kamali the notion of freedom in Islam is also evident in various *Qur'anic* themes which characterize the Prophet as someone who informs the believers and then leaves them at liberty to make their own choices (e.g. "Say, O people, the truth has indeed come to you from your Lord. So whoever follows guidance does so only for the good of his own soul, and whoever errs, errs only against it. I am not a custodian over you." *Yunus*, 10:108)³³⁹ Rather than impinging on the individual's liberty, the Prophet merely reminded the believer of the consequences of the choices they made: "So remind. You are only a reminder, you are not a warder over them". *Al-Ghahiyah*, 88:21-22).³⁴⁰ Whilst Kamali also takes the notion of *shura* as evidence that the *shar'ia* validates a representative system, which comes to power through the concept of *bay'ah*, the citizens' pledge of allegiance (*see also* p. 102), his main concern lies with the notion of freedom. Freedom in Islam, according to Kamali, not only liberates the individual conscience and encourages individual accomplishment and growth through the freedom of choice, but also bears immediate political rights.³⁴¹ Since freedom in the *Qur'an* is a manifestation of God's favour and grace on mankind, it is inherent in every human and as thus may not be denied or revoked. "Being God-given and sacrosanct, it commands respect and no one, including a ruler or judge, is authorised to overrule or derogate it without a valid cause. It is an obligation of the state to provide adequate guarantees for the protection of individual liberties."³⁴² As for Soroush, the concept of justice and jurisprudence, rather than restricting rights, aims to draw a regulatory framework for rights and mutual duties, so as to benefit both the individual and the community. Thus, the initial dichotomy between religion, be it Christianity or Islam, and human rights, which, at its core, is between duty

³³⁸ Mohammad Hashim Kamali, *Freedom, Equality and Justice in Islam* (Cambridge, Islamic Texts Society, 2002), pp.15-16

³³⁹ *ibid*, p. 15

³⁴⁰ *ibid*, p. 19

³⁴¹ *ibid*, p. 27

³⁴² *ibid*

and right, does not have to be contradictory; that is outside the political realm concentrating on what God expects from one rather than on ones own desires, essentially implies to look among one's duties to find one's rights, not vice versa. ³⁴³ As Soroush convincingly concludes:

In any event, religious governments that are based on religious societies will be democratic only when they seek to combine the satisfaction of the Creator and that of the created; when they are true both to the religious and extra religious concerns; and when they equally respect pre religious and postreligious reason and morality. In the elusive and delicate balance between the two realms lies the rare elixir that the contemporary world, because of its neglect, finds unattainable or undesirable.

³⁴⁴

What does all this tell us for the prospect for promoting human rights within an Islamic context?

Reflecting the fluidity of Islamic hermeneutics, contributions by contemporary scholars, such as Soroush or Kamali, aim to reconcile both normative concepts. By and large, Islam continues to be determined by dynamic change, ³⁴⁵ which is particularly true for interpretations of human rights in Islamic thought. Whilst, one has to acknowledge certain analytical and historical problems and challenges of human rights applications in Islam, there is a significant school that claims that support for human rights today can be found in the canonical Islamic sources and accompanying juristic techniques, namely the *Qur'an, haddith, ijma, qiyas ijtiḥad* ³⁴⁶ Overall, there is widespread consensus amongst Islamic scholars that Islam teaches that “it is the state's duty to enhance human dignity and alleviate conditions that hinder individuals in their efforts to achieve happiness” providing “social and political precepts” that “reflect a strong concern for human good and dignity, and autonomy.” ³⁴⁷ In this light, profound religious values coupled with analogical reasoning can not only lend a deeper meaning to the construct of human rights but, moreover, seem to present us with the possibility for a mutual search for a better

³⁴³ Mahmoud Sadri, Ahmad Sadri, Reason, Freedom, and Democracy in Islam – Essential Writings of Abdolkarim Soroush, pp. 129- 130

³⁴⁴ ibid, p. 130

³⁴⁵ see JohnL. Espisito, “Contemporary Islam – Reform or Revolution ?” in John L. Espisito, The Oxford History of Islam, (Oxford, Oxford University Press, 1999), pp. 684- 690

³⁴⁶ Shaheen Sardar Ali, Gender and Human Rights in Islam and International Law: Equal before Allah, Unequal before Man, (Boston, Kluwer Law International, 2000), pp. 16-19 see also Chapter IX

³⁴⁷ Jack Donnelly, Universal Human Rights – in Theory and Practice, p.75

understanding of human life, dignity and a merciful society. Undoubtedly, the discourse on human rights and Islam is vast and deserves more elaboration than it has received here. What one can identify, however, is that canonical Islam and Islamic jurisprudence constitute a normative foundations on which human rights diplomacy could build; which from a theological perceptive, will only enhance the value and belief system of human rights.

Human rights diplomacy, therefore, should not be based on a secular dictum to shape Islam into a Western liberal mould, but rather follow the Hegelian spirit and promote a communitarian ethos in which the self-legislation of rights and duties will eventually lead to the security and protection of the individual. Evidently, the challenge of human rights diplomacy is to build on rather than to challenge respective belief systems. As Khatami contends on the relationship between liberty and Islam: “A value system is only as strong and durable as the realistic and practical affirmation of its tenets. It cannot exist in the realm of thought and imagination alone.” Whilst he emphasizes religiosity as paramount normative element for a functioning ethical society, Khatami also demands to “distinguish between the essence of religion and the incomplete interpretations of humans such that religion maintains its central place deep in the hearts of the believers, in a way that we can modify religious thinking to adapt to the demands of our time.”³⁴⁸

3. Human Rights in Iran and the Constitution of the Islamic Republic of Iran

3.1 The Maze of Iranian Power Centres and Factional Divides

At the height of Europe’s “Critical Dialogue” *Ayatollah* Hasan Sane’i, leader of one of the revolutionary *bonyad panzdah-e khordad*, a powerful state owned economic conglomerate, increased the blood money offered for the assassination of Rushdie from \$2 million to \$2.4 million. President Ali Akbar Rafsanjani’s insistence that the “15th Khordad Foundation” was a not a government organization, and over which he had no

³⁴⁸ Mohammad Khatami, *Islam, Liberty and Development*, (New York, Global Academic Publishing, 1998), p.95, p. 104

control, indicated that, in Iran, additional influential organizations and groups outside that of the formal political system existed. For the purpose of understanding the limits of Iranian diplomatic manoeuvring during engagement with Britain, it seems, therefore, important to briefly outline the informal power structures in Iran, the various political and ideological factions as well as the formal power structure as set out in the constitution.

3.1.1 Elites - Informal Power Structure

Iran's informal power structure resembles that of many Middle Eastern states, and primarily consists of hierarchical and clientalist networks. This decentralized power structure takes the form of loose coalitions among like-minded individuals or groups; whose dynamics are largely dictated by personal patronage links.³⁴⁹ These links provide for a fundamental mechanism behind formal decision-making procedures. The actual informal power structure as such, could be divided into three "rings of power". The central ring comprises a group of the country's most influential clerics, so called "patriarchs" who tend to uphold the principles of the revolution and thus, in socio-political terms tend to be conservative. These patriarchs, according to Buchta, do not only control their own ring of power, but directly exert influence on general Iranian politics through formal power centres such as the Guardian Council, the Assembly of Experts as well as the "Society of Teachers of Qom Theological Colleges", which comprises some thirty high ranking clerics.³⁵⁰ The second ring of power consists of high-ranking government officials, technocrats, state functionaries and provincial governors. The third ring is made of various economic entities, the so-called *bonyads*, diverse security bodies, such as the *Basij*, *Hizbullah* and the Islamic Republican Guard Corps (IRGC).³⁵¹ The

³⁴⁹ Wilfried Buchta, Who rules Iran? The Structure of Power in the Islamic Republic of Iran (Washington, D.C., Washington Institute for Near East Policy), p.6

³⁵⁰ *ibid*, p. 7

³⁵¹ *ibid*; for the impact of *bonyads* see Djavad Salehi-Isfahani "Labour and the Challenge of Economic Restructuring in Iran" in Middle East Report, (Spring 1999), p. 35; So called parallel institutions, such as the *Basij* or *Hizbullah*, use a tactic of violence and intimidation against groups or individuals which are seen as posing a threat to the political and ideological status quo. *see* Michael Rubin, Into the Shadows – Radical Vigilantes in Khatami's Iran, (Washington, D.C., The Washington Institute for Near East Policy, 2001)

last ring would comprise formerly influential figures, such as *Ayatollah* Montazeri, which still enjoy religious authority and political weight.³⁵²

3.1.2 Political and Ideological Factions in Iran

During the first decade since 1979, power was shared by what could be referred to as fundamentalist revolutionary factions.³⁵³ The umbrella group for these revolutionary factions was the Islamic Republican Party (IRP), founded by devout followers of Khomeini and included *Hojjatoleslam* Ali Akbar Rafsanjani and *Hojjatoleslam* Ali Khomeini. Following the consolidation of power, tensions began to emerge within the IRP's right and left camps. The right consisted of religious traditionalist, socio-politically conservative clerics, and a number of religious technocrats, and it supported a pragmatic domestic and foreign policy in order to maintain the goals of the Islamic Revolution. Member of the left camp consisted more of left-leaning clerics, which advocated more ideological policies, such as statist economic policies and export of the revolution.³⁵⁴ When the IRP finally split in 1988, two major political unions of clerics emerged, the Islamic-left *majma-e ruhaniyun-e mobarez* (Combatant Clerics Society) and its traditionalist-right counterpart, the *jame-e ruhaniyat mobarez* (Militant Clergy Association).³⁵⁵ With the death of Khomeini and the post-war realities, the ideological factions split further, such that one can distinguish between three mainstream factions; The Islamic-left (reformists), the traditionalist / conservative rights (conservative) and the centrist-pragmatists. The traditionalist / conservative right faction, mainly represented through the Militant Clergy Association, hold on to the religio-political view that sovereignty ultimately belongs to God, who relegates such powers to the *velayat-e faqih*. Given the uneasy balance between Islamism and republicanism in the Islamic Republic, this faction stresses the subordination of the latter to the former. The economic outlook of this faction could be referred to as a *bazaar-mosque* alliance and as such advocates a *laissez-faire* economy. The most prominent members of this group are Supreme Leader,

³⁵² Wilfried Buchta, Who rules Iran? The Structure of Power in the Islamic Republic of Iran, p.9

³⁵³ A. Ehteshami, After Khomeini: The Iranian Second Republic (New York, Routledge, 1995)

³⁵⁴ Wilfried Buchta, Who rules Iran? The Structure of Power in the Islamic Republic of Iran, p.12

³⁵⁵ see Matthew C. Wells, "Thermidor in the Islamic Republic of Ira: the Rise of Muhammad Khatami, British Journal of Middle Eastern Studies, Vol. 26, No.1 (May, 1999), pp.28-29

Ayatollah Ali Khomeini and Parliament Speaker of the 5th *Majlis* Ali Akbar Nateq Nuri and head of the judiciary Ayatollah Mohammad Sharoudi (since 1999). The Militant Clergy Association's formal power strongholds are the Guardian Council, the Assembly of Experts, the judiciary as well as enjoying a majority in the *jame'eh-e-modarresin-e-houz-ye-elmiye-ye Qom* (Society of Teachers of Qom Theological Colleges).³⁵⁶ The modern right faction, or centrist-pragmatists, gained ascendancy in the post-war period under the presidency of Rafsanjani (1989-1997) and is usually associated with a priority shift from dogmatism to pragmatic reconstruction of the economy. This group of technocrats and experts is mainly associated with the *Kargozaran-e Sazandegi* Party (Servants of Reconstruction). Their focus is on economic modernization, facilitated through reliance on industrial-based infrastructure and dependent capitalist development, thus relying on low taxation, modern banking and integration into the world-capitalist system.³⁵⁷ The range of viewpoints in the Islamic Left, whose most influential group is the Combatant Clerics Society, is extraordinary and ranges from radical ideologues, such as *Hojjatoleslam* Ali Akbar Mohtashemi-Pur, who continues to advocate the export of the revolution and favor a command economy to reformists, most notably, *Hojjatoleslam* Sayyid Mohammad Khatami. Khatami's faction generally reject the notion that the *faqih* has unencumbered power and argue that the role of the Supreme Leader should be that of supervision rather than domination.³⁵⁸ Khatami's vision of a liberal Islam as opposed to a fundamentalist interpretation of Islam emphasized a democratic-republican system, in which religion merely provides for the basic belief system. As such this faction's priorities is even political and economic restructuring, which entails "controlled privatization" as well as a focus on the growth of civil society and the creation of democratic institutions.

3.2 Formal Power Structure: Prospects and Constraints for Human Rights

³⁵⁶ Mehdi Moslem, Factional Politics in Post-Khomeini Iran (New York, Syracuse University Press, 2002), pp.99-104

³⁵⁷ *ibid*, pp.128-130; Mehdi Mozaffari, "Revolutionary, Thermidorian and Enigmatic Foreign Policy" in International Relations, Vol.XIV, No.5, (August, 1999), pp.14-16

³⁵⁸ *see* Mehdi Moslem, Factional Politics in Post-Khomeini Iran , p. 116-117

After the Revolution in 1979, the centerpiece of the new government was the constitution, which primarily defined the concept of *velayat-e faqih* as a type of *Shi'ite* Islamic government. For Khomeini, the government of the *faqih* or just jurist exceeds a simply supervisory role and ultimately represents the authoritarian linchpin of the constitution. This was based on his opinion that the absolute, appointive *velayat-e faqih* is the only form of Islamic government during the occultation of the Twelfth Imam, and is binding on the people as a religious duty. For Khomeini the idea behind the *velayat-e faqih* was the assumption that people were capable of committing errors and, therefore, needed the *faqih* “as the ultimate arbiter of the people’s judgement, supervising the legislative body whose laws might reflect the people’s errors.”³⁵⁹

However, the most fundamental contradiction of the text, which was also highly contested among the drafters, was the attempt to combine popular sovereignty with divine will. Recognizing such an inherent contradiction or not, during the process of its drafting, the authors of the constitution tried to emphasize the fact that the revolution was an expression of the will of the people, which was clearly reflected in their active participation. The drafting of the constitution, however, required no popular participation, rejecting the idea of constitutionalism altogether. As Ansari describes it:

For the conservatives, the essence of constitutionalism was anathema to Islam, and if this proved a difficult argument to pursue in the light of Khomeini’s obvious support of the 1979 Constitution, they turned to the Constitutional Revolution to emphasize their point, arguing that what people had in fact wanted was *Mashru’eh* (the *shari’a*) not *Mashru’* (constitutionalism); the extra “t”, it was insisted, had been inserted by unscrupulous British diplomats.³⁶⁰

In fact, the disputes during the genesis of the Constitution and the contradictions the document eventually bore reflected the need to reconcile the extraordinary range of revolutionary forces. On one hand, the text accounts for principles of rights, equality, justice and popular participation in political life, one the other it acknowledges the supremacy of restrictive secular as well as religious interpretations on rights and representative politics.

³⁵⁹ Reza Afshari, Human Rights in Iran – The abuse of cultural relativism (Philadelphia, University of Pennsylvania Press, 2001), p. 16

³⁶⁰ Ali M Ansari, Islam, Iran and Democracy – The Politics of Managing Change p.149

Specific references and safeguards to human rights are made in Section II of the Iranian Constitution, where respective articles enumerate civil rights and political freedoms and underscore the necessity of their observance. As Art. 20 states: “All citizens of the country, both men and women, equally enjoy the protection of the law and enjoy all human, political, economic, social, and cultural rights, in conformity with Islamic criteria.”³⁶¹ The Constitution focuses also on all aspects of individual freedom (Art. 2) and notes that one of the responsibilities of the judicial system is to reinforce legitimate freedoms, while stressing that the government must account for political and social freedoms within the limits of the law.³⁶² At the same time, the constitution bears numerous articles, which restrain the rights of the individual on issues such order, security and public interest. Likewise, numerous clauses place restrictions on the democratic rights of individuals and of certain religious and ethnic groups and set up institutions whose task is to ensure the Islamic character of the state.³⁶³

The constitution also establishes that the government would be popular in the sense that it is approved by the people through elections as well as is accountable to an elected parliament. Article Six of the constitution also vests the public with the full power to elect the Assembly of Experts (a clerical body in charge of selecting and supervising the *faqih*), and the municipality councils. Evidently, the parliament, which is given the constitutional powers by Art.96 to pass legislation, accede to international treaties and conventions as well as to impeach ministers of the executive and the president himself, is a significant democratic element in the political system, particularly with regards to protecting human rights. A crucial constitutional prerogative reserved for the president, which under Khatami was interpreted as instrument to promote and protect the rule of law, is Art. 113, which gives the executive the responsibility for implementing the

³⁶¹ Jamshid Sharifian, “The International Human Rights Law & Strategy of the Islamic Republic of Iran” in The Iranian Journal of International Affairs, Vol. XII, No.4, (Winter, 2000-2001), p. 638

³⁶² *ibid*, p.639

³⁶³ Asghar Schirazi, The Constitution of Iran – Politics and the State in the Islamic Republic (London, I.B. Tauris, 1997), p. 8

constitution. Furthermore, Art. 13 states that the President can take any “measure he may find necessary” to safeguard the constitution.³⁶⁴

On the other hand, there are articles in the constitution, which, according to some of the drafters, were intended to safeguard Islamic values and principles and to achieve an “exemplary society” with the assistance of “Islamic ideals”. Thus, the constitution also assigns Islamic tasks to the organs of the state, in which the executive power must pave the way by “putting into effect Islamic regulations and prescription” and the judiciary is to defend “the rights of the people in the Islamic movement.”³⁶⁵ The *shari’a* is considered the supreme law over everybody and is the source of legislation in Iran. Art. 2 acknowledges legislation as a power reserved for God and states that revelation has a fundamental role in the promulgation of laws. Most importantly, Art. 72 forbids the *Majlis* (parliament) to pass laws, which “contradict the principles and ordinances of the state religion of the land [...]”³⁶⁶ Particularly with regards to legislation, the Guardian Council, is after the *velayat-e faqih*, the second most important and powerful constitutional institution. This organ, which is a body of 12 jurists, occupies the right to veto parliamentary enactments that are thought not to be in conformity with the *shari’a*. Moreover, the constitution vested this body with the interpretation of the constitution, supervision of presidential and parliamentary elections and with that of referendums.³⁶⁷ This authority reserved for the Council derived from an amendment to the constitution, which “provided the Council of Guardians with automatic scrutiny over parliamentary legislation, a power to review greatly in excess of that of the highest court in, say, France or the United States, and something which was to have major political consequences.”³⁶⁸ Once the Guardian Council rejects a particular parliamentary bill or law, it is sent back to the *Majlis* with specific objections. The parliament must then, on the basis of the directives given, revise and amend the law and return it for further scrutiny. Given the

³⁶⁴ Mahmood Jalali, “An Independent Constitutional Court: Essential Prerequisite for Peaceful Resolution of Vast Majority of Current Crises in Iran” Discourse: An Iranian Quarterly, Vol.5, No.2 (Fall 2003), pp.9-10

³⁶⁵ *ibid*, p. 10

³⁶⁶ *ibid*, pp.10-11

³⁶⁷ Report submitted by the Special Rapporteur on the right to freedom of opinion and expression, UN Doc.E/CN.4/2004/62/Add.2, 12 January, 2004, paragraph 19

³⁶⁸ Roger Owen, State, Power and Politics in the Making of the Modern Middle East, p, 179

factional divide in Iranian politics, it is evident, that bills and policies are bound to be held in abeyance and that the conflict between the elected parliamentarians and appointed jurists has the potential to considerably paralyse Iran's legislative process.³⁶⁹ Responding to the ever increasing conflicting constitutional / legal authority between the *Majlis* and the Council of Guardians, Khomeini, by relying on the concept of *maslahat*,³⁷⁰ ordered the establishment of a mitigating body, the Expediency Council, which began its work in February 1988.

The constitution also created an independent judiciary, which, in practice, however, is directly linked to the Supreme Leader. This highly centralized judiciary was given broad powers in investigation, prosecution, and rendering judgement in the interest of justice and Islam. (Art. 156) As the highest judicial body, the Supreme Judicial Council, under Art. 157 has the ultimate authority over the appointment, promotion, suspension, and dismissal of all judges in the country. It is important to note that the members of this body, which must be learned scholars in Islamic law, are only answerable to the *faqih* not to the president or parliament. Moreover, the Islamic Revolutionary Courts, which were first established in 1979 as a temporary tool to prosecute officials of the Pahlavi monarchy, have persisted throughout the post-revolutionary period and continued to deal with "political crimes".³⁷¹

It is evident that the above stated contradictions between not only the democratic and undemocratic elements of the Iranian constitution but also the popular and divine sovereignties, upon which the Islamic Republic is presumably based, are bound to lead to tensions and political deadlocks. Looking at the factional divide in Iranian politics, the constitutional "balance of power" provides for multiple institutional layers of influence and political-religious authority through which political players can intervene in the case of conflict. As a result, state institutions regularly and systematically compete for power,

³⁶⁹ see Mehrangiz Kar, "The Deadlock in Iran: Constitutional Constraints", *Journal of Democracy*, Vol. 14, No.1, (January, 2003), pp.134-135

³⁷⁰ Also referred to as *Zar'at* (transl. overwhelming necessity) which derives its validity from the idea that the basic purpose of legislation in Islam is to secure the welfare of the people by promoting their benefits and by protecting them against harm.

³⁷¹ Mehran Tamandonfar, "Islam, Law and Political Control in Iran", *Journal for the Scientific Study of Religion*, Vol. 40, No.2 (March, 2001), p. 217

and defeated political players simply move to other institutions instead of leaving public life.³⁷²

By the same token, the factional divide also bears opportunities for engagement and human rights diplomacy in particular. By and large, the hermeneutic pluralism, which took centre stage after the reformists' victory in the 1997 presidential elections, centred on the notion of rationality, pluralism and human rights and constituted a radical break with Khomeini's thought and that of the religious establishment. Khatami's agenda was based on the "rule of law" (*hukumat-i qanun*), freedom of speech, as well as introduced concepts, such as "civil society" (*jamai'a-i madani*), "legality" (*qanun-mandi*) and "law-orientedness" (*qanun-gira'i*). Overall, Khatami's presidency and the reformist camp emphasized both in their political discourse as well as their proposed policies the importance of "political development" and "Islamic democracy" which has to be based on the rule of law and human rights.³⁷³ Inevitably the reformist discourse on constitutionalism challenged Khomeini's interpretation of the *velayat-e faqih* as it asserted that neither the absolute appointive *velayat-e faqih* nor a secular liberal democracy is entirely fit to govern. Rather, by altering and combining the two forms of government, one can arrive at a type of Islamic democracy that can be labelled elective, conditional *velayat-e faqih*. According to this reformist interpretation, the people elect a jurist as a *vali-ye amr* for a limited period to take over the spiritual guidance and management of society according to the law approved by the jurist and the people. Under this form of Islamic government, the elected jurist would be accountable directly to the people. Overall, the reformist discourse put great emphasis on the *Qur'anic* correlation between right to seek justice and the duty to do justice, as well as stressed the aim of *shar'ia* to maintain justice and public welfare.

³⁷² After Khatami's purge of the intelligence service after 1997, many officials who had previously staffed the Interior and Information Ministries began to influence institutions outside Khatami's control, such as the judiciary, the Revolutionary Guards, and the Guardian Council. The Guardian Council then further intensified its role in vetting all electoral candidates, thus undercutting the Interior Ministry's authority to hold elections. At the same time, the judiciary coordinated with parts of the Revolutionary Guards to create its own security and intelligence institutions that it now regularly uses to arrest opponents for a variety of alleged political crimes.

³⁷³ For a full overview of the reformist movement see Said Amir Arjomand, "The Reform Movement and the Debate on Modernity and Tradition in Contemporary Iran", *International Journal of Middle East Studies*, No.34 (November, 2002), pp.723-727

As previously noted, *Shi'a* jurisprudence and its notion of enjoining religious authorities on the need to change laws or add new legislation on the basis of the exigencies of time and reason was indeed viewed by reformists as viable concept to advance human rights in Iran's political and legal realm. In fact, it was Khomeini's interpretation and application of *maslahat*, which added a series of new laws and regulations to Iran's body of law. As a principle or method of law, there is some disagreement over the interpretation of *maslahat*. According to Al-Ghazali, *maslahat* refers to considerations that secure a benefit and prevent harm but are, simultaneously, in accordance with the objective (*maqasid*) of the *shari'a*. As noted previously, these objectives consist of protecting the five essential values, namely, religion, life, intellect, lineage, and property. Any measure that secures these values falls within the scope of *maslahat*. Thus, *maslahat* only applies if it is harmonious with the *shari'a* and as long as the *shari'a* provides no specific ruling about it.³⁷⁴ Khomeini, however, disagreed and contended that Islamic rulings can be waived if the very existence of the state is threatened or when inaction by the government would result in "wickedness or corruption"³⁷⁵ Arguing that all Islamic laws are pliable according to government rulings, Khomeini asserted that "The government is empowered to unilaterally revoke any *shari'a* agreement which it has concluded with the people when these agreements are contrary to the interest of the country or Islam." He even went so far as to say that "the government can also prevent any devotional (*Ibadi*) or non-devotional affair if its opposed to the interest of Islam and or so long as it is so. The government can prevent *hajj* on a temporary basis, in cases when it is contrary to the interests of the Islamic country."³⁷⁶ Thus, Khomeini suggested that a government under the rule of *velayat-e faqih* is entitled to make any laws it wishes as long as it serves the interest of the republic, which naturally coincide with Islam. Following Khomeini's line of thought, the Islamic Republic has witnessed the adoption of a bulk of laws, statutory instruments, and resolutions that have no demonstrable relationship to the *shari'a*. As Tamandonfar puts it " [...] *the shari'a* requirements are becoming redefined according to what is politically expedient, intelligible and appealing to a mass audience. In the course

³⁷⁴ Mehran Tamandonfar, "Islam, Law and Political Control in Iran", p. 213

³⁷⁵ Shaul Bakhash, "The Politics of Land, Law, and Social Justice in Iran", Middle East Journal, Vol. 43 No. 2,(1989), p. 196

³⁷⁶ Mehran Tamandonfar, "Islam, Law and Political Control in Iran", pp. 213-214, *see New York Times*, November, 10, 1999 for the trial against Abdullah Nuri

of this ideologization and the politicization of the *shari'ah*, the connection to the Islamic Sources is growing more tenuous.”³⁷⁷ Ultimately, Khomeini’s insistence on the need for *mashlahat* or “public good” was intended to strengthen the republican character and thus ensure the survival of the revolution after his death. In fact, the Expediency Council is entrusted with the task of protecting the public interest and the good of society does have the potential of genuinely reaching consensus between dogmatic interpretations of Islamic law and legislation, intended to advance human rights.

It is evident that two ambiguities emerged out of the process to formulate an Islamic constitution for Iran. The first is between the document’s Islamist legalist and non-Islamic secular elements which flows largely from the claim that a state set up on the basis of *Shi'ia* law and ruled by Islamic jurists is capable of offering solutions to all problems not only in Iran, but throughout the world even though itself incorporates many non-Islamic and non-legalist elements. The second is the contradiction between its democratic and non-democratic elements, arising mainly from the inherent conflict between the two notions of popular and divine sovereignty, the latter, which is exercised by the jurists as God’s deputies.³⁷⁸ Engagement with Iran, particularly promoting human rights, ultimately requires comprehension of these constitutional contradictions in order to identify potential safeguards as well as to overcome obstacles to human rights standards. Appreciating the rule of the Two-Level Game in Iran is, therefore, paramount both for the country that wishes to engage and for Iran itself. Human rights diplomacy towards Iran can only have a sustainable effect if it manages to empower those groups and constitutional institutions with the agenda and authority respectively to advance respect and protection of political and civil rights. In fact, a human rights strategy of such kind could support an indigenous human rights tradition as advocated by the reformists and thus substitute for the dominant ruling tradition established by Khomeini. Essentially, it could help to uncover secular elements of authoritarian control and contribute to give human rights a genuine ethical-religious foundation.

³⁷⁷ Mehran Tamandonfar, “Islam, Law and Political Control in Iran”, pp. 208-209

³⁷⁸ Asghar Schirazi, The Constitution of Iran – Politics and the State in the Islamic Republic, p. 1

4. The Right to Freedom of Expression: Blasphemy and Islamic Law

The fact that many laws have even circumvented the *shar'ia* in order to maintain the supremacy of the *velayat-e faqih* indicates that the operation of the system is driven by political calculations than Islamic principles and seems to reflect a drive to control political behaviour and ideas rather than protect Islamic traditions.³⁷⁹ This is particularly evident in Iran's legal framework provided for the right to freedom of expression.

Common arguments put forward to justify free speech consider the importance of discovering truth, which as an autonomous and fundamental good is necessary for the development and progress of society. Another major theory, which sees freedom of speech as the ultimate manifestation of a person's opinion, claims it to be an integral aspect of each individual's right to self-development. A third theory advocating freedom of expression argues that it is indispensable for the discovery and spread of political truth and thus is crucial to the working of a democratic constitution. Whilst these arguments largely constitute positive theories of freedom of speech another argues that there are strong reasons to be suspicious of states and churches and highlights the evils of regulations and suppression of such freedoms.³⁸⁰ It is this aspect, which interests us here. Freedom of speech and expressions are liberties against the state, yet ultimately bear a logical connection to an obligation not to harm others or incite hatred in society and as such have always faced restrictions imposed by state and church. In fact, the drafters of the two most fundamental documents on civil and political liberties appreciated that freedom of expression may be used as a dangerous tool, and thus Article 19 of the UDHR and ICCPR state respectively:

UDHR Article 19: Everyone has the right to freedom of opinion and expression; this right includes freedom to [...] impart information and ideas through any media and regardless of frontiers.

³⁷⁹ see Ann Elizabeth Mayer, "Islamic Rights or Human Rights – An Iranian Dilemma", *Iranian Studies*, Vol. 29, No. 3&4, (1996), pp. 284-289

³⁸⁰ see Eric Barendt, *Freedom of Speech*, (Oxford, Oxford University Press, 2005), pp.6-23. [Barendt uses the term "church" here for all organized religions.]

ICCPR Article 19:2. Everyone shall have the right to freedom of expression; this right shall include freedom to [...] impart information of all kinds, regardless of frontiers.

3. The exercise of the right provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be as such are provided by law and are necessary: (a) for the respect of the rights of others (b) for the protection of national security or public order, or of public health and morals.³⁸¹

The charge of blasphemy in particular had always cast a long shadow on the freedom of speech. Blasphemy can be many things, but essentially constitutes an offence against the sacred. It may involve the abuse of God's name or irreverence to highly respected religious figures or sacred objects and is always perceived to be an expression that is beyond the pale.³⁸² The significance of the *fatwa* against a British citizen on charges of blasphemy against Islam is that both British and Islamic law consider blasphemy a common law offence and thus bear limitations to the freedom of speech. We shall briefly depict limits of the right to free speech in the Islamic legal system. The common law in England and Wales is discussed in Chapter V, which will help to understand the pressure the British government was subject to as well as the frustration felt by opponents of the novel.

According to Khamenei's account, Islam entitles man to think any way he wishes and knows no limitations for his thoughts and opinions; yet law invalidates ill-founded thoughts bound to hurt or destroy society and disturb the general order. Art. 22 of the Cairo Declaration of Human Rights in Islam, entitles man to the enjoyment of freedom of thought and opinion, however, these freedoms are banned when they disturb the general order or hurt the public opinion.³⁸³ Kamali's notion on limitations of freedom classifies

³⁸¹ Henry J. Steiner and Philip Alston, International Human Rights in Context – Law, Politics, Morals, (Oxford, Oxford University Press, 2000), p. 750; *see also* Kofi Anan, "Freedom of speech is a right to be fought for", UN Press Release SG/SM/6978 PI/1128 30 April 1999

³⁸² *see* James Piscatori, "The Rushdie Affair and the Politics of Ambiguity", International Affairs, Vol.66, No.4 (Oct.,1990),p. 769, *also see* David Lawton, Blasphemy, (Philadelphia, University of Pennsylvania Press, 1993), pp.2-13

³⁸³ Sayyid Muhammad Khamini, "Individual Rights in Islam", in Organization for Islamic Culture and Communications, Directorate of Research and Education Centre for Cultural-International Studies, Islamic Views on Human Rights- Viewpoints of Iranian Scholars, p.57

them into “moral restraints” and “legal restraints”. Moral restraints are essentially “addressed to the conscience of the believer and include offences such as defamation, lying, derision, and acrimonious disputation.” The legal restraints, which are backed by specific sanctions include *inter alia* “public utterances of evil or hurtful speech, slanderous accusation, libel, insult, cursing, seditious speech, and blasphemy.”³⁸⁴ Whilst it should be noted that the Cairo Declaration does not openly confront the issue of blasphemy³⁸⁵, under Islamic law blasphemy is commonly referred to as “*Sabb Allah aw Sabb al-Rasul*”, meaning “reviling God or reviling the Messenger”.³⁸⁶ In fact, Muslim born Rushdie’s deed amounted to blasphemy as well as apostasy, which according to classical jurists carries the death penalty under the *shari’a*.³⁸⁷ However, Kamali stated that the *Qu’ran* has made no reference to the death penalty for blasphemy, neither does the text warrant the conclusion that it is a *Qu’ranic* obligation or a prescribed punishment or a mandate. On the contrary, Kamali argues that “we should submit that the general language of the *Qu’ran* can only sustain the broad conclusion that the perpetrator of blasphemy disgraces himself and invokes the curse of God upon himself”. He further commented that “it is a criminal offence which carries no prescribed mandatory punishment, and, as such, automatically falls under the category of *ta’zir* offences, whose punishment may be determined by the head of State or competent judicial authorities.”³⁸⁸ It is evident that the prohibition of blasphemy in Islamic law as a limitation of expression serves to protect the sensibilities of believers and as Mawdudi argues, therefore, does not prohibit intellectual and religious discourse but rather forbids speech that encroaches upon the beliefs of others.³⁸⁹

³⁸⁴ cited in Mashood A. Baderin, *International Human Rights and Islamic Law*, (Oxford, Oxford University Press, 2003), p.127

³⁸⁵ see Katerina Delacoura, *Islam, Liberalism and Human Rights*, pp.50-51

³⁸⁶ Mashood A. Baderin, *International Human Rights and Islamic Law*, p. 128; An alternative to this definition is given by Shariati, who did not apply blasphemy to “those who deny the existence of God and soul, but to those who are unwilling to take concrete and objective action for the casue.” Assef Bayat, “Shariati and Marx” A Critique of an “Islamic” Critique of Marxism”, in *Alif: Journal of Comparative Poetics*, No.10, Marxism and the Critical Discourse (1990), p.23

³⁸⁷ In 2004, an Iranian court imposed a death sentence against liberal academic Hashem Aghajari for saying that Muslims should not blindly follow religious leaders. (see pp.304-309). This ruling demonstrates that the death penalty for charges of blasphemy may still to be employed in Islamic law.

³⁸⁸ *ibid*

³⁸⁹ *ibid* pp.128-129

5. The Right to Freedom of Expression in Iran: The Legal Framework

The guarantees of freedom of expression vested in the Iranian constitution are subject to such stringent qualification as to effectively impede the free exchange of ideas and information. It is conditional on compliance with the government's interpretation of Islamic norms and public interests. As Art. 24 reads: "Publication and the press have freedom of expression except when it is detrimental to the fundamental principles of Islam or the rights of the public. The details of this exception will be specified by law."

³⁹⁰ Furthermore, the "political, cultural, economic, and military independence or the territorial integrity of Iran" may not be infringed in any manner "under the pretext of exercising freedoms" (Art. 9). The Constitution also permits control of expression by requiring that every citizen's conduct, including speech, serve the government's notion of propriety. In this regard, Art. 8 imposes on every citizen in the Islamic Republic an affirmative and perpetual duty "to enjoin the good and forbid the evil", pursuant to the identical *Qu'ranic* injunction. ³⁹¹ Given these restriction on Art. 24, the constitution does not protect the right to freedom of opinion and expression as "the right to hold opinions without interference" and "the right to freedom of expression [which] shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media" as defined in the UDHR and the ICCPR. ³⁹²

Until the 5th *Majlis* passed a new press law in 2000, the Press Law of 1985 controlled the circulation of newspapers, which not surprisingly constitutes the most important political medium in the country. Article 2 of the Press Law expanded on the constitutional and religious duty to "enjoin the good and forbid the evil" and contemplated a specific role for the press, which consisted of the following:

³⁹⁰ Middle East Watch, Guardians of Thought – Limits on Freedom of Expression in Iran, (New York, Human Rights Watch, August 1993), p. 23

³⁹¹ Middle East Watch, Guardians of Thought – Limits on Freedom of Expression in Iran, p.23

³⁹² Report submitted by the Special Rapporteur on the right to freedom of expression. UN Doc. E/CN.4/2004/62/Add.2, paragraph 19

- a) To enlighten public opinion and to raise the level of people's knowledge and awareness in areas such as news, commentary, social, political, economic, religious, scientific, military affairs, as well as arts and sports.
- b) To promote the goals that are expressed in the Constitution
- c) To struggle against false and devise classification and to avoid pitting different strata in society against one another on the basis of race, language, tradition, and custom [...]
- d) To fight against the manifestation of colonial culture [...] and to promote and propagate authentic Islamic culture and diffuse virtuous principles.
- e) To protect and strengthen the policy of “neither East, nor West.”³⁹³

Moreover, the Ministry of Islamic Culture and Guidance must license all publications.³⁹⁴ Anyone who attempts to publish without such license is subject to prosecution by a religious judge.³⁹⁵ The body responsible for the review of license applications is the Press Supervisory Board, which consists of a state Supreme Court judge, the Minister of Islamic Culture and Guidance, a *Majlis* Deputy, a university professor and a director of a publication.³⁹⁶ Individuals wishing to obtain a press license, must among other requirements, be an Iranian citizen at least 25 years of age, possess a Bachelor's degree and be free of criminal record or “moral corruption.”³⁹⁷ The most stringent application concerns the actual content of any circulars and newspapers. While the press may cover both domestic and international news, it must “consider the best interests of the community” and “observe the provisions of the existing law.”³⁹⁸ The provisions for criticism are that it must be based on reason and logic, rather than *ad hominem* attacks.³⁹⁹ Moreover, anyone who insults Islam through the press is subject to the penal code, unless

³⁹³ Middle East Watch, Guardians of Thought – Limits on Freedom of Expression in Iran, pp.24-25

³⁹⁴ Article 7,8, Press Law accessed on http://www.parstimes.com/law/press_law.html 25 March 2004

³⁹⁵ Article, 3, Press Law

³⁹⁶ Article, 10, Press Law

³⁹⁷ Article, 9, Press Law

³⁹⁸ Article, 5, Press Law

³⁹⁹ Article, 3, Press Law

the insult amounts to apostasy, which creates liability as an apostate.⁴⁰⁰ The Press law passed by the 5th *Majlis* in 2000 contains additional restrictive provisions on the right to freedom of expression. Article 12 of the new law requires the Press Supervisory Board to ban a publication that violates Articles 6, 24 to 29 and 32 of the Law, which deal with issues such as “publishing atheist articles or issues which are prejudicial to Islamic codes” or which promote “subjects which might damage the foundation of the Islamic Republic”, national security, dignity and interests, insulting Islam or offending the Leader and religious authorities, publishing libel against officials or institutions or insulting legal or real persons who are “lawfully respected” publishing writings “containing apostasy and matters against Islamic standards” and quoting articles from the “deviant press, parties and groups which oppose Islam.”⁴⁰¹ Consequently, the legal framework of the Islamic Republic fails to provide any guarantee of freedom of expression, as the constitution is crippled with exceptions that require conformity to Islam and principles of the state. The Press Law expands on these restraining exceptions and further, sets the limits for intellectual, cultural and political discourse as well as dictates its contents.

With respect to the actual administration of justice concerning “press offences”, the Rapporteur for the right to freedom of expression continuously questioned the competence of the Revolutionary Courts in dealing with press or opinion- or press-related offences. Emphasising that these courts only have jurisdiction over serious security related cases, such as offences against internal and external national security, espionage, sabotage and terrorism⁴⁰², these and other courts evidently pursue a political agenda rather than serve justice. Common charges, such as “insult against Islam”; “criticism”; “propaganda against the state”; “matters against Islamic standards”; “deviant press parties and group”; “anti-revolutionary forces” are open to subjective and arbitrary interpretation by judges implementing them and, therefore, contrary to Article 19, paragraph 3 of the ICCPR.⁴⁰³ It is clear that the restrictions posed on the right to freedom of expression owe more to political manoeuvring than religious authority. *Engagement with Iran then means*

⁴⁰⁰ Article, 26, Press Law

⁴⁰¹ UN Doc. E/CN.4/2004/62/Add.2, 12 January, 2004, paragraph 26

⁴⁰² *ibid*, paragraph.27

⁴⁰³ *ibid*, paragraph, 95; UN Doc. A/56/278, 10 August, 2001 paragraph 9

to uncover political motives for these restraints and identify Islamic sources in support of the right to freedom of speech.

6. Human Rights Diplomacy and the “Critical and Comprehensive Dialogue” with Iran – A Case of Constructive Engagement

6.1 Human Rights Diplomacy

The Memorandum “Human Rights and Foreign Policy”, which was published by the Dutch Ministry of Foreign Affairs in 1979 begins with the statement that “the rights of man, human rights, or fundamental rights, are names given to those elementary rights which are considered to be indispensable for the development of the individual.” With these opening lines, a government made a commendable effort at clarifying its views on the subject; it opted for emphasising the rights of individuals.⁴⁰⁴ More importantly, human rights became part of foreign policy considerations.

All this brings us to a deeper sense in which human rights have become part of foreign policy. Since the state is the central institution for effectively implementing these rights, the legitimacy of a state can consequently be measured by the extent to which its subjects enjoy human rights. As Vincent argues: “It is not enough anymore for a state to be, and to be recognized as, sovereign. Nor is it enough for it to be a nation state in accordance with the principle of self-determination. It must also act domestically in such ways as not to offend against the basic rights of individuals and groups within its territory.”⁴⁰⁵ Therefore, references to human rights in international relations literature potentially go beyond the inviolability of state sovereignty and even seem to present the international community with a duty to intervene in internal affairs. Faced with a sovereign state’s failure to protect humanitarian standards, the UN Security Council sanctioned interventions in Kosovo (SC1203) in Somalia (SC794) and created Safe Havens for the

⁴⁰⁴ Peter R. Baehr, *The Role of Human Rights in Foreign Policy*, p. 3

⁴⁰⁵ R.J. Vincent, *Human Rights and International Relations*, p. 130

Kurds in Iraq (SC688) on grounds of human rights violations.⁴⁰⁶ The right to humanitarian intervention is beyond this research on constructive engagement. However, its implication for human rights diplomacy is that human rights have become a “hegemonic political discourse” and have “moral and political authority that goes well beyond their backing by power (force).” Because they universally “respond to some of their most important social and political aspirations of individuals, families, and groups” Donnelly argues that “human rights have become internationally hegemonic in Gramscian sense of the term.”⁴⁰⁷

How can human rights then be promoted through diplomacy? So far, we have established that amongst the measures of statecraft available to policymakers, constructive engagement was identified as an effective peaceful strategy at exerting influence and resolving conflict in international relations. Hence, if we accept the fact that human rights diplomacy is the “use of foreign policy instruments in order to promote human rights”⁴⁰⁸ then we have to ultimately conclude that promoting and protecting human rights abroad requires engagement with the target rather than coercion and isolation. Whilst channels of communications should be maintained, violations of human rights in the target state should continue to receive scrutiny and public criticism through parliamentary resolutions or formally at the United Nations or joint diplomatic démarches:⁴⁰⁹ hence, constructive engagement should maintain dialogue whilst at the same time continue to emphasize the legal character of human rights.

With regards to the use of sanctions in human rights diplomacy, Baer supports the premise of constructive engagement and argues that “positive sanctions may be more effective than negative ones.” Aside from the cooperative character of engagement with

⁴⁰⁶ For a discourse on humanitarian intervention and the dilemma between a state’s perceived duty to intervene and the concept of state sovereignty *see* Anthony F. Lang, Just Intervention (Washington, D.C., Georgetown University Press, 2003); Geoffrey Robertson, Crimes Against Humanity – The Struggle for Global Justice, (London, Penguin Books, 1999), pp.401- 436

⁴⁰⁷ Jack Donnelly, Universal Human Rights – in Theory and Practice, p. 40

⁴⁰⁸ Rein Müllerson, Human Rights Diplomacy, (London, Routledge, 1997) p. 2; *see also* Nazila Ghanea, “Diplomatic Efforts to Protect Human Rights in Iran”, Centre for the Study of Diplomacy, University of Leicester, (Leicester, Diplomatic Studies Programme Discussion Papers, 1999)

⁴⁰⁹ Peter R. Baehr, The Role of Human Rights in Foreign Policy, p. 32

respect to conflict resolution and problem solving, one could also establish a more direct link between economic assistance / incentives and human rights. After all development aid is intended to improve economic and social human rights and can equally be used to support local and national institutions that try to promote and secure civil and political rights. This may entail to strengthen the role of the media, assisting the development of independent trade unions, giving training to judges, the police and armed forces, helping prison reform, designing legislation that is in accordance with international standards and supporting relevant UN projects.⁴¹⁰

Incorporating our assumptions on the merits of following a "Hegelian diplomacy", it is evident that the key factor in successfully promoting human rights is dialogue. Essentially, the European Union's human rights and democratisation policy towards third countries implements such strategy. The prospects of political and economic cooperation with the EU is being given as incentive to the third country to meet respective demands on human rights improvements. As the Commissioner for External Relations puts it:

In general, the human rights dialogues aim at seeking information about the human rights situation in the country concerned, expressing EU concerns about the country's human rights record and identifying practical steps to improve it, in particular through co-operation projects, and discussing questions of mutual interest and enhancing co-operation on human rights in multinational fora such as the United Nations.⁴¹¹

Thus, dialogue can serve on two levels: exposing human rights violations as well as finding solutions of how to overcome political, institutional and legal obstacles to human rights protections. The case of engagement with Iran shall test whether Europe's soft power strategy really is a effective human rights diplomacy.

6.2 Europe's Policy of Constructive Engagement with Iran

⁴¹⁰ Peter R. Baehr, The Role of Human Rights in Foreign Policy, p. 36

⁴¹¹ http://ec.europa.eu/comm/external_relations/human_rights/intro/index.htm#6, website accessed 27 June 2006

The policy of constructive engagement pursued by Britain towards Iran from 1992 onwards was essentially crafted by the European Union and was a common foreign and security policy (CFSP) aimed at maintaining contact with Iran in order to influence its regime on certain areas of concern for Europe. This policy was coined “Critical Dialogue” and was endorsed by the European Council at the European Union (EU) summit in Edinburgh on December 11-12, 1992. The critical dialogue was adopted to pursue a range of goals which all were officially articulated by the European Council of Ministers:

Given Iran ‘s importance in the region, the European Council reaffirms its beliefs that a dialogue should be maintained with the Iranian Government. This should be a critical dialogue, which reflects concern about Iranian behaviour and calls for improvement in a number of areas, particularly human rights, the death sentence pronounced by a Fatwa against the author Salman Rushdie, which is contrary to international law, and terrorism. Improvements in these areas will be important in determining the extent to which closer relations and confidence can be developed. ⁴¹²

The conclusion further stated that the Council “accepts the right of countries to acquire the means to defend themselves, but is concerned that Iran ‘s arms procurement should not pose a threat to regional stability.” Within the context of the Israel Palestine peace process the Council “expressed the wish that Iran will take a constructive approach here.” ⁴¹³ Contrary to the European proposal, the US rejected any engagement and pursued a policy of “active containment “ ⁴¹⁴ against Iran. From 1995 onwards, Washington implemented increasingly severe sanctions aiming to “isolate” Iran until it halted its alleged plans to acquire nuclear weapons, obstruction of the Middle East peace process, and support of international terrorism.⁴¹⁵ The EU’s refusal to support the sanctions led to transatlantic tensions in particular with respect to the Iran Libya

⁴¹² European Council in Edinburgh, 11-12 December 1992, European Council, RAPID, DOC/92/8, *Conclusions of the Presidency*

⁴¹³ *ibid paragraph 15 -17*

⁴¹⁴ Martin Indyk, “The Clinton Administration ‘s Approach to the Middle East” cited in Matthias Struwe, “The Policy of Critical Dialogue: An Analysis of European Human Rights Policy towards Iran from 1992-1999” Durham Middle East Paper Series No. 60 (Durham, Centre for Middle Eastern and Islamic Studies, 1998), pp.1-2

⁴¹⁵ Matthias Struwe, “The Policy of Critical Dialogue: An Analysis of European Human Rights Policy towards Iran from 1992- 1999”, pp. 1-2

Sanctions Act (ILSA) and the 1997 conflict over its extraterritorial aspect.⁴¹⁶ Thus, the first European CFSP was a genuine constructive engagement approach refusing to employ negative sanctions but actually seeking a dialogue with Tehran to improve Iranian behaviour and, in the long run, to re-integrate it into the international system. In fact, based on the geo-political significance of Iran in the region, the EU dismissed any policy of isolation and containment, stating that “security and stability cannot be achieved without Iran or even against it”. European governments were convinced that the only way to approach Iran about their demands and to make it observe international norms was through direct contact and dialogue.⁴¹⁷

When on April 10, 1997 a German court found the highest Iranian authorities - including the leader of the revolution - responsible for killing members of the Kurdish opposition in Berlin critical dialogue was suspended. The conclusion of this so-called Mykonos trial forced the immediate end to the policy and all European ambassadors were withdrawn from Tehran.⁴¹⁸ It was only the election of President Khatami and the promise of a new moderate rhetoric in Iran’s foreign policy notably the call for “dialogue between civilizations” which persuaded Europe to restore relations with Iran and to enter into what henceforth was called a “comprehensive dialogue”. Convinced that the election of Khatami and new developments in Iran vindicated a policy of active engagement, the “Comprehensive Dialogue” reaffirmed previous demands and concerns but offered incentives for cooperation more publicly. Having agreed that renewed contacts with Iran should be “comprehensive, leading to a dialogue on both the areas of concern [...] and on issues of mutual interest”,⁴¹⁹ specific enticements on financial and technical cooperation regarding the areas of energy, drugs, refugees and

⁴¹⁶ The US - European dispute over French Total and its operations in Iran reached a fragile truce in April 1997 when the Clinton administration decided, contrary to pressure by Congress to impose sanctions, to exercise the national interest waiver under sec. 9 (c) of ILSA which indicated that EU companies making investments similar to Total ‘s in South Pars could also expect this “national interest waiver” see Peter Rudolf, “Critical Engagement: The European Union and Iran” in Richard N. Haas, Transatlantic Tensions: The US, Europe and Problem Countries (Washington DC, Brookings Institute, 1999), p. 87

⁴¹⁷ “Iran Politik der Bundesregierung; Antwort der Bundesregierung auf die Grosse Anfrage“ ,Deutscher Bundestag, Drucksache 13/3483, 16. Januar 1996

⁴¹⁸ see “Declaration by the Presidency on behalf of the European Union on Iran” RAPID PESC/97/32, 7009/97 (Presse 97) , (Brussels, 10 April 1997)

⁴¹⁹ “Declaration by the European Union on Iran”, RAPID PESC/97/41, 7569/97 (Presse 125) E/41/97, (Luxembourg, 29 April 1997)

trade and investment were made should Iran show progress on the issues of human rights, its intention to develop WMD, the *fatwa* against Salman Rushdie, its support for radical groups as well as greater domestic economic reform.⁴²⁰

The critical and comprehensive dialogue was a policy of constructive engagement with the aim of reintegrating a revisionist state back into the international community. Whilst it was the first ever Common Security and Foreign Policy endorsed by the European Union and at times lacked coordination, coherence and was subject to asymmetries in EU-Iran interdependence,⁴²¹ the following assessment of its success or failure mainly focuses on its implementation by Britain.

6.2.1 Origins of engagement

While the scope of this study does not focus on determinants but on statecraft and diplomacy, a brief discussion of the factors that shaped Europe's critical dialogue towards Iran are nonetheless useful in order to fully appreciate how and why the critical dialogue policy was adopted. It is necessary to understand several factors that framed the environment in which the policy was crafted. First, at the time the "Critical Dialogue" was adopted, European trade relations with Iran were not only considerable but also held promise of further development, as Iran was in the process of reconstruction after its eight-year war with Iraq.⁴²² Statistics show that in 1991 Iranian oil exports to Europe peaked and in the following year European exports to Iran

⁴²⁰ Commission of the European Communities, "Communication from the Commission to the European Parliament and the Council – EU relations with the Islamic Republic of Iran", COM (2001) 71 final, (Brussels, 7 February 2001); see also "Declaration by the European Union on Iran", RAPID PESC/97/41, 7569/97

⁴²¹ Since human rights was one of the main area where the European Parliament can exert pressure on the Commission, it played a crucial part in shaping EU public opinion on relations with Iran by consistently scrutinizing policies and developments and passing critical resolutions. *see* European Parliament, Resolution on human rights in the world in 1993-1994 and the Union's human rights policy, Official Journal C126, 22 May 1995 ; The European Parliament, Resolution on continued human rights violations in Iran, Official Journal C166, 3 July 1995 The European Parliament, Resolution on the violation of political and human rights in the Islamic Republic of Iran, Official Journal C096 , 1 April 1996; The European Parliament, Resolution on Iran, Official Journal C 176 , (2 June 1997)

⁴²² Johannes Reissner, "Europe and Iran: Critical Dialogue", in Richard N. Haas and Meghan O'Sullivan, Honey and Vinegar: Incentives, Sanctions and Foreign Policy , p. 37

reached their highest level for the decade 1986-96.⁴²³ While France and Italy were primarily oil importers of Iran, by 1990 Germany had become the most significant importer of Iran's non-oil exports (34.4 percent). In 1992 German – Iranian trade relations reached a volume of more than U.S. \$ 6.8 billion, the highest since the Iranian revolution, and Iranian shares in German stocks amounted to DM 600 million.⁴²⁴ In addition to commercial relations, Germany and Iran are looking back on a special historical relationship that began in the nineteenth century and had continued to unfold until the reign of the Shah.⁴²⁵ More recently, in 1984 Hans-Dietrich Genscher, as foreign minister, was the first Western official to visit Tehran after the Revolution and was also the first one to blame Iraq publicly for attacking Iran in 1987. This constituted a step towards encouraging Iranian acceptance of UN Resolution 598 that brought an end to the Gulf War. Iran's acceptance of the resolution was interpreted as a major success of German diplomacy.⁴²⁶ The critical dialogue was a joint German-British initiative, which crafted a diplomatic strategy with clear political objectives and demands on areas of concern. It will be shown that whilst German-Iranian economic interdependence largely dictated diplomatic manoeuvres to the favour of Tehran, it be wrong to state that the Critical Dialogue was endorsed by Europe solely on commercial grounds. Since the focus is on British foreign policy implementation rather than on EU-CSFP, an analysis of Whitehall's approach towards Tehran will attempt to prove that, at least for Britain, the Critical Dialogue was a policy genuinely aiming at achieving political change in Iran, rather than merely maintaining good economic relations.

The second factor, which led Europe to adopt the critical dialogue, was the recognition of new political forces in Iran and the assumption that it was moving toward

⁴²³ *ibid*, p. 37

⁴²⁴ *ibid*, p. 37; *see also* International Monetary Fund, Direction of Trade Statistics Yearbook, 1999 (Washington, D.C. 1999) p. 2260

⁴²⁵ On the historical relationship between Germany and Iran *see* Yair P. Hirschfeld, Deutschland und Iran im Spielfeld der Mächte. International Beziehungen unter Reza Schah 1921- 1941 (Düsseldorf : Droste Verlag, 1980); Phillip W. Farby, Iran, die Sowjetunion und das Kriegsführende Deutschland (Göttingen, Muster-Schmidt, 1980)

⁴²⁶ Matthias Struwe, "The Policy of Critical Dialogue: An Analysis of European Human Rights Policy towards Iran from 1992- 1999", p. 20

moderation and compliance with internationally recognized norms. *Ayatollah* Khomeini's death in 1988 and *Hojjatoleslam* Rafsanjani's accession as first executive president were widely perceived as the end of the revolutionary period in Iran. What Ehteshami coined the "Second Republic" laid the groundwork for Khatami's reform attempts of today. Under Rafsanjani, pragmatists favoured a gradual approach to the West, moderation in Iranian foreign policy, and reconstruction of the war-damaged economy based on decreased state intervention and increased privatisation.⁴²⁷ After the war with Iraq, Iran "experienced a dual military stalemate with states outside the Islamic revolutionary wave"⁴²⁸. In other words, because Iran did not bring about the downfall of Saddam Hussein, and emerged out of the conflict with a war torn economy, the ruling elite eventually had to follow a foreign policy of reconciliation. It had to moderate its ideological rhetoric in order to establish good relations with those nations that could financially support Iran in its reconstruction efforts. Appreciating Iran's vulnerability, i.e. the absence of foreign investment and diversification which reinforced the country's dependence on oil, Rafsanjani initiated a conciliatory foreign policy towards Iran's Arab neighbours as well as the West.⁴²⁹ Iran proved this new attitude by staying neutral during the Gulf War of 1990-91. In response to Iran's position, the European Union lifted the economic boycott imposed at the time of the Iran-Iraq war. Finally when the last Western hostages in Lebanon were freed with Iranian help in December 1991, thereby removing a major impediment to rapprochement, the European Commission argued in favour of the political and economic integration of Iran into the international community to "assist its economic reconstruction" and "strengthen the hand of the pragmatic wing of the regime".⁴³⁰ Clearly, Europe had appreciated changes within the Iranian political system, and aware of its own strength, recognized the country's economic vulnerabilities and, therefore, the opportunities for dialogue.

⁴²⁷ Mohsen M. Milani, "The Transformation of the Velayat-E Faqih Institution: From Khomeini to Khomeini", in *The Muslim World*, Vol. LXXXII, No3-4, (July- October 1992), p.184

⁴²⁸ Mark. N. Katz, *Revolutions and Revolutionary Waves*, (New York, St Martin's Press, 1997), p.109

⁴²⁹ Anoushiravan Ehteshami, "The Foreign Policy of Iran", in Raymond Hinnebusch and Anoushiravan Ehteshami, *The Foreign Policies of Middle East States* (London, Lynne Rienner, 2002,) p. 288

⁴³⁰ Johannes Reissner, "Europe and Iran: Critical Dialogue", in Richard N. Haas and Meghan O'Sullivan, *Honey and Vinegar: Incentives, Sanctions and Foreign Policy*, p. 38

The final factor shaping the formulation of the dialogue was Europe's newly established common foreign and security policy. The CFSP reflected the commitment of the European Union to promote human rights as "a core element" of its foreign policy, particularly in light of several events involving human rights abuses in Iran.⁴³¹ While integrating human rights actively in foreign policy has only been apparent since the early 1990s, the concept itself was first outlined in the "Declaration of Human Rights" of 1986⁴³² in which the foreign ministers outlined the principles of human rights in the Community's external relations:

Respect for human rights is one of the cornerstones of European cooperation [...] The protection of human rights is the legitimate and continuous duty of the world community and of nations individually. Expressions of concern at violation of such rights cannot be considered interference in the domestic affairs of a state.⁴³³

In line with Article 1 and 55 of the UN Charter the "1991 Declaration Concerning Human Rights" stated that "tensions and conflicts arising from flagrant and systematic violations of human rights and fundamental freedoms in one country [...] are often a threat to international peace and security."⁴³⁴ Declaring the promotion of human rights as cornerstone of a foreign policy inherently needs to adopt a constructive engagement approach. As has been shown, this is because encouraging democratic reforms and actively pushing other states for the respect of human rights and other norms is best implemented through a non-coercive strategy. The extent to which the EC legally bound itself to a strategy of "conditional reciprocity" (i.e. constructive engagement) is reflected in the Community's bilateral trade and co-operation agreements with third countries. Since the early 1990, the EC has systematically included a so-called human rights clause in its trade and co-operation agreements with other countries, including association agreements such as the Europe agreements, Mediterranean agreements and the Cotonou Agreement (former Lomé Convention).

⁴³¹ *ibid*, p. 38

⁴³² Matthias Struwe, "The Policy of Critical Dialogue: An Analysis of European Human Rights Policy towards Iran from 1992- 1999", p.13

⁴³³ *ibid*

⁴³⁴ *ibid*

⁴³⁵ In line with an earlier communiqué from 1995, the Commission stated in 2001 “that respect for human rights and democracy should be an integral, or mainstream consideration in all EU external policies”. In its dialogue with third countries the document stressed that “the most effective way of achieving change is [...] a positive and constructive partnership with governments based on dialogue, support and encouragement. This should aim to improve mutual understanding and respect, and promote sustainable reform.” Whilst giving high priority to a positive approach, the “suspension clause” foresees that if a state lacks a genuine commitment to pursue change through dialogue and consultation, and if all avenues for progress have been explored the EU will resort to negative measures such as sanctions. ⁴³⁶ In line with the theoretical model for constructive engagement, the CFSP includes two types of human rights conditionality: *ex ante* and *ex post*. The first relates to certain conditions, which have to be fulfilled in order to enter a regime with the EU. Conditionality *ex post* then refers to what this thesis’ model termed ‘continuous conditional assurance’ and manifests itself in the human rights clause, which grants the possibility of suspending the agreement. ⁴³⁷

Hence, by committing itself to promoting human rights in third countries through dialogue rather than sanctions, the EU implemented the Critical Dialogue towards Iran with the objective and expectation to genuinely achieve changes in Iranian behaviour. Looking at the evolution of the human rights clause in external relations, it is evident that for the EU the promotion human rights advanced to an imperative grounded in the

⁴³⁵ see Commission of the European Communities , “Report from the commission on the implementation of measures intended to promote observance of human rights and democratic principles in external relations for 1996 – 1999”, COM (2000) 726 final , (Brussels, November, 2000) ; Commission of the European Communities, “The inclusion of respect for democratic principles and human rights in agreements between the Community and third countries”, COM (1995) 216 final, (Brussels , May 1995) ; see also “Resolution of Human Rights, Democracy and Development”, 28 November 1991 , adopted by the Council, “EP, Committee on Foreign Affairs and Security, Subcommittee on Human Rights”, PE 156.345, 26 February 1992

⁴³⁶ European Commission, “Communication from the Commission to the Council and the European Parliament, The European Union ’s role in promoting human rights and democratisation in third countries”, COM (2001) 252 final, (Brussels, 8 May 2001) p. 8

⁴³⁷ see Elena Fierro, The EU’s Approach to Human Rights Conditionality in Practice, (The Hague, Martinus Nijhoff Publishers, 2003), pp.98-102

character of EU co-operation itself. With Lomé, the protection of human rights eventually became a precondition for political and economic co-operation with third countries. Consequently, institutionalised economic and political co-operation as well as development aid became subject to human rights conditionality.

6.2.2 The Agenda of Engagement

The main stated objective was to induce changes in Iranian behaviour to move this “important country towards responsible and constructive cooperation.”⁴³⁸ This policy was based on two closely related assumptions. First, European diplomacy should engage with different political forces in Iran aiming at persuading moderates in Iran that a change in policy is in Iran’s basic self-interest. Convinced that a policy of “isolation and speechlessness”⁴³⁹ would prove ineffective, supporters of critical dialogue argued that keeping open lines of communication forces the Iranian political elite to face the issues of greatest concern for Europe.⁴⁴⁰ Second, critical engagement has rested upon the assumption that Iranian behaviour can be influenced through communication and incentives within an approach, which Peter Rudolf characterized as, diffuse linkage. While it was stated that further improvement of European Iranian relations is linked with Tehran’s living up to European demands, linkage may be termed diffuse because before the adoption of the “Comprehensive Dialogue” incentives had not been publicly explained or tied to specific changes in Iranian behaviour. While it was expected of Iran to fulfil as many expectations as possible, before progress in relations is offered, the time frame for Iranian concessions, however, remained open.⁴⁴¹ Yet the most specific public linkage was made concerning the *fatwa* against British novelist Salman Rushdie. It was stated that without progress on this case no bilateral cultural agreement and no treaty with the EU

⁴³⁸ Plenarprotokoll , Deutscher Bundestag 13. Wahlperiode-104. Sitzung, Plenarprotokoll 13/104, p. 9217

⁴³⁹ *ibid*, p. 9217

⁴⁴⁰ Peter Rudolf, “Critical Engagement: The European Union and Iran” in Richard N. Haas, Transatlantic Tensions – The US, Europe and Problem Countries, p. 76

⁴⁴¹ *ibid*, p. 76

would be made.⁴⁴² Facing a death sentence issued against a British national by a foreign head of state, the British government's stance was obviously more resolute on this issue as the prime minister stated in 1993: "The continuing failure of the Iranian authorities to repudiate this incitement to murder inevitably prevents the establishment of full and friendly relations."⁴⁴³ In fact the demand to lift the *fatwa* against Salman Rushdie became the most specific European demand, repeatedly emphasising the respect for human rights and international law and demanding a written assurance from Iran not to pursue any attempt to kill him. In December 1993 Commissioner for external relations Hans van den Broek met Rushdie and declared that "improvements in human rights and the lifting of the fatwa against Salman Rushdie are important in determining the quality of relations with Iran. [...] Respect for fundamental human rights and international law remain essential for the development of closer relations with Iran."⁴⁴⁴ Whilst Europe did not publicly repeat all the demands on its agenda, Foreign Minister Klaus Kinkel presented a very specific list of expectations to the Bundestag in 1996:

1. A positive attitude towards the Middle East peace process
2. Recognition of the democratically elected Palestinian national authority
3. Implementation of the commitment made to the EU not to sponsor terrorism in the Middle East, neither financially nor logistically
4. Concrete contribution towards a sustainable and peaceful solution in Lebanon by exerting a moderating influence towards Hezbollah
5. Pledge to assist in cooperative and peaceful solutions in the Near East
6. Improvements in human rights, in particular full freedom of press, speech and religion
7. Effective control of compliance with the Chemical Weapons Convention
8. An end to all intelligence activities, designed to target Iranian dissidents abroad.⁴⁴⁵

⁴⁴² *ibid*, p. 76

⁴⁴³ House of Commons Hansard, 18 February 1993, Column 320

⁴⁴⁴ "Mr van den Broek meets Salman Rushdie" European Commission Press release, RAPID, IP/93/1080, (Brussels, 9 December 1993)

⁴⁴⁵ Plenarprotokoll , Deutscher Bundestag 13. Wahlperiode-104. Sitzung, Plenarprotokoll 13/104, p. 9218

The agenda item of improving human rights in Iran is the scope of this thesis and shall be evaluated by using following methodology:

- (iii) To respect: This requires the state and its organs and agents to abstain from carrying out, sponsoring or tolerating any practice, policy or legal measure violating the integrity of individuals or impinging on their freedom to exercise their right.
- (iv) To protect: This primarily concerns appropriate legislation confirming the rights for all individuals and groups. It also obliges the state and its agents to prevent the violation of rights by state and non-state actors. It requires that where violations do occur, appropriate remedies exist in the form of accessible and well-publicized complaints and inspection procedures. This in turn concerns the framework of the rule of law and access to justice.⁴⁴⁶

7. Conclusion

The essential assumption brought forward in this discussion on human rights was that a holistic and sustainable way of promoting human rights through diplomacy should be by following a Hegelian interpretation of rights. Civil and political rights should be seen as a by-product of a functioning ethical community in which members of that community assign themselves rights and mutual duties. Thus, rather than imposing a contractarian political system from outside, human rights diplomacy should nurture a culture in which rights make sense. Ultimately, the realization of such a community, which assigns itself rights and mutual duties, will lead to the establishment of a political framework, in which the state is responsible for strengthening these bonds of community. Thus, in the long-term, human rights diplomacy may contribute to the emergence of the concept of positive and negative rights, not necessarily in the contractarian sense of the individual's protection *against* the state, but rather in a Hegelian sense of the state being *responsible*

⁴⁴⁶ *Based on methodology put forward by Humanist Committee on Human Rights, Matching Practice with Principles: Human Rights Impact Assessment: EU Opportunities – An outline for the development of Human Rights Impact Assessment for EU policy measures with an external effect, p.49*

for the maintenance and protection of the ethical community. It was also argued that rather than viewing religion as a normative challenge to the concept of human rights it should be incorporated into human rights diplomacy. In a true Hegelian sense, the inclusion of religion in human rights diplomacy could actually lend a deeper meaning to human rights.

This is particularly relevant for engagement with Muslim countries. At first, Islam is often seen as an obstacle to the promotion and protection of human rights. This presumption seems to be primarily based on the charge that Islam fails to assign rights to individuals but rather emphasizes their duties towards God. It is true that the Cairo Declaration on Human Rights falls into this pattern. However, given the fluidity of Islamic interpretations and also looking at apparent secular political motives behind the document, the Cairo Declaration cannot be seen as a single authoritative pronouncement on human rights in Islam. Rather, the multitude of Islamic hermeneutics and the history of Islamic jurisprudence (particularly *Shi'a*) itself provide a strand, which lends support to the modern understanding of human rights. Essentially, advocates of this “reformist school” agree that Islam recognizes the dignity of man and, as such, individual rights. Islamic law also seems to provide a legal-political framework, in which the ruler is responsible for the enforcement of the law but at the same time subject to it as well. Thus, rather than restricting human rights, Islamic Law aims to draw a regulatory framework for rights and mutual duties in order to meet the benefit and protection of the individual as well as of the community. Moreover, references to fundamental techniques in *fiqh* indicated that it is not religious dogma, but rather it is the faculty of reason which is central to Islamic jurisprudence.

Divergent views on human rights within the Islamic tradition particularly manifest themselves in Iranian politics. The genesis of the constitution as well as the ongoing debate between mainstream conservatives and reformists in Iran show the inherent contradictions of Islamic and secular elements of the Iranian political system. It has been shown that the conflict between the notion of popular and divine sovereignty led to a political system, which bears obstacles as well as institutional safeguards for the

protection of human rights. Whilst conservatives maintain the supremacy of the *faqih*, the reformist movement advocates the rule of law and constitutionalism in which religion ought to serve as the handmaiden of democracy. Engagement with Iran then can only be effective if it manages to empower those who see human rights as vital element of the political system and of Islam. Therefore, it seems that the key to successful human rights diplomacy in Iran is to support an indigenous human rights culture to evolve, thus assisting that the body of laws and rights, would constitute the “normative product” of an ethical community rather than a concept which is being imposed from without or from above.

Since economic and political external relations of the European Union are conditional upon the respect and protection of human rights, thus serving as an incentive for a formal “human rights dialogue”, it was argued that EU human rights diplomacy effectively follows a policy of constructive engagement. Constructive engagement with Iran - which encompasses two periods: the “Critical Dialogue” which was the EU’s official policy towards Iran between 1992-1999 and the “Comprehensive Dialogue” which was implemented following Khatami’s election victory in 1997 – shall test the hypothesis that constructive engagement is best suited at promoting human rights.

CHAPTER FOUR

BRITISH IRANIAN RELATIONS: THE *FATWA* YEARS 1989-1990

1. Introduction

The impact which the “Satanic Verses” had on British-Iranian relations have ultimately to be seen in historical perspective, taking Britain’s imperial legacy in that country into consideration. If one thinks of Iranian nationalism and Islamism as crucial determinants of post-1979 Iranian foreign policy, revolutionary anti-imperialism has certainly to be depicted as third of such core components. In fact, the impact of anti-imperialism not only on Iranian foreign policy but also on Iranian identity as a whole can directly be linked to Britain’s legacy in that country. Iranian resentment of foreign influence and the rejection of superpower hegemony largely derives from this experience and have, as Abrahamian observes, led to a conspiratorial mindset among all periods of and factions in Iranian politics.⁴⁴⁷ As the British Foreign Affairs Select Committee itself conceded in its 2003 Report on Iran: “Given this history, it is hardly surprising that Iranians are said to see the hand of the United Kingdom behind every suspicious development in their country [...]”⁴⁴⁸ The following historical milestones in British-Iranian relations undeniably serve as prerequisite to understand Iranian perception towards Britain: the Definitive Treaty with Britain in 1814, which made Persia a pawn in the Great Game, the Reuter Oil Concession of 1872, the tobacco concession awarded to Britain in 1882, Britain’s ambivalent role in the Constitutional Revolution between 1905 and 1911, Britain’s role in the rise of the Pahlavi reign from 1921-1941, the Allied invasion of 1941 and above all the ousting of Prime Minister Mossadeq by the British-American instigated coup d’état in 1953.⁴⁴⁹ These historical milestones reflect Britain’s grand imperial strategy of keeping Persia as a buffer zone against Russian expansionism in order to protect interests in British-India. By and large, Persia was a pawn in the Great Game and thus was never perceived as an equal ally to Britain. Rather, various 19th century bilateral

⁴⁴⁷ Shilbey Telhami and Michael Barnett, *Identity and Foreign Policy in the Middle East* (Ithaca, Cornell University Press, 2002), p.101

⁴⁴⁸ House of Commons Foreign Affairs Committee, *Iran – Third Report of Session 2003-2004*, HC 80, published 19 March 2004, p. 7

⁴⁴⁹ *see* Appendix A

treaties and agreements between London and the court in Persia testify to Iranian military defeats, diplomatic concessions, and commercial capitulations before the great powers. Persia's economic predicament and increased dependence on outside powers equally applied to the political realm, in which mainly Britain dictated the agenda and influenced major policies. Shrewd political manoeuvring on part of London against the Russian backed Qajar Shah eventually culminated with the Constitutional Revolution (1906-1911). However, Britain's ambivalent role eventually strangled the country's first genuine attempt at democracy. More significantly, Britain's decision to oust the democratically elected Prime Minister through a coup d'état in 1953 in order to maintain an asymmetrical relationship with the Iranian oil industry heralded the rise of an increasingly authoritarian monarchy.

With the rise of Reza Shah, the times when Whitehall dictated the terms in Iran were finally over as Washington now acted as the "Patron Power", preserving the monarchy and influencing the direction and agenda of its policies in line with western regional and international interests. In return for Iran's dependence on the US and alliance with the West, the monarch expected the consolidation of his rule. Undoubtedly, extensive U.S. support, which helped the Shah to transform the country from an inefficient autocracy into a stronger oil-funded neo-patrimonial state, initially enabled his regime to control the country, but eventually resulted in the Islamic Revolution of 1979.

Nonetheless, it was the fundamental role of the British government, which had sown the seeds of anti-imperialism, and Khomeini's agenda against "foreign oppressors". More than that, Britain's continuous coercive diplomacy towards Iran shaped an entire mindset of Iranian politicians as well as intelligentsia, which essentially reflects deep suspicion of Western, particularly British, policy towards Iran. Ironically, however, this negative undercurrent also carries an admiration for British statecraft in the sense that whilst Iranians resent the British the most, they also perceive Britain as one of the most powerful players in international relations.⁴⁵⁰ Ultimately, Khomeini's *fatwa* against a

⁴⁵⁰ Interview with Italian Official, (Tehran, 2 September, 2004)

British citizen can only be fully appreciated if one takes this historical context and reciprocal cycle of interference and mistrust into account.

2. Immediate Historical Background

The Revolution in 1979 had a considerable impact on British-Iranian relations and significantly reduced Britain's economic as well as political stake in that country. Following the takeover of the American embassy in Tehran and anti-British demonstrations in 1980, Britain was advised by the Iranian Foreign Ministry that the authorities could no longer guarantee the safety of British staff, thus prompting the departure of Britain's Ambassador. Because of the "Rushdie affair", it was to be nearly twenty years before a new one was appointed.⁴⁵¹ In the end, the Iranian embassy in London turned out to be at greater risk. In April 1980 an armed group from Iran took the embassy staff hostage and demanded autonomy for the Iranian province of Khuzestan. During the siege and, finally, the dramatic rescue operation by the Special Air Services (SAS), two members of the embassy staff were killed by the hostage takers and all but one of the gunmen were killed by the SAS. Although the Iranian Foreign Ministry thanked Britain officially for the way the crisis was ended, the incident cast a further shadow over bilateral relations and it was followed by a long-drawn-out negotiations concerning compensation for damage done to the premises during the rescue.⁴⁵² By far, the most detrimental impact on post-1979 bilateral relations was Britain's policy during the Iran-Iraq war. Whilst the U.S. and the EU did observe an arms embargo towards both warring parties, Britain for its part, operated an official policy of restraint on arms sales to Iran and Iraq and an unofficial one of supply. The "Scott Inquiry" of 1996 showed that the official guidelines in the FCO and MoD were aimed not at affecting the progress of the conflict but rather at the maintenance of relationships with the belligerents – hence an apparent policy of even-handedness. Far from fulfilling the requirements of wartime neutrality, guidelines on arms exports to Iran and Iraq were dictated by a general desire to continue to trade with both countries. An abundance of evidence proved how the British government's review process of Export Licensing Application (ELA) by British

⁴⁵¹ Christopher Rundle, (former FCO diplomat / Iran Desk) Iran –UK Relations since the Revolution: Opening Doors, (2005) Manuscript handed to the author

⁴⁵² *ibid*, p. 4; *see also* Chris Cramer and Jim Harris, Hostage, (London, J.Clare, 1982)

companies did not meet the standards one would expect from a country which declared neutrality. Moreover, the British government knew about the widespread diversion of military goods via Saudi Arabia, Egypt and particular Jordan to Iraq. While the British government's policy of allowing this illicit supply of arms to Iran and Iraq may have not had a significant impact on sustaining the war, it clearly failed to actively seek to resolve the conflict.⁴⁵³

Nonetheless, by 1988 Iran began to conduct what it called an 'open door' policy towards all countries with the exception of Israel, the United States and South Africa. Following the Iran – Iraq war, the Iranian government seemed eager to get closer to European countries in particular, as well as the Arab states, most of which had favoured Iraq during the war. The prospect of re-establishing relations with Britain largely resulted from negotiations, which took place at the United Nations in Geneva and were held by Sir David Meyer and the Iranian Director General for West-European affairs Mahmoud Vaezi.⁴⁵⁴ These negotiations eventually settled the rival claims for compensation for the damage of the Iranian embassy in 1980 and, from the British side, damage done to the British embassy building by a mob at the time of the revolution.⁴⁵⁵ When acting Charge d'Affaires, Gordon Pirie eventually ran up the Union Flag on 3 December 1988 for the first time in eight years⁴⁵⁶, it was based on the joint announcement in Geneva which stated that “full diplomatic relations [...] were based on reciprocity, mutual respect and non-interference in each other's affairs.”⁴⁵⁷ For policymakers in Whitehall, a British presence in Iran mainly served to establish channels of communication with the Hezbollah in Lebanon, which was holding three British citizens hostage. The idea was that Iran would be an intermediary with the kidnappers and thus contribute to their release. Another priority for Britain was the release of Mr Roger Cooper and Mr Nicholas

⁴⁵³ Davina Miller, Export or Die – Britain's Defence Trade with Iran and Iraq (London, Cassel, 1996), pp.192-196

⁴⁵⁴ Interview with former Deputy Foreign Minister for Iran, Mahmoud Vaezi (Tehran, 6 September, 2004); Chris Rundle, (former FCO official) unpublished paper “UK/Iran relations since the Revolution” handed to the author, (1 August 2005)

⁴⁵⁵ Chris Rundle, unpublished paper “UK/Iran relations since the Revolution”

⁴⁵⁶ The Times, 5 December, 1988

⁴⁵⁷ *ibid*

Nichola, two Britons who were held in Tehran's Evin prison on charges of spying.⁴⁵⁸ Foreign Secretary Geoffrey Howe linked any further improvements of bilateral relations to the release of both Britons and maintained that none of the prisoners who were being accused of spying have ever been tried by the Iranian authorities. Whilst Cooper was not released until 1991, the Iranian government eventually freed Nicholas Nicola on December 27, 1988.⁴⁵⁹ Tom Clark, then Labour MP for Monklands West, Strathclyde, who joined a delegation to Iran that year stated that "it [the release] suggests that it was right to restore diplomatic relations and reopen the British Embassy. It is very important we should keep pressing for the release of Roger Cooper from Iran and the British hostages from Beirut. It has taken time to recover from the shooting down of the Iranian airbus over the Gulf but it would appear that things are now beginning to move in the right direction."⁴⁶⁰ However, the *fatwa* issued against Salman Rushdie for writing the "Satanic Verses" derailed this potential rapprochement.

3. The "Satanic Verses": The Prelude to the *Fatwa*

3.1 The Novel

Before examining the impact on British Iranian relation of the *fatwa* issued by *Ayatollah* Khomeini on Salman Rushdie for publishing the "Satanic Verses", it seems appropriate to briefly portray the contents of the novel, which Rushdie claims he sat down to write with the dictum "better a spectacular fiasco than a mediocre success."⁴⁶¹ A concise synopsis of the novel should help to highlight the opposing concepts of blasphemy and freedom of expression and put subsequent events into perspective. In hindsight, actual public engagement with the text could have contributed to a contested literary discourse and may have potentially prevented the tragedy which followed. As Said rightly states "[...] only a tiny proportion discussed the book itself; those who opposed it and

⁴⁵⁸ Roger Cooper was a British businessman employed by the American firm McDermott International, a leading marine construction company. He had been visiting Iran from Dubai on business when he was arrested and imprisoned on a charge of spying. He was sentenced to "Death Plus Ten Years." *see* Roger Cooper, *Death Plus Ten Years*. (Scranton, Harper Collins, 1994)

⁴⁵⁹ *The Times*, 28 December 1988

⁴⁶⁰ *ibid*

⁴⁶¹ Axel Jensen, "God does not read novels", in Niels Frid-Nielsen(ed) *Freedom of Expression: the Acid Test* (Stockholm, Nordic Council, 1994), p. 43

recommended its burning and its author's death refused to read it, while those who supported his freedom to write left it self-righteously at that. "⁴⁶² Whilst the novel does address religious beliefs and narratives of Islam, critics claim that this is only one aspect of a complex and highly allusive novel that produces a broad and provocative commentary about the philosophical and religious problems of good and evil. The underlying theme of the "Satanic Verses" is about British and Asian politics and culture, in particular Asian and African immigrant identities, and it is concerned with the nature of truth and revelation. These ideas are incorporated into an eventful storyline involving the characters of Gibreel Farishta and Saladin Chamca, two figures with complex British-Indian identities caught in a seemingly epic battle that takes place between Bombay and London in the 1980s. Both of Rushdie's protagonists begin to take on supernatural qualities and visit alternative worlds, such as that of Gibreel's extended dreams about the prophet Muhammad. These episodes, which essentially refer to the founding of Islam only constitute one seventh of the novel as opposed to the rest which is taken up by the present day lives of Saladin and Gibreel, thus lending weight to the issues of immigration, denationalisation and integration."⁴⁶³ Nonetheless, it was this part of the book, which aroused fundamental questions about religious belief and truth and which ultimately was considered blasphemous. In the "Satanic Verses", Rushdie narrates the genesis of how the prophet character "Mahound" founded a religion called "Submission". Referring to the contested historical account of the "Satanic Verses", Rushdie subjects his fictional character to the struggle between the divine and political ambitions. Ultimately, the reader learns that his revelations are not of divine origin but rather stem from Mahound's own imagination in an effort to strengthen his position with the ruling elite.

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Essentially, Rushdie was charged with blasphemy on two counts: On ontological grounds, his narrative questions the nature of divine revelation and thus the very basis of Islam and its prophet founder. As the incident of the satanic verses has been contested in

⁴⁶² Edward Said, Culture and Imperialism (London, Vintage, 1994), p. 397

⁴⁶³ D.C.R.A. Goonetillke, Salman Rushdie (London, MacMillan, 1998), p. 94

⁴⁶⁴ see Appendix B

Islamic historical records, Rushdie reiteration of the matter constitutes more than joining the ranks of Orientalists. As Sardar argues

The reasons for Muslim anger, profound offence and dubbing of Rushdie's words as blasphemy reach much deeper and far more central to the entire thrust of his book than this one incident. It is the precision and careful selection of the satanic verses incident as a vehicle for advancing his proposition about the nature of religion and revelation, the encrusted and encoded theses of Rushdie's book, that so offends.⁴⁶⁵

Whilst the chapter "*Jahilia*" and "Return to *Jahilia*" questioned the infallibility of the revelation, the profanities and offences in "The Curtain", which were directed against the Prophet, his spouses and his followers, which according to Rushdie were intended to set up an opposition between the sacred and profane worlds, even failed to convince some of his admirers, and thus played irreverently with figures held in deep reverence by believers.⁴⁶⁶

3.2 The Protest

The controversy surrounding Rushdie's novel eventually spilled over from the literary circles and entered the public realm when it became a matter of blasphemy *versus* freedom of speech. It all started in October 1988, when the Indian government, bowing to pressure from Muslim groups and politicians Khurshid Alam Khan, MP and Syed Shahabuddin, MP, banned the publication of the Satanic Verses in India.⁴⁶⁷ The implication of this decision was that the book was banned in several other countries, including South Africa, Pakistan, Malaysia, Egypt and Saudi Arabia and the UAE. The prospect of an even more widespread ban and legal proceedings was reinforced when in November Grand Sheikh of Al-Azhar University in Cairo, Gad el-Haq Ali Gad el-Haq called on all Islamic organisations based in Britain to join in legal steps to prevent continuing distribution there. He ruled that the novel contained "lies and figments of the

⁴⁶⁵ Ziauddin Sardar and Meryll Wyn Davies, Distorted Imagination – Lessons from the Rushdie Affair, (London, Grey Seal, 1990), pp.150-151

⁴⁶⁶ see Aamir Mufti, "Reading the Rushdie Affair: An Essay on Islam and Politics", Social Text, No.29 (1991), pp. 102-103

⁴⁶⁷ The Independent, 6 October, 1988

imagination about Islam which were passed off as facts” and demanded that the Islamic Conference Organisation (OIC) should take concerted action against what he described as “a distortion of Islamic history”.⁴⁶⁸ Whilst this ruling carried considerable weight, particularly for Britain’s Sunni community, protests there had already been organised. Frustrated by the fact that the British government remained largely oblivious to the blasphemous nature of the book, Faiyazuddin Ahmad, Public Relations Director of the Islamic Foundation in Leicester photocopied the offending passages of the *Satanic Verses* and sent them to numerous Islamic organisations in Britain. Copies were also dispatched to the 45 embassies in London of the member countries of the OIC, including Iran. Having received a copy containing the offending passages, Dr Syed Pasha, Secretary of the Union of Muslim organisations, an umbrella organisation for Muslims community groups in Britain, summoned the union’s 19 council members to a crisis meeting on October 15. It was decided to launch a country wide campaign to get the novel banned.⁴⁶⁹ Reiterating that Muslims groups in Britain did not object to accounts, which are critical or irreverent about Islam or Muslims, numerous letters, such as that of the Islamic Defence Council to Penguin Publishers emphasised “that no individual much less a whole world community can accept to be abused and insulted in the filthy way this “novel” has sought to do.”⁴⁷⁰ Such petitions and lobbying efforts to the publishing house to refrain from any further distribution of the novel were unsuccessful. Penguin maintained that to withdraw the novel “would be wholly inconsistent with our position as a serious publisher who believes in freedom of expression” and reminded critics that perception of its blasphemous nature was based on “failure to read it in its entirety, what is after all a work of fiction.”⁴⁷¹ Pressure on the British government remained equally futile. On behalf of the Union of Muslim Organisations, Pasha and two Members of Parliament sought initially to prosecute Rushdie and Penguin under the Public Order Act (1986) and the Race Relations Act (1976) for the incitement to racial hatred.⁴⁷² However, failing to

⁴⁶⁸ The Times, 22 November, 1988

⁴⁶⁹ Sunday Times, 19 February, 1989

⁴⁷⁰ “Memorandum of Request from the Muslim Community in Britain to Penguin Books Ltd”, cited in Jørgen S. Nielson (ed.), The Rushdie Affair: a Documentation, Birmingham, (Centre for the Study of Islam and Christian-Muslim Relations, Selly Oak Colleges, 1989), pp.6-7

⁴⁷¹ *ibid*, p. 6

⁴⁷² Sunday Times, 19 February 1989; also *see* House of Commons, Hansard, 5 December, 1988, Column 19

realize the changed dynamics and sensitivities of Britain's multicultural society, the government made it clear that these were no grounds on which the government would consider banning the book. Prime minister Thatcher further stated that "It is an essential part of our democratic system that people who act within the law should be able to express their opinions freely."⁴⁷³ The government's only concession was to refer the matter to the Attorney General, Sir Patrick Mayhew, who decided that the novel constituted no criminal offence.⁴⁷⁴ Demands to have the book banned under the common law of blasphemy, which was supported by various MPs, such as David Young and Peter Thurnman, were rejected on the grounds that the ambit of the offence of blasphemy did not extend to non-Christian religions. The government further reminded MPs that in its "Report on Offences against Religion and Public Worship" published in 1985, the Law Commission recommended by a majority that the existing common law offence of blasphemy should be abolished and only a minority took the stance that the existing offence would be repealed and replaced with a criminal offence which applied to all religions.⁴⁷⁵ Evidently, this statement by the British government failed to address the wider picture of the common law and thus ultimately failed to give the issue the attention Muslim constituents expected. Frustrated by the fact that the democratic and legal process proved unsuccessful for their demands to have the book banned in the United Kingdom, Muslim Community leaders followed the advice of a solicitor in the North of England who suggested that publicity was the key to get their message across. He advised that they could always try burning the book in public, as there was, he pointed out, no law against that.⁴⁷⁶ Bradford with a community of 50 000 Muslims became the centre of protest in Britain and members of Bradford mosque ritually burned the book after Friday prayers. The irony of these campaigns was that it did not necessarily convey to the public that the novel polemically distorted facts about Islam and offended religious feelings. Rather, many commentators interpreted the demonstrations as the rise of Islamic fundamentalism in Britain and feared a crusade against the liberal democratic value system. With regards to exerting pressure on the government, these demonstrations in

⁴⁷³ Sunday Times, 19 February, 1989

⁴⁷⁴ House of Commons, Hansard, 5 December, 1988, Column 19

⁴⁷⁵ *see* House of Commons, Hansard, 20 December, 1988, Column 181

⁴⁷⁶ The Observer, 19 February, 1989

fact proved counterproductive and even allowed Rushdie himself to comment that “Unable to accept the unarguables of religion, I have tried to fill up the hole with literature. The art of the novel is a thing I cherish as dearly as the bookburners of Bradford value their brand of militant Islam.”⁴⁷⁷ It is against this background that one has to understand the events that followed.

3.3 The *fatwa*

The immediate event, which seemed to have provoked the until-now relatively silent *Ayatollah* Khomeini to comment on the Rushdie issue, were the deaths of Pakistani demonstrators in Islamabad. The day before the Iranian head of state issued his statement, he had been told that five people were killed and dozens injured at a rally against the “Satanic Verses”, which ended in the attempt by the crowd to storm the US Information Centre in the Pakistani capital.⁴⁷⁸ On February 14 1989, *Ayatollah* Khomeini’s office in Tehran eventually released the following statement:

In the name of God Almighty. There is only one God, to whom we shall all return. I would like to inform all the intrepid Muslims in the world that the author of the book entitled “The Satanic Verses”, which has been compiled, printed and published in opposition to Islam, the Prophet and the Koran, as well as those who were aware of its contents, have been sentenced to death. I call on all zealous Muslims to execute them quickly, wherever, they find them, so that no one will dare to insult the Islamic sanctions. Whosoever is killed on this path will be regarded as a martyr, God willing. In addition, anyone who has access to the author of the book, but does not possess the power to execute him, should refer him to the people so that he may be punished for his actions. May God’s blessing be on you all. Ruhollah Musavi Khomeini.⁴⁷⁹

At first, it was not too apparent why Khomeini issued the *fatwa*⁴⁸⁰ and sentenced Rushdie to death, as Iranian foreign policy had gradually been moving towards *détente*

⁴⁷⁷ The Observer, 22 January, 1989

⁴⁷⁸ *see* The Independent, 13 February, 1989

⁴⁷⁹ The Observer, 19 February, 1989

⁴⁸⁰ It should be noted, Khomeini’s statement was first described as a death sentence by European and US media, and only became known as *fatwa* after French journalists introduced the term in Le Monde on February, 16. *see* Mehdi Mozaffari, Fatwa- Violence and Discourtesy (Aarhus, Aarhus University Press, 1998), p. 48

with Europe and particularly Britain. There is evidence that the petitions sent by organisations in Britain via the Iranian embassy demanded that Rushdie should be judged by Khomeini.⁴⁸¹ Evidently, Khomeini as *mujtahid* was a qualified *fatwa* giver and his verdict to have Rushdie killed has to be seen as a response to the initiative of *istifta'* (i.e. he was asked for a *fatwa*). Usually such questions ask for clarifications on certain matters, which cannot be found in the *Qu'ran* or *hadith*.⁴⁸² In this case, however, it seems that it resulted more from Khomeini's ambition of exporting the revolution.⁴⁸³ Though the application of Islamic norms to Iran's foreign policy was not new, the *fatwa* was an unparalleled effort by the leadership to take the intrinsically universal character of Shi'a Islam and its fight for the oppressed (*mostazafin*)⁴⁸⁴ against the oppressor (*mostakbarin*) as far as Great Britain. Essentially, the *fatwa* resulted from what Ehteshami refers to as "messianic *Shi'ism*"⁴⁸⁵ and hence was Khomeini's way of appealing to his worldwide *umma* constituents.

The *fatwa*, however, also must be seen within the wider picture of the Iranian political system. After the war with Iraq, which enjoyed little support after 1982, when an Iranian counter-offensive managed to drive Iraqi forces out of Iranian territory, the Islamic Republic faced tremendous economic and political pressures. By 1989, Iran suffered from a war torn economy, which was further heavily burdened by the loss of oil revenues.⁴⁸⁶ Moreover, as a result of the human toll of the war, an increasingly alienated society had lost confidence in the leadership and its ability to govern.⁴⁸⁷ Mehdi Moslem

⁴⁸¹ Amir Taheri "Khomeini's Scapegoat", *Times*, 13 February, 1989

⁴⁸² see Mehdi Mozaffari, *Fatwa- Violence and Discourtesy*, p. 31

⁴⁸³ During the early 1980s, the Iranian government followed a "revolutionary foreign policy" which was dominated by a interventionist agenda, particularly with regards to Lebanon and the Occupied Palestinian Territories.

⁴⁸⁴ During the 1960s and 1970s it was Ali Sahriati who depicted a world between the oppressed and the oppressors and argued that the true Islam was vested in the struggle of the oppressed. See Suzanne Maloney, "Identity and Change in Iran's Foreign Policy", in Shibley Telhami and Michael Barnett, *Identity and Foreign Policy in the Middle East*, p. 99

⁴⁸⁵ Anoushiravan Ehteshami "The Foreign Policy of Iran" in Raymond Hinnebusch and Anoushiravan Ehteshami *The Foreign Policies of Middle East States*, p. 287

⁴⁸⁶ see Patrick Clawson, "Islamic Iran's Economic Politics and Prospects", in *Middle East Journal*, Vol. 42, No.3 (Summer, 1988), pp.374-375

⁴⁸⁷ The majority of Iranian society as well as Rafsanjani's Reconstruction Party called for an end to the non-materialistic culture of the revolution and war years. Policies put forward by the conservative-right which opposed foreign borrowing to reconstruct the economy had been rejected by the mass of the people

further argues that the most troubling aspect in post-war Iran, however, was the growing tension and disagreement among powerful figures loyal to Khomeini. Far from being a monolithic entity, the leadership disagreed on a broad range of issues from socioeconomic policies to foreign policy orientation.⁴⁸⁸ Khomeini had to deal with two camps. Prominent figures, such as *Hojjatoleslams* Karrubi, Sadeq Khalkhali, Mohammad Khoinea and Ali Akbar Mohtashemi wanted to ensure that the radical agenda would dominate foreign and domestic policy. On the other side, there were the emerging pragmatists, most notably *Majlis* Speaker Ali Akbar Hashemi Rafsanjani, who demanded reforms and détente abroad.⁴⁸⁹ Appreciating the realities, that emphasis on Islam and revolutionary discourse were insufficient for governing the country, Khomeini himself attempted to break the ideological deadlock. Through various decrees from late 1987 until his death in August 1989 Khomeini paved the way for the rationalisation of the Islamic Republic. The new constitution and various proclamations strengthened the populist republican dimension of the state at the expense of its religious revolutionary one and once again ensured Khomeini's prerogative as the *vali-ye faqih*.⁴⁹⁰ In fact, it was the interpretation of *vali-ye faqih*, over which the factions fundamentally disagreed. The two ends of the spectrum are the traditional interpretation *fiqh-e sonnati* and dynamic *fiqh-e puya*. Adherents of traditional interpretation believe that primary ordinances (i.e. *Qu'ran* and *Sunna*) provide sufficient means to govern the *umma*. Only in special circumstances should jurists deviate from this premise and enact new decrees. The idea of the dynamic *fiqh* agrees with the premise that primary Islamic ordinances provide a solid foundation for Islamic governance. Supporters of this interpretation further argue that as society progresses, new issues and problems arise, and hence the *shari'a* must be constantly changing, adapting and producing new decrees.⁴⁹¹ Khomeini's series of edicts in the late 1980s addressed numerous domestic and socio-economic and political issues and ultimately strengthened the role of the state. However, he was increasingly criticised by radical circles in Qom when he went so far as to argue that "the government [state]

who no longer wanted war, privation and social control. *see* Economist Intelligence Unit, [Iran Country Report](#), No.1, 1990, pp.4-5

⁴⁸⁸ Mehdi Moslem, [Factional Politics in Post-Khomeini Iran](#), p. 71

⁴⁸⁹ Anoushiravan Ehteshami "The Foreign Policy of Iran", p. 292

⁴⁹⁰ Mehdi Moslem, [Factional Politics in Post-Khomeini Iran](#), pp.72-73

⁴⁹¹ *ibid*, p. 49

that is part of the absolute vice-regency of the Prophet of God is one of the primary injunctions of Islam and has priority over all secondary injunctions, even prayers, fasting and *haj*.” He further declared that “The government is empowered to unilaterally revoke any *shari’a* agreement that it has conducted with people when those agreements are contrary to the interests of the country of Islam.”⁴⁹² This highly controversial decree, which fundamentally undermined the Islamic nature of the state, again bolstered its republican dimension. Whilst dismissed and contradicted by figures, such as *Ayatollah* Ahmad Azari-Qomi, it was political capital for Rafsanjani and the pragmatist camp. Because Khomeini had initially supported the radical leftist camp before the election for the Third *Majlis* (1988-1989) by publicly asking the electorate to “vote for the candidates who have experienced poverty and who in word and deed defend the Islam of the bare-footed, the Islam of the oppressed” the radical left enjoyed a majority in the Third *Majlis*.⁴⁹³ Thus, the parliament was particularly hostile to Rafsanjani’s minority pragmatist camp and continuously opposed his post-war reconstruction plan, which was aimed at maximizing use of industrial production and to increase economic growth, on the grounds that “it pushed aside important social issues” and “that the programme is not clear on the direction of the country’s culture.”⁴⁹⁴ This latest ruling coupled with Khomeini’s insistence on immediate reconstruction provided Rafsanjani with enough leverage from the Supreme Leader to push his bill through parliament.

More significantly, in late 1988, Khomeini ordered the establishment of the Expediency Council as an arbiter between the parliament and the Guardian Council, dominated by the conservative right faction, thus further supporting the pragmatists in their effort to gain political momentum. It was during this period, when Khomeini’s edicts created a favourable political environment for the technocrats / pragmatists that ultimately witnessed the ascension of Rafsanjani and other pragmatists. In fact, days before Khomeini issued the *fatwa* against Rushdie, he uttered his most direct and harsh criticism

⁴⁹² *ibid*, p. 74

⁴⁹³ Another factor, which contribute to the radicals’ majority in parliament, was a major Iraqi air raid in 1988 against urban areas in Iran. By and large frustration and horror of these events translated into votes for candidates who called for the most radical policies and strategies. *see* Bahman Baktiari, Parliamentary politics in revolutionary Iran: the institutionalization of factional politics (Gainesville, University Press of Florida, 1996), pp.147-148

⁴⁹⁴ As stated by radical deputy from Tehran, Mohammad Ebrahim Asgharzadeh, *ibid*, p. 159

of the radical camp. Referring to statements by members of a religious seminary (*howzeh*) in Qom, who questioned the Imam's ruling that the game of chess and certain Western films were permissible, Khomeini attacked this faction by calling them "pseudo-religious people [who] destroy the essence of the revolution from within. With self-righteous faces and in support of religion and *velayat*, they accuse everyone of irreligiousness."⁴⁹⁵ Though one should be careful not to interpret too much into Khomeini's political motivations for issuing the *fatwa* against Rushdie, during that period a certain pattern of political manoeuvring on his part to avoid explicitly siding with either faction is evident. During the post war period of strengthening the republican nature of the state, Khomeini was at the same time always cautious not to alienate the radicals too much and many decrees were followed by efforts to appease this faction. Following his public attack on the *howzeh*, the *fatwa* against Rushdie could be seen as such an attempt at redressing the balance between the rival factions. In fact, shortly after the *fatwa* Iranian officials commented that *Ayatollah* Khomeini has made a practice of re-establishing the balance every time it tilts too much in one direction and that lately, events had been tilting towards pragmatists like the Speaker of the Parliament, Rafsanjani and conservative allies, like President Khomeini. To the detriment of more radical leaders such as the Interior Minister and the Prime Minister, pragmatists were thus able to promote liberalisation policies in and outside parliament. Hence, after the *fatwa*, Prime Minister Mir Hussein Moussavi seemed eager to exploit the situation and immediately declared a public day of mourning.⁴⁹⁶ A more significant move with regards to the unfolding Rushdie affair as a whole, was one by *Ayatollah* Sanei, Head of the 15th Khordad Foundation, who within days after the sentence, offered a bounty of US \$ 1 Million to anyone who would kill Rushdie. Undoubtedly, in the eyes of disillusioned radical circles, the *fatwa* succeeded in re-establishing Khomeini's credentials as leader of the Islamic revolution as it seemed to have put revolutionary Islam back on the agenda. It is noteworthy, however, that the pragmatists too jumped on the bandwagon and managed to interpret Khomeini's decision according to their interests. When Rafsanjani addressed the parliament he declared that what had angered *Ayatollah* Khomeini "was not merely

⁴⁹⁵ *ibid*, p. 76

⁴⁹⁶ The New York Times, February 16, 1989

the publication of the book or novel against Islam.” Rather it constitutes “a well-calculated and extensive plot, [which] has been orchestrated against Islam behind the curtain.”⁴⁹⁷ In an attempt to read the edict within his dynamic interpretation of the *fatwa* he concluded his address:

Therefore, the importance of the issue merits our great leader – who usually does not involve himself in personal issues- involving himself in force to express his anger. It is always incumbent upon us to obey his orders. We always know that he raises issues related to Islam in a timely manner and that he makes a confrontation in due time.⁴⁹⁸

Notwithstanding such centrist interpretations, the *fatwa* proved a useful tool for the conservative (and radical) camp to regain short-term political momentum and also strengthened their legitimacy in religious terms. Whilst, compared to previous rulings, the *fatwa* did not have significant impact on domestic policies; it somehow re-established a balance of power between the factions. As Khomeini himself declared:

For the sake of maintaining a balance amongst various factions, I have always issued bitter and sweet instructions [...] However, I am worried about the confrontation and discord among the factions which believe in the revolution, lest should it lead to the strengthening of the comfort-seeking and carefree faction which does nothing but nag and complain.⁴⁹⁹

Whatever, the true reasons for the death sentence, its implications was a diplomatic disaster and would trouble British Iranian relations for the next nine years.

4. The Immediate Aftermath: First Reactions

The reactions which the *fatwa* created, can be divided into three stages. At first, confusion and panic dominated the private and public domain. The British government was unsure how to react and, therefore, initially refused to publicly discuss the matter. Moreover, various book chains, concerned for their safety, immediately cancelled orders

⁴⁹⁷ Islamic Republic New Agency, (IRNA), 16 February, 1989

⁴⁹⁸ *ibid*

⁴⁹⁹ IRNA, 22 February, 1989

to receive editions of the “Satanic Verses”. However, after the realization that the edict was genuine and constituted a threat to a British subject, the government moved quickly to publicly condemn Khomeini’s decision and developed a strategy to confront Iran. Likewise, literary and intellectual circles interpreted it as an attack on liberal values and human rights and emphasised a writer’s freedom of speech. The third stage witnessed an increased public debate on the issue of blasphemy and the offence the book constituted. Faced with the seemingly volatile nature of Iranian politics, British politicians and intellectuals soon turned against Rushdie and openly questioned the wisdom of Rushdie’s work. This resulted in efforts by NGOs and other groups to actively lobby the British government to publicly side with citizen Rushdie and defend his freedom of speech. It was a period when the British government confronted Iran, yet at the same time was confronted at home.

After the *fatwa* was issued, the British government faced a similar situation as the US government did, when the US embassy in Tehran was taken over in 1980. A public ruling by a head of state and government, which incited the killing of a subject of another country on grounds of blasphemy, seemed unprecedented in international relations history. As such, the British government had no Standard Operating Procedure to fall back on, thus preventing any of the governments departments from efficiently responding. Eventually, the Home Office decided to put Rushdie under police protection as well as the premises of the publishers. Members of Viking Penguin Publishing were advised to take care of their own security precautions.⁵⁰⁰ Since Special Branch Metropolitan Police did not know what to expect and seriously considered the possibility of a suicide bomber storming any place they occupied with the author, it was decided to keep him hidden in undisclosed locations in the countryside.⁵⁰¹

On 16 February, thousands of demonstrators gathered outside the British embassy in Tehran and protested against the publication. The crowd was further incited by radical

⁵⁰⁰ House of Commons Hansard, 16 February, 1989, Column 489

⁵⁰¹ Baroness Frances D’Souza (House of Lords) Former Head of Article 19 and the Rushdie Defence Committee, unpublished diary and memories on her defence of Salman Rushdie “Fighting the Fatwa” (1989-1998), given to the author 14 November, 2004 (hereafter Baroness Frances D’Souza’s diary of “Fighting the Fatwa”)

Member of Parliament, Fakhreddin Hejazi, who addressed the demonstrators with the words that “Britain was the enemy of the Qur’an and Islam and the manifestation of all evil” and declared that “Iranians were disgusted at having relations with Britain.”⁵⁰² Thus, it became obvious that the *fatwa* represented more than a threat to a British citizen, as the Iranian government seriously considered the British government’s active involvement in the publication of the book. This was a view shared by many decision-makers in government and parliament and certainly amongst the Iranian *ulema*. On the other hand, the British were coming to a similar conclusion regarding Iran. During a meeting between British Chargé d’Affaires Nicholas Brown and senior Iranian diplomats, in which he expressed London’s grave concern at the *Ayatollah*’s death sentence, the Iranian government representatives found themselves unable to condemn or even distance themselves from the *fatwa*.⁵⁰³ Failure to do so reinforced Whitehall’s position that the *fatwa* represented more than revolutionary rhetoric and considered it as being supported by the Iranian government as well as parliament. On this basis the Foreign and Commonwealth Office summoned the Iranian Charge d’Affaires in London and protested “in the strongest terms” over *Ayatollah* Khomeini’s death threat and indicated that recent moves toward establishing closer relations with Iran would be shelved. For the Foreign and Commonwealth Office (FCO) it proved impossible to “establish a normal relationship with Iran while the Iranian Government failed to respect fully international standards of behaviour.” It was decided not to build up the embassy in Tehran, thus showing Tehran how unacceptable a threat it considered the *fatwa*.⁵⁰⁴ It should be noted that from the onset the *fatwa*’s impact was not confined to Anglo – Iranian relations. Rather it created worldwide turmoil both on an intellectual and political level. The American based human rights organisation PEN immediately started to lobby the British government to secure the safety of Rushdie and defend his freedom of speech. Viking-Penguin’s New York offices had to be closed for an hour after bomb threats. Pakistan announced a concerted action among Islamic nations to achieve a worldwide ban of the “Satanic Verses” and the Iranian Embassy appealed to Pope John Paul II to intervene and

⁵⁰² IRNA, 16 February, 1989

⁵⁰³ The New York Times, 17 February 1989; Given Khomeini’s status in Iranian politics, it was impossible for any Iranian official to condemn the *fatwa*.

⁵⁰⁴ FCO press statement, cited from The New York Times, 17 February 1989

block any further publication of the book in Italy.⁵⁰⁵ Nevertheless, it was up to Britain to deal with the issue and to find a solution to the impending diplomatic crisis.

Following Britain's protest, President Ali Khomeini carefully moved to de-escalate the situation, which he realized was increasingly being exploited by the radical camp and suggested that if Rushdie repents and apologised to Muslims it would be possible that the people may pardon him. Likewise Iran's Charge d'Affaires, Muhammad Mehdi Akhoond Zadeh Basti, described Khomeini's execution order as "purely religious statement" which was not meant as a political gesture against Britain.⁵⁰⁶ Given the fact that Iranian diplomats worked hard on the rapprochement with Britain, it seems that its diplomatic corps was somewhat frustrated by the *fatwa* and thus tried to carefully manoeuvre between diplomatic courtesy and Khomeini's authority. Nonetheless, given earlier consultations with Iranian diplomats, this move did little to impress the FCO. Rushdie, however, was advised to issue a statement of regret. Whilst his previous statements emphasised the philistine nature of governments and individuals, which have banned and condemned the book, Rushdie moved on to sound more apologetic:

As author of the Satanic Verses I recognize that Muslims in many parts of the world are genuinely distressed by the publication of my novel. I profoundly regret the distress that publication has occasioned to sincere followers of Islam. Living as we do in a world of many faiths this experience has served to remind us that we must be conscious of the sensibilities of others.⁵⁰⁷

To the frustration of some officials in the Iranian Foreign Ministry and certainly to the dismay of the British FCO and Rushdie, Khomeini rejected Rushdie's statement as falling short of the public repentance required for a pardon and added that "It is incumbent on every Muslim to employ everything he has got, his life and his wealth, to send him to hell."⁵⁰⁸ For British Foreign Secretary Sir Geoffrey Howe Khomeini's reiteration of the threat in such manner was "an attack not only on the author and publishers of the book, but on the fundamental freedoms for which our society stands: the

⁵⁰⁵ see Article 19 Carmel Bedford (ed), *Fiction, Fact and the Fatwa – 2000 Days of Censorship*, (Article 19 International Centre against Censorship, August 1994), pp. 2-3

⁵⁰⁶ *IRNA*, 18 February, 1989

⁵⁰⁷ *The New York Times*, 19 February, 1989

⁵⁰⁸ *IRNA*, 19 February, 1989

freedom of expression, religious tolerance and the rule of law. “⁵⁰⁹ The British government then quickly moved to gain support from its European allies, thus seeking a more powerful forum as well as attempting to rid itself of some of the burden the British author had brought upon the Tory government.⁵¹⁰ Following a General Affairs Council Meeting on 20 February, a joint statement was issued by the 12 Ministers of the EU. In unprecedented unity they condemned, what they called “incitement to murder” and regarded it as “an unacceptable violation of the most elementary principles and obligations that govern relations among sovereign States “ underlining that “such behaviour” was “contrary to the Charter of the United Nations”. Whilst the resolution paid respect to the religious feelings of all peoples, the European Union statement also emphasised that “ they remain fully committed to the principles of freedom of thought and expression within their territories” and that the member states “will ensure the protection of the life and properties of their citizens” and that “in no case will they accept attempts to violate these basic rights.”⁵¹¹ More than anything else, the declaration established that what was at stake was freedom of speech and ultimately served as the normative basis on which British diplomacy towards Iran would thereafter be founded. Following this meeting the immediate strategy was to recall the heads of missions from the 12 member states in Tehran and at the same time to restrict the freedom of movement of Iranian diplomats in member state countries.⁵¹² From the onset of the crisis, however, the British government was aware that its power to sway Iran was somewhat limited and any diplomatic strategy had to take this into consideration.

5. A Question of Power: How to Confront Iran?

Secretary Howe’s statement that “it is neither possible nor sensible to conduct a normal relationship with Iran”⁵¹³ prompted the break of British Iranian relations. With reference to Iran’s continuous failure to renounce the use or threat of violence, the FCO asked the

⁵⁰⁹ House of Commons, Hansard, 21 February, 1989, Column 839

⁵¹⁰ It should be noted that the Common Foreign and Security Policy (CFSP) of the European Union was not established until 1993 with the Treaty on European Union signed at Maastricht.

⁵¹¹ Bulletin EU, 2- 1998 , paragraph 2.4.3

⁵¹² House of Commons Hansard, 21 February, 1989, Column 839-840

⁵¹³ *ibid*; In his memoirs Howe describes this decision as “there was no option but to put this relationship back into the icebox”. Geoffrey Howe, Conflict of Loyalty, (London, Macmillan, 1994), p. 512

Iranian Ministry of Foreign Affairs to withdraw their Chargé d'Affaires and the other Iranian-based member of his staff from London on 28 February.⁵¹⁴ Britain had withdrawn its entire diplomatic staff from Tehran on 20 February and requested the Swedish Embassy in Tehran to protect its interests. Referring to the Swedish offer to act as Protecting Power for Britain in Iran, the cable sent to the Swedish Foreign Ministry by the British Embassy in Stockholm read:

Her Britannic Majesty's Government would be grateful for formal confirmation that the Swedish Government will consent to this arrangement in accordance with Article 45 of the Vienna Convention. As the British Embassy staff are to withdraw as a matter of some urgency [...] ⁵¹⁵

The Iranians eventually reciprocated by 1 March with a parliamentary declaration, which gave Britain one week to withdraw support for the book and its contents or face a break in diplomatic relations.⁵¹⁶ The official statement was given to the Swedish Embassy in Tehran and cabled to the FCO and read as follows:

From the date of approval of this law, if the British government does not officially declare, in a maximum period of a week, its opposition to the unprincipled stands against the worlds of Islam, the Islamic Republic of Iran and the contents of the anti-Islamic Book "The Satanic Verses", the Foreign Ministry of the Islamic Republic of Iran is obliged to break all bilateral political ties. ⁵¹⁷

Britain's refusal to do so lead the Iranian Foreign Ministry to formally break relations on 8 March, 1989.⁵¹⁸ The Swedish Flag had been raised at the British Embassy the day before⁵¹⁹ and the Swedish Ambassador presented its compliments to the Iranian Foreign Ministry the day after the parliamentary deadline:

⁵¹⁴ House of Commons, Hansard, 9 March, 1989, Column 895

⁵¹⁵ Note sent from the British Embassy to the Swedish Foreign Ministry, Note No:55 Utrikesdepartement, No 52/001, 21 February, 1989 all correspondence documents between the Swedish and British government were given to the author by Tommy Lindberg, Regierungskansliet (Swedish Foreign Office, Archives, Stockholm), 27 December, 2005

⁵¹⁶ IRNA, 1 March, 1989

⁵¹⁷ Cable from Swedish Embassy to the FCO, Ambassaden Teheran to Utrikesdepartement ACF Cable B-AVD, 1989-03-01.

⁵¹⁸ The New York Times, March 8, 1989

⁵¹⁹ Cable sent from Swedish Embassy in Tehran to Foreign Office, Stockholm, MSG No: 890307-340, Pol IV/Kr Ganslandt, eo, 1989-03-07, Misio Tehran, exp 890303/eo

As was stated in the Notification by the Swedish Embassy of February 16 1989 (No 49/89), the Swedish Government has been requested to temporarily assume the responsibility to protect the British interests in Iran. [...] Following the Breaking of the diplomatic relations between the Government of the Islamic Republic of Iran and the United Kingdom of Great Britain and Northern Ireland the Embassy hereby requests [...] the formal approval of the aforesaid assumption of British representation. [...].⁵²⁰

With the break of bilateral relations, the British government also expelled a number of Iranians living in the UK. On security grounds, the FCO and the Home Office decided that twenty Iranian citizens, resident in the UK, were required to leave the country. Moreover, the Home Secretary demanded to keep the activities of remaining Iranians in the UK under very close review and it was decided that further action towards these individuals could be taken as necessary.⁵²¹ Most of the Iranians who had been deported were students, who had been working as locally employed staff at the Iranian Embassy in London. The decision to deport these students was not merely to communicate to Tehran how unacceptable a threat the British governments viewed the *fatwa*. Rather it was grounded in genuine security concerns. According to the Home Office, most of the students had been affiliated with Iranian intelligence and were believed to have been plotting to execute the *fatwa*. This conclusion seemed to have been largely based on evidence, which showed that they had been strengthening the activities of different *Shi'a* and revolutionary organisations in the United Kingdom, most notably the “Islamic Students Society”. This group in particular was under close scrutiny as it declared itself prepared to carry out the death sentence against Rushdie.⁵²² Whilst these actions reflected determination on behalf of the British government, the British Foreign Secretary’s remarks on a radio interview on 9 March, ironically, also reflected the government’s first signs of disenchantment at being Rushdie’s unsolicited advocate. In an effort to somewhat appease the volatile situation of British-Iranian relations, Foreign Secretary Howe commented that:

⁵²⁰ Cable Sent from Swedish Embassy in Tehran to Foreign Office, Stockholm, MSG No: 890309-330, B-avd, Larsson, 1989-03-09 Ex t: Britt amb, relex t: London exp 890309

⁵²¹ House of Commons, Hansard, 9 March, 1989, Column 895; That day the Iranian Government was also asked to close their Consulate General in Hong Kong; Cable sent from the Swedish Embassy in London to the Foreign Ministry in Stockholm, MSG No: 890309-576, London, to UD/B-AVD, 1989-03-09

⁵²² *ibid*

We understand that the book itself has been found deeply offensive by people of the Moslem Faith. [...] The British government, the British people, do not have any affection for the book, which is extremely critical, rude about us. It compares Britain with Hitler's Germany. We don't like that any more than people of the Moslem Faith like the attacks on their faith contained in the book.⁵²³

Evidently, the attempt to adopt the posture of an equally injured party did little to solve the deadlock. On the contrary, to a certain degree it actually endorsed Khomeini's death sentence and must have seemed alarming for British and international human rights NGOs, which were about to launch their lobbying campaign against both the British and Iranian government.

5.1 Britain and Iran: Economic Interdependence

Essentially, the break of political relations was the premise on which Britain now had to change its defence export policy towards this country.⁵²⁴ After the Iran-Iraq war, Britain had decided adopting a more flexible approach to arms sales to the two states. The exchange of notes between the FCO, MoD and DTI, which followed the diplomatic break of bilateral relations, may only concern the adjustment of Britain's defence export policy to Iran. It does, however, help to demonstrate to what extent economic and political levels of interdependence between Britain and Iran influenced overall British diplomacy towards that country.

By and large, two important factors, besides the principles involved, proved important for the Thatcher government in mapping out a strategy was the situation of British hostages in Lebanon and prisoners in Iran and the overall trading prospects that post-war Iran had to offer.

On 3 March, Lord Howe sent a Minute to the Prime Minister examining the various options of by the Government "in the event of further Iranian outrages". One of the

⁵²³ *Financial Times*, 9 March, 1989

⁵²⁴ After the ceasefire between Iran and Iraq, the British government had just relaxed the guidelines of defence equipment exports to both countries.

options was a “Defence Sales Embargo” which did not seem desirable to the Foreign Secretary. He commented in his note that an “ embargo on lethal equipment is in force since 1985.” Having consulted with senior Ministers at the FCO, Lord Howe’s statement of 7 March indicated that with regards to a “ban on military equipment [...] we could take the opportunity of the Iranian break in relations to halt all residual military sales. But the disadvantages outweigh the advantages.” Since the military sales only constituted £ 1 m in 1988, Lord Howe concluded that “any actions by us would be presentational rather than substantial. More significant, it could provoke the Iranians to take to arbitration their substantial claims [...] against IMS [International Military Services Limited], which could amount to as much as £220 million.”⁵²⁵ At the meeting of the Inter-Departmental Committee (IDC) held on 14 March, the implications of the Rushdie affair were discussed. Whilst the Summary Record of this meeting stated that the possibility of a defence sales embargo was a matter for the MISC 118 committee, they agreed that:

[..] in the present uncertain circumstances the more flexible implementation of the guidelines which Ministers had decided to take since the ceasefire would no longer be appropriate for Iran. The exact nature of the new guidelines for Iran would have to be agreed once it was known where the downward spiral in bilateral relations began to level out. In the meantime, the IDC agreed to recommend that decisions of all defence-related export license applications be deferred.⁵²⁶

With regards to strategic considerations of the British government, a dilemma was evident. On one side, Britain was concerned about the safety of its Armilla Patrol⁵²⁷ in

⁵²⁵ The Right Honourable Sir Richard Scott, Report of the Inquiry into the Export of Defence Equipment and Dual-Use Goods to Iraq and Related Prosecutions, HMSO House of Commons 115, Volume 1-5, (15 February, 1996) paragraph D3.66, pp.399-400; hereafter the Scott Inquiry

⁵²⁶ Summary Record of the Inter-Departmental Committee on Defence Sales to Iran and Iraq, 14 March 1989, (Secret), Matrix Churchill Trial Reference Number 000148, given to the author by Special Collections, University of Bradford; Generally the guidelines adopted by the British government in 1984 towards defence equipment towards Iran and Iraq were as follows:

1. We should maintain our consistent refusal to supply any lethal equipment to either side.
2. Subject to that overriding consideration, we should attempt to fulfil existing contracts and obligations.
3. We should not, in future, approve orders for any defence equipment which, in our view, would significantly enhance the capability of either side to prolong or exacerbate the conflict
4. In line with this policy, we should continue with the supply of defence equipment to Iran and Iraq.

quoted from Davina Miller, Export or Die – Britain’s Defence Trade with Iran and Iraq, p. 65

⁵²⁷ The “Armilla Patrol” is a Royal Navy escort vessel and was sent to the Persian Gulf as a response to the increased danger to British shipping and other British interests during the Iran –Iraq war.

the Persian Gulf and the threat the naval branch of the Islamic Revolutionary Guard Corps (IRGC) would pose if the FCO were to adopt a hard-line stance towards Iran. On the other hand, diplomatic efforts to appease Iran would be jeopardized if such ban had been made public policy. Whitehall was also wary of public opinion, which it deemed would have opposed any major arm sales to Iran if regulations were made public. As the IDC record remarked:

[...] the MoD might conclude that the increased risk or renegade IRGC activity in the Gulf required a reintroduction of the ban on sales to the Iranian navy. There would also be major presentational difficulties involved in any large-scale defence exports to Iran for some time.⁵²⁸

The decisive decision by the IDC meeting of 14 March was that “we should not penalize Iraq for the crisis with Iran, and so should continue to use the more flexible interpretation with Iraqi applications”.⁵²⁹ What followed, however, was not a firm direction resulting from this assessment, but a continued debate on how to deal with Export License Applications (ELA) for exports to Iran. This uncertainty is reflected in a note sent on 23 March, 1989 from the FCO to the British embassy in Baghdad “Ministers were prepared, with some reservations, to adopt the more flexible approach to defence sales “ but that “the Salman Rushdie affair has forced us to rethink, and it is likely that we shall have to return to a more strict approach to Iran..”⁵³⁰

Generally, with regards to economic British-Iranian interdependence during the post-war period, two trends were apparent. One was that, even if Iran had not been highly dependent on oil rents to create foreign exchange, it could have not used the oil weapon against Britain, which by the early 1980s had become self-sufficient with regards to hydrocarbon energy. The other economic fact, however, was that following the Iran-Iraq war, Britain was careful about jeopardizing future trading prospects with Iran, particularly with regards to defence goods. This generated potential of diplomatic leverage on both sides.

⁵²⁸Summary Record of the IDS, Matrix Churchill Trial Reference Number 000149, p.84

⁵²⁹ *ibid*, p. 85

⁵³⁰ Scott Inquiry, D3.71

By 1989, exploitation of North Sea oil produced 91.0 millions tonnes, which constituted a 3% share of world production and managed to cover British national energy consumption of oil, which in the same year had reached 81.7 millions tones.⁵³¹ In the same year Iran produced 142.2 million tonnes, a 4.6 % share of world production.⁵³² Particularly, the increase of crude oil prices from \$15 per barrel in 1988 to \$18 per barrel in 1989⁵³³ proved beneficial for Iran, which significantly depended on oil rents to rebuild its war torn economy. Above all, the refining industry was badly damaged during the war, effectively putting the Abadan, Esfahan and Tabriz refineries out of action. More crucially, however, oil export facilities had proven equally vulnerable to Iraqi air raids during the war, both on Kharg Island and on Iran's mainland. Therefore, following the ceasefire in August 1988, the National Iranian Oil Company (NIOC) began to rebuild its damaged oil export facilities in order to catch up with shortages of foreign exchange.⁵³⁴ Thus, oil was not an asset of diplomatic leverage for Iran, as it desperately needed foreign exchange and investment.

Neither was Britain, which by 1988, due to its hydrocarbon energy self-sufficiency, only imported 3381 thousand metric tons of crude oil from Iran, in a position to threaten to reduce oil imports from that country. However, this was not the case for Britain's European allies. In 1988, German, French, Dutch and Italian crude imports from Iran constituted a total of 18,378 thousand metric tons.⁵³⁵ By March, the French government quietly signalled its major oil companies Total and Elf Aquitaine to slow the purchase of Iranian oil. Since France had just lifted its oil embargo after the ceasefire, it was evident that the decision reflected the common European stance against the death threat, as well as being seen as an attempt not to be at the forefront of those states buying Iranian oil during a diplomatic crisis. Likewise, Japan directed its oil companies to reduce by a third the amount of oil they had been buying from Iran, reducing its purchases to 200,000

⁵³¹ BP Statistical Review of World Energy, June 1992, p. 7; BP Statistical Review of World Energy, June 1990, p.4

⁵³² BP Statistical Review of World Energy, June 1990, p.4

⁵³³ *ibid*, p.1

⁵³⁴ Economist Intelligence Unit, Country Profile Iran, 1989-90, (EIU, 1990), pp.30-33

⁵³⁵ 1989 Energy Statistic Yearbook (New York, United Nations), p.160

barrels a day.⁵³⁶ Whilst both decisions had only modest short-term economic impact and could have been exploited more fully, they did, nonetheless, convey a decisive message to Tehran.

The situation with regards to wider European-Iranian and particular British-Iranian trading relations however was a different matter. After West-Germany, and Japan, Britain had become one of Iran's major trading partners. In 1988 Britain exported \$ 441 US million worth of goods to Iran and imported \$249 US million and by 1989 exports from the UK to Iran stood at \$421 US million and imports to the UK rose to \$410 US million.⁵³⁷ Therefore, most West European countries, in particular Britain, enjoyed good trade relations with Iran. What was also evident to policymakers in Britain and elsewhere in Europe was that Iran was highly dependent on imported goods, which it needed for its reconstruction efforts and which were mainly chemicals and pharmaceutical products, iron steel and manufactures as well as road vehicles and machinery and defence related equipment. When the governments of the European Union member states were confronted with the threat against Rushdie, an appreciation of such economic weight certainly came into play when tabling the common stance against Iran. In particular, Iranian dependence on credit lines during the early post war period was substantial and appreciated by Europe. What could have been exploited as a viable strategy of conditional reciprocity and hence would have qualified as constructive engagement (in line with the theory) were initial European threats at depriving Iran of such credits. Immediately, following the fatwa, West German, French, Spanish, Dutch and Japanese delegations all stopped scheduled economic negotiations with Tehran, depriving the Iranian government of \$3 billion to \$4 billion in credit lines that it had hoped to secure from those countries over the next few months.⁵³⁸ What was more, the German government under Chancellor Kohl, which at this point was Iran's largest trading partner, suspended talks on the financing of some of Iran's large-scale reconstruction projects. The German government indicated further that the state guaranteed exports credits to

⁵³⁶ The New York Times, 3 March, 1989; The New York Times, 2 March, 1989; In 1988 Japan imported a total of 9379 thousand metric tons of crude from Iran making it Iran's second biggest importer of oil. 1989 Energy Statistic Yearbook (New York, United Nations), p.160

⁵³⁷ IMF Direction of Trade Statistics, (IMF, Yearbook 1991) p. 227

⁵³⁸ Frankfurter Allgemeine Zeitung, March, 3, 1989

German exporters of goods to Iran would not be available. At that time, Iran was seeking as much as to \$ 2 billion in credits from West Germany.⁵³⁹ As will be shown, however, these threats did not translate into a coherent pan-European strategy at extracting concessions from the Iranians. Rather what would have been an effective exploitation of asymmetrical interdependence by European creditor countries gave way to unconditional trading and provisions of credits to Iran.

Evidently, military requirements, in particular, became increasingly important for Iran during the 1980s, constituting as much as 30-40 % of all imports by 1985.⁵⁴⁰ Iran was first and foremost concerned about its security and the post-war situation with Iraq. As far as the government in Tehran was concerned, the ceasefire with Iraq was fragile. The most crucial impediment for Foreign Minister Velayati and his negotiators to agree on a lasting peace agreement within the framework of Resolution 598 was Iraq's continuous attempt to abrogate the 1975 Algiers accord, which fixed the international border down the Shatt al-Arab waterway. Velayati claimed that as much as 2600 square kilometres are still being occupied by Iraqi troops despite the provisions of the Security Council Resolution. Moreover, navigation in the waterway was not possible due to the number of wrecks and hulks in the channel. Another urgent problem for both sides was the situation of POWs, which at that point had still not be exchanged.⁵⁴¹ The stalemate over the waterways and Iranian frustration at the UN Security Council for failing to enforce Resolution 598 ensured that bilateral relations remained tense and thus did not provide for the immediate implementation of any sustainable peace agreement. Thus, both sides were too aware of the unstable ceasefire and therefore concerned about their respective security and new alliances. As stated earlier, Iran, in particular, was seeking a new post-ceasefire role in the Persian Gulf and essentially attempted to create a regional axis in full partnership with the Arab states to ensure that outside powers were excluded and, by implication, that Iraq too was kept under some form of constraint by its close neighbours.

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⁵³⁹ Economist Intelligence Unit, Country Profile Iran, 1989-90, pp.30-33

⁵⁴⁰ *ibid*, pp.41-42

⁵⁴¹ Economist Intelligence Unit, Country Report Iran, No.1 1990, (EIU, 1990) p. 7

⁵⁴² *ibid*

The British government was aware of such Iranian aspirations as well as of the fact that rearmament and reconstruction of Iran's military infrastructure was a fundamental premise for any such political ambition. Therefore, as a major defence exporter, the Thatcher government enjoyed some considerable leverage over Iran, but at the same time saw endless opportunities for selling highly government regulated military equipment to that country.

Developments in the Rushdie affair and the assessment of the impact on trade relations were further discussed at the IDC meeting on 23 March. Following the break in relations, the FCO reported that "Tehran had not imposed economic sanctions, but Lloyds Bank had reported signs of Iranian transferral of assets out of the UK." Moreover, "there had been difficulty in opening Letters of Credit [in Iran]." ⁵⁴³ The MoD reported that the "Iranians were still anxious to press ahead with the Plessey Radar Project but would perhaps be prepared to let the project ride until circumstances became more favourable" ⁵⁴⁴ Against this background, it was recorded under the heading ELAs for Iran: "In accordance with the IDC recommendation of 14 March, the MoD Working Group has made its recommendations for Iranian application on the assumption that the IDC would return to the strict implementation of the guidelines which operated before the ceasefire." Since FCO Under Secretary Mr Waldegrave recommended in his letter to Mr Clark and Lord Trefgarne at the MoD to defer all applications for Iran until mid-April, the IDC recommended that ELAs for Iran be deferred with the exceptions of where the MoD Working Group had already recommended refusal of an ELA for Iran and except where it was content that an application was completely innocuous and without military application. ⁵⁴⁵ Eventually, government policy was made firmer and clearer by Mr Waldegrave's letter of 28 March to Mr Clark, which read "As a result of the ceasefire we agreed in February to interpret the export guidelines more flexibly so as to refuse orders for non-lethal equipment only if they would be of direct and significant assistance to

⁵⁴³ Summary Record of the Inter-Departmental Committee (IDC) on Defence Sales to Iran and Iraq, 23 March 1989, (Secret) Matrix Churchill Trial Reference Number 000160

⁵⁴⁴ *ibid*

⁵⁴⁵ Matrix Churchill Trial Reference Number 000160; Matrix Churchill Trial Reference Number 000161

either side in the conduct of offensive operations in breach of the ceasefire.”⁵⁴⁶ Lord Trefgarne agreed with the proposal in the FCO Minister of State’s letter and confirmed in his agreement that “we should interpret the guidelines more flexibly as you propose in respect of Iraq” and “that we should revert to a stricter interpretation of the guidelines along the lines before Iran accepted Resolution 598.” His letter continued “As for the exact form of the restricted interpretation should take, I would suggest that instead of a blanket embargo on any kit intended for the Iranian navy or IRGC, as we had before the ceasefire, we should stop anything which we believe would pose a direct threat to the Armilla Patrol.”⁵⁴⁷

The DTI, however, was unenthusiastic about Mr Waldegrave’s proposals for Iran. A letter from a Minister at the DTI stated that “as a result of the Rushdie affair both the FCO and the MoD have sought to back pedal on the Ministerial agreement reached on 20 December for a more relaxed application of the guidelines controlling the sale of defence equipment to Iran and Iraq” and added that “The Minister may prefer to reject the proposed hardening of the line against Iran.” Eager to secure a green light to supply Iran with non-military equipment including civil aircraft and helicopters and spares, communications equipment of all types, radar systems and all defensive military equipment, the note concluded that “the FCO proposals, whilst having considerable political attraction would be most unwelcome to UK exporters.”⁵⁴⁸ Moreover, the department’s concerns reflected the fact that EC Foreign Ministers agreed on 20 March that their heads of mission, who had been temporarily withdrawn from Tehran for consultations, could return to Iran. They carried a strong message that the Iranian death threats remain unacceptable,⁵⁴⁹ but, had reestablished their presence and thus were able to continue their countries’ respective economic policies towards Iran. On 24 April, a meeting between FCO ministers was arranged, which proposed “to adopt “relaxed” implementation of existing guidelines in respect of Iraq, and return to restricted

⁵⁴⁶ The Scott Inquiry, D3.73

⁵⁴⁷ The Scott Inquiry, D3.75

⁵⁴⁸ ibid, D.3.77

⁵⁴⁹ see statement by Mr Waldegrave, House of Commons, Hansard, 4 April, 1989, Column 12;

implementation for Iran.” The proposal also listed three FCO objectives with regards to the strategy towards Iran:

- To agree the FCO’s proposals
- To resist DTI calls for guidelines to be lifted
- To remind MoD and DTI that FCO has additional concerns (human rights, CW [Chemical Warfare]) beyond the guidelines [...]⁵⁵⁰

It should be noted that from the onset of the crisis, the FCO condemned the situation of human rights abuses in Iran and reminded Tehran that “anyone living in this country [Britain] lawfully and abiding by our laws and institutions, is entitled to the full protection of the law against threats or the actuality of violence.”⁵⁵¹ Thus the *fatwa* was directly linked to the continuous violation of human rights in Iran⁵⁵² and at the same time emphasised the rule of law in Britain and, thus, Rushdie’s rights. Another priority for the FCO decision-making process was the fragility of the ceasefire and the fact that the original guidelines were not “appropriate for [...] dealing with the Rushdie affair [...]”⁵⁵³ It was also for this reason that three Royal Navy ships and one Royal Fleet Auxiliary Vessel continued to being deployed in the Persian Gulf.⁵⁵⁴

⁵⁵⁰ The Scott Inquiry, D3.80

⁵⁵¹ House of Commons, Hansard, 9 March, 1989, Column 898

⁵⁵² Whilst the Special Rapporteur noted that Khomeini granted amnesty to 2500 political prisoners on the occasion of the 10th anniversary of the Revolution, it was estimated that up to 900 remained in prison. Waves of politically motivated executions were also reported to have taken place, most of which, it was alleged, had been disguised as referring to offences of drug-trafficking in order to avoid international condemnation. In 1989, more than 1500 executions were officially announced, most of which referred officially to drug offences. Interim Report on the situation of human rights in the Islamic Republic of Iran, prepared by the Special Representative of the Commission of Human Rights in accordance with Commission Resolution 1989/99 and Economic and Social Council decision 1989/148 UN Doc.A/44/620, 2 November 1989; paragraphs 64-65, paragraph 111

⁵⁵³ Letter sent from Mr Clark to Mr Waldegrave, 24 April 1989, The Scott Inquiry, D3.82; In fact, more than linking any newly changed policy to the *fatwa*, the FCO was also concerned about the fragility of the ceasefire and British interests in the region. As noted in Mr Waldegrave’s letter to Mr Clark: “ But for the reasons I described - the fragility of the ceasefire while no progress is made in the negotiations, and the importance of not supplying the kind of offensive equipment which might enable or induce either side to renew hostilities – we nevertheless concluded that it was not right at the present to withdraw the [stricter] guidelines, and that it was preferable not to have to announce publicly any change in them.” Letter from Mr William Waldegrave to Mr Alan Clark, Foreign and Commonwealth Office (Confidential) Matrix-Churchill Trial Reference Number 000169, 27 April, 1989

⁵⁵⁴ *see* House of Commons, Hansard , 11 April 1989, Column 721

Eventually, the FCO's insistence on holding on to the stricter guidelines paid off and the Minister reached an agreement on 24 April 1989, which was reflected in a submission on "UK policy on Iran/Iraq" dated 28 April 1989 drafted by Lord Howe. In his draft Mr Young advised that "in view of the worse recent behaviour of Iran (relative to that of Iraq) and the subsequent collapse of bilateral relations, even-handedness is no longer possible, particular over arms sales" and continued in his remarks that "we are not contemplating a major change of policy. Given the fragility of the ceasefire and the risk of resumed hostilities while there is no progress towards a negotiated settlement, the existing guidelines on arms sales will remain in place." He contended that while "exports of defence equipment to Iran will be a trickle, we can afford a degree of flexibility in dealing with defence export applications for Iraq."⁵⁵⁵ In parliament, Waldegrave eventually announced that "the guidelines on the export of defence equipment to Iran and Iraq are kept under constant review, and are applied in the light of the prevailing circumstances"⁵⁵⁶ thus implying that the guidelines applied equally to both countries. While in fact Britain had tilted toward Iraq.

5.2 Britain – Iran: Political Considerations and Leverages

The reluctance to choose an overtly confrontational position towards Iran, namely the decision not to make the revised interpretation for Iranian ELAs public, also reflected two political considerations. One was the FCO's appreciation that bilateral relations had reached such a volatile juncture that any diplomatic initiative would have been futile from the start and possibly made matters even worse. Evidence of this was Khomeini's unremitting stance on the *fatwa*, which prevented any attempt at de-escalation from either side. The second important political factor was the situation of the British hostages in

⁵⁵⁵ The Scott Inquiry, D3.85

⁵⁵⁶ Letter from Mr William Waldegrave to Mr Alan Clark, Foreign and Commonwealth Office (Confidential) Matrix-Churchill Trial Reference Number 000170, 27 April, 1989

Lebanon and the role Iran played, as an intermediary between western governments and the *Hezbollah*, as will be discussed below.

5.2.1 Futility of Conditional Diplomacy in the Immediate Aftermath

Weeks after he had issued the *fatwa*, which was the period when British policymakers were discussing options, Khomeini declared that the “dispute over the Salman Rushdie novel “The Satanic Verses” proved that it was pointless to pursue moderate policies in an attempt to win favour abroad.” Reiterating his calls for the death of Rushdie to senior clergy members, he declared that compromises on what were the fundamental principles of the Islamic Republic of Iran might lead true followers of Iran to “feel the Islamic Republic is retreating from its principal stands.” He further confirmed that the revolutionary aims that had guided Iran for the last decade, remained its guidelines and that the actions of members of the European Community in supporting Rushdie’s right to publish the book and their opposition to the death sentence, were “desperate attempts” to defeat Islam.⁵⁵⁷ It was evident that radicals had successfully exploited Khomeini’s continuous endorsements in support of the *fatwa* culminating in a letter signed by 115 *Majlis* deputies, in which they asked the government:

[To] take a mighty and steadfast stand against this blatant aggression aimed at the sanctity of our spirituality and convictions. [Policymakers] must do so not reactively but aggressively [...] Continuation of the policy of keeping aloof from the great Satan, rejection of any thought of friendship with the arch enemy, the cutting off relations with colonialist Britain, and reciprocal actions toward the stances and plots of European countries [...] ⁵⁵⁸

Whilst Rafsanjani tried to somewhat deescalate the situation by endorsing Iranian commitment to relations with Europe,⁵⁵⁹ the pragmatists were in no position to make any

⁵⁵⁷ *IRNA*, 22 February. 1989

⁵⁵⁸ Bahman Baktiari, *Parliamentary Politics in revolutionary Iran*, p.168

⁵⁵⁹ On 18 February 1989, Rafsanjani welcomed a French delegation and publicly stated that “relations between the two countries can be reciprocal and sincere if forged on the basis of mutual interests.” *IRNA*, 19 February, 1989; *see also* *ibid*

meaningful diplomatic gestures and certainly were in no position to distance themselves from the *fatwa*. Likewise, *Ayatollah* Ali Montazeri, who, at that time was still designated as the next Supreme Religious Leader of Iran, went so far as to publicly question the wisdom of the *fatwa*. During Iran's celebration of the first decade of the revolution, Montazeri said that internal repression and radical international policies were "grave errors that ruined the image of Iran and frightened the world by making it believe that our only objective is to kill."⁵⁶⁰ With the exception of religious heavyweights, such as Montazeri, Rafsanjani's pragmatist camp and his conservative allies had to appreciate Khomeini's absolute dominance over Iranian politics. In fact any diplomatic move to somewhat question the ruling would have had severe ramifications in terms of their factions' overall legitimacy and domestic political standing. By all accounts, negotiations with the Iranians proved futile as the government was in no position to even consider any of the demands raised by Britain.

5.2.2 Hostages

Whilst such domestic constraints largely dictated Iranian diplomacy, the government in Tehran did also enjoy substantial political leverage over Britain. This derived from Iran's role in Lebanon, where British subjects were still being held hostage. Iranian presence in Lebanon and support for *Hezbollah* initially was an effort to aid the resistance against the Israeli occupation of Lebanon, and had begun with the dispatch of Iranian Revolutionary guards in 1982. Based in the Bekaa Valley, the Iranians served as conduits for transferring financial and military assistance to *Hezbollah*.⁵⁶¹ Under Syrian acquiescence, Iranian IRG forces supported the group in establishing a network of social welfare and financial services for the *Shi'a* community. Funds from Tehran were, however, mainly used to provide sophisticated armaments and military training for *Hezbollahi* and Islamic Amal militiamen.⁵⁶² Between 1982 and 1992, the group launched

⁵⁶⁰ The New York Times, 23 February 1989

⁵⁶¹ Eric Hooglund, "Iranian Views of the Arab-Israeli Conflict", Journal of Palestine Studies, Vol.25, No.1 (Autumn, 1995), p. 92

⁵⁶² Magnus Ranstorp, Hizb'allah in Lebanon- The Politics of the Western Hostage Crisis, (London, Macmillan Press, 1997), p. 36; Daniel Byman, Jerrold D. Green, Political Violence and Stability in the Persian Gulf, (Santa Monica, RAND-Monograph Series MR-1021-OSD, 1999), pp.61-63

spectacular and deadly suicide attacks against Western and Israeli targets. Through the employment of various freelance hostage-taking cells they also adopted the tactic of taking Western hostages. According to Ranstorp, *Hezbollah's* sophisticated organisational framework was closely integrated with several key Iranian institutions, such as the Supreme National Security Council and the Office of the Islamic Liberation Movements, which provided for necessary weaponry and training. Whilst the *Hezbollah* should not be seen as a unitary rational actor as internal decision-making and tactics were mainly subject to the realities of the Lebanese civil war, Iran did enjoy considerable influence over the group. Thus the process of abduction and release of hostages reflected not only individual *Hezbollah* motives but was also often convergent with Iranian interests.⁵⁶³ However, what was also evident by 1989 was the fact that rivalry within the Iranian leadership had a direct result on the group's activities, most notably in the process of the release of hostages rather than in the actual abductions.⁵⁶⁴ Britain had been following a hard line policy of refusing to either conduct any negotiation with *Hezbollah* and its patrons or to concede to any demands, and only the ascendancy of Douglas Hurd as Foreign Secretary under John Major, and the release of all remaining French hostages in May 1988 brought an appreciation by the British government that communication was key to bringing the hostages home.⁵⁶⁵ The *fatwa* and the break of relations was, however, a turning point for the Thatcher cabinet in their management of the hostage situation. Hence, the decision not to disclose the new stringent guidelines towards Iran mainly reflected the concern to avoid further alienating the Iranians, which evidently served as the sole "intermediary" between Britain and the hostage takers. Both Lord Howe and Lord Trefgarne's expositions of the reasons to keep it undisclosed attributed a significant role to the plight of British hostages in Beirut and prisoners in Tehran and the concern "to do nothing that would have made their circumstances worse" as one of the reasons why there should not be a public announcement.⁵⁶⁶ Mr Waldegrave too, referred to the danger

⁵⁶³ Magnus Ranstorp, *Hizb'allah in Lebanon- The Politics of the Western Hostage Crisis*, pp.60 -61

⁵⁶⁴ *ibid*, p. 109

⁵⁶⁵ *ibid*, p. 142

⁵⁶⁶ *see* transcript of Lord Howe's oral evidence of 29 March 1994, Day 81, pp.158-159. Lord Trefgarne reiterated that the hostages were a pretty important consideration." Lord Trefgarne relied on Lord Howe's letter (although Lord How did not) to the Prime Minister of 31 August 1988 which said that: "Iran presents a rather more serious problem as the pace at which relations can grow depends above all on Iranian readiness to obey civilised rules of behaviour." Lord Trefgarne's Counsel submitted that this statement

to the hostages, “whose fate was in the hands of the Iranians” as one of the reasons for not announcing the stringent approach to Iran after the fatwa.⁵⁶⁷ Ultimately, the hostage situation carried considerable weight in Britain’s overall decision-making process. Given established channels of communication between Tehran and the *Shi’a* of Lebanon, if not the Iranian leadership’s relative authority over *Hezbollah*, there is no doubt that Iran was enjoying considerable leverage over the British government between 1989-1992. (i.e. from the declaration of the *fatwa* to the release of the last British hostages)

6. Conclusion

The *fatwa* constituted a diplomatic disaster for British-Iranian relations. Under the leadership of Khomeini, bilateral relations in 1989 had reached such a volatile stage, that Britain was left with no other option but to break relations with Iran. The same was true for Iran, which was increasingly alienated by the fact that, what religious and political elements amongst the Iranian elite considered to be an offence against the sacred, was so vehemently defended as a human right by Britain and Europe. The immediate period following the *fatwa* also reflected to what extent economic and political interdependences between both countries influenced British statecraft and the capability to sway Tehran. Findings indicate that, in addition to the principle of defending Rushdie’s freedom of speech, political and economic factors, which according to Foreign Secretary Howe were “ the plight of the hostages and prisoners, [and] the possible impact upon trading prospects”⁵⁶⁸ proved fundamental in crafting a strategy towards Iran. It is evident, that what was at stake for both countries were fundamental belief and value systems. It also became apparent during that period that the respective export and defence of either of those belief systems, was subject to power leverages caused by asymmetries of interdependence. It has also been shown that both governments were subject to domestic constraints thus preventing any diplomatic initiative aimed at deescalating the situation.

was a “portmanteau expression” which included the concern for the hostages in Beirut. See transcript of Lord Trefgarne’s oral evidence, 30 March 1994, Day 82, p.187-188, cited in Scott Inquiry, D3.107

⁵⁶⁷ Scott Inquiry, D3.107

⁵⁶⁸ The Scott Inquiry, D.3.108

By and large, Khomeini's *fatwa* proved an effective ruling to tilt the balance between pragmatists and the radical faction. Following the *fatwa*, the latter managed to regain political momentum after Khomeini had issued a series of edicts, which emphasized the republican character of the state. When radicals interpreted the "Satanic Verses" as a deliberate conspiracy by the British government against the Islamic Revolution calling Britain "the enemy of the *Qur'an* and Islam"⁵⁶⁹, pragmatists were in no position to seek a diplomatic solution.

⁵⁶⁹ statement by Majlis Deputy Fakhreddin Hejazi, IRNA, 28 February, 1989

Constructive Engagement: Hypotheses and Variables
CHAPTER FOUR

Hypothesis	Independent Variable	Dependent Variable
A. NA	NA	NA
B. NA	NA	NA
C. Political and economic interdependence between Britain and Iran affected power relations and ultimately affected Britain's ability to sway Iran.	The British government's perceived <i>vulnerability</i> to changes in the relationship with Iran, influenced Whitehall decision-making and overall strategy towards that country: Existing economic relations precluded the use of negative sanctions. The plight of the prisoners and hostages and the possible impact upon trading prospects following the end of the Iran-Iraq war, dictated a cautious and non-confrontational policy.	The British government was restricted to sway or influence Iran in a decisive manner. In an effort not to alienate Iran further and jeopardize British interests, the government chose not to publicly announce the changes in guidelines for arms-exports to Iran.
D. (i) Level I negotiations / decision making procedures were subject to domestic constituents in Iran.	a) Level II (domestic) "win-sets" were somewhat supported by "internationalist forces", but were considerably constrained by the "isolationist" camp. The latter enjoyed more influence over the former: Whilst the Iranian Foreign Ministry initially attempted to downplay the <i>fatwa</i> , the government was in no position to abrogate or distance itself from the ruling. On the contrary, because of active support for the <i>fatwa</i> and advocacy for the break of relations by parliament and Khomeini himself, the government too moved on to call for its implementations. b) NA	The Iranian government was neither willing nor in any position to meet any of Britain's demands concerning the <i>fatwa</i> .

<p>D. (ii) Level I negotiations / decision making procedures were subject to domestic constituents in Britain.</p>	<p>a) Level II (domestic) “win-sets” were somewhat supported by “internationalist forces” (MoD, DTI), but were considerably constrained by the “isolationist” camp (FCO): Inter-bureaucratic bickering between the MoD, DTI and FCO reflected the differences in departmental agendas and interests towards Iran. Contrary to the MoD and DTI who were eager to exploit the post-war Iranian market as well as protect existing British commercial interests, the FCO advocated a more confrontational Iran policy. Because of the plight of the prisoners and hostages, increasing public support for Rushdie’s right to freedom of speech, and the overall normative issue at stake, the FCO’s position of implementing stricter guidelines for ELAs to Iran (even if not made public) was eventually adopted.</p>	<p>The British government became Rushdie’s unsolicited advocate and considered Iranian rhetoric and behaviour as adverse to British interests.</p>
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CHAPTER FIVE

HUMAN RIGHTS VIOLATIONS AND THE GERMAN CONNECTION: THE YEARS 1990-1994

1. Introduction

Essentially, the furore the Satanic Verses had caused, reflected a deeper debate about the limits of freedom of speech. The contestation amongst intellectuals, politicians and religious figures, which took place in Britain, places the Rushdie affair within the overall discourse between human rights and religion and, most importantly, shows to what extent the British government was confronted at home both by advocates of Rushdie, who lobbied the government into publicly upholding his freedom of expression as well as opponents, who denounced what they regarded as a blasphemous text and consequently sought to have it banned.

2. Freedom of Speech vs. Blasphemy: The UK-Debate and Britain's Verdict on Rushdie

Similar to the *Shar'ia*, in England and Wales, blasphemy and blasphemous libel is considered a common law offence with an unlimited penalty.⁵⁷⁰ The legal notion of blasphemy dates back to when faith was seen to be the root of society's political and moral behaviour and any offence against it was to seriously threaten the very fabric of political and moral society. No blasphemy case has been reported since the passage of the Human Rights Act in 1998 (incorporating elements of the European Convention of Human Rights)⁵⁷¹ It should also be noted that the current law only protects Christianity as the established churches espoused it, and does not cover any other denominations or

⁵⁷⁰ It should be noted that there had been no prosecution under this law from 1922 until 1977, which made it possible to consider the offence obsolete. It was only in 1979 that the House of Lords upheld the conviction of the editor and publisher of *Gay News* for printing a poem depicting homosexual acts with Christ's body after death. This verdict was justified under the premise that a rational discussion of religious matters should be free, but not insults which cannot provoke a reasoned response and so contribute nothing to a worthwhile debate. It is obvious that it is very difficult to defend such a distinction between a rational and emotive discourse. Another difficulty from the perspective of freedom of speech is that it is unnecessary for the prosecution to prove that the publisher intended to outrage the feelings of Christians. *see* Eric Barendt, *Freedom of Speech*, pp.186-187

⁵⁷¹ Select Committee on Religious Offences in England and Wales, Volume I –Report, House of Lords Session 2002-03, *HL Paper 95-I*, p.10, p.46

religions. Designed to provoke a public discussion on this matter, in 1981, the Law Commission produced a “working paper”, which constituted a cogent evaluation of blasphemy. It unanimously favoured abolition of the common law. Yet the commission also advocated abolition of the law without replacement by a new statute. Commissioners believed that any new statute ought to protect non-Christian religions as well as Christians ones, however, knew of no way to define religion and believed that a failure to do so would make a new statute dangerous to freedom of expression.⁵⁷² Equally, the House of Lords Select Committee Report in 2002 concluded “that the constitution of the United Kingdom is rooted in faith – specifically the Christian faith” and that “we do not see it as our task, in discharging our remit to consider the law of religious offences, to challenge the constitution or question the Church’s part in it, although there is little doubt that the pre-eminent role enjoyed by the established church is probably outdated.”⁵⁷³ It is therefore, not surprising that the Rushdie affair reignited the question whether the common law should be extended to protect other religions.

In an open and authoritative letter, the Director of the Oxford Centre for Islamic Studies emphasised that in current serious writings on Islam, as in the long tradition of Islamic scholarship, real differences of interpretation and opinion continue to be vigorously expressed without recourse to book burning. The issue regarding the “Satanic Verses”, however, showed to what extent freedom of expression needs to be used responsibly. Whilst literary imagination or artistic license may be legitimate tools for a writer, one should not, he argued, confuse them with deliberate and injurious insult or blasphemy. Stressing the importance for Muslims in Britain to abide by the law, he further stated that a review of the common law of blasphemy would seem appropriate.⁵⁷⁴ In an effort to sympathize with Muslim believers and stress the universality of blasphemy, Bishop Lesslie Newbiggin claimed that the blasphemy laws were not designed to protect the Christian religion rather than constitute an acknowledgement of the fact that since God is

⁵⁷² Leonard W. Levy, Blasphemy – Verbal Offences against the Sacred, from Moses to Salman Rushdie (New York, University of North Carolina Press, 1993), pp.553-554

⁵⁷³ Select Committee on Religious Offences in England and Wales, HL Paper 95-I, p. 38

⁵⁷⁴ The Times, 22 February, 1989

the creator of our being, to blaspheme him is to inject poison into public life.⁵⁷⁵ The Chief Rabbi also expressed his solidarity and stated that he deprecated not only the falsification of established historical records but also the offence to the religious convictions and susceptibilities of countless citizens. In his view, however, Jews should not seek an extension of the blasphemy laws. Living in a predominantly Christian society, he commented, the Jewish community should be quite content to leave the legislation on blasphemy as it stands enshrining the national respect for the majority faith. What should concern everyone, however, were not religious offences but socially intolerable conduct inciting revulsion or violence.⁵⁷⁶

Opposing any such demands, the International Committee for the Defence of Salman Rushdie, which was founded days after the *fatwa* under the umbrella of the human rights NGO “Article 19”, emphasised Rushdie’s undeniable right of freedom of expression. Acknowledging that the novel had caused distress, the group reiterated that those critics should discuss their concerns free from censorship, intimidation or violence.⁵⁷⁷ This group would prove to be of fundamental importance in lobbying the British government as well as its European allies in defending the author.

Eventually, John Patten for the Home Office made it clear that Rushdie had not violated any law and would, therefore, not face prosecution. According to Patten, the government was guided by two principles: “the freedom of speech, thought and expression and the notion of the rule of law”. He pointed out that the same freedom that enabled Muslims to hold their protest meetings and marches against the book, allowed Rushdie to say whatever he pleased, short of breaking the law. He further noted that the government had considered the claim that the law of blasphemy ought to be amended so that books such as the Satanic Verses could be charged with an offence. For several reasons, however, an alteration of the law seemed undesirable. No agreement existed on whether the law should be reformed or repealed. Furthermore, the difficulties in redefining blasphemy

⁵⁷⁵ The Independent, 21 February, 1989

⁵⁷⁶ The Times, 4 February, 1989

⁵⁷⁷ World Statement by the International Committee for the Defence of Salman Rushdie and His Publishers, cited in Jorgen Nielson, The Rushdie Affair: a documentation, p.14

seemed irreconcilable as opposing views on this notion between religious groups were evident, nor was there any agreement what constituted a religion. Even if an agreement on such issues could have been reached, the Home Office believed that a new law would be too divisive, and might lead to a wave of litigations, which would damage relations between faiths.⁵⁷⁸

Another statute, which in itself limits the freedom of speech and which also underlines the frustration British Muslims had felt during the Rushdie affair, was the British legislation on hate speech laws. Incorporated into the Public Order Act 1986, this statute is defended in terms of the hurt racist speech causes members of minority groups. As noted previously, MPs had tried to prosecute Rushdie with reference to this law. The law provides for prosecution of publishers of hate speech, which was considered threatening or intending to stir up racial hatred against a particular group. Racial hatred, however, refers only to groups defined by reference to colour, race, nationality [...] ethnic or national origins and with the exception of Jews and Sikhs, which constitute mono-ethnic religions, the provision does not cover hate speech against religious groups.⁵⁷⁹ Therefore, Rushdie could not have been prosecuted with reference to this statute. The entire debate eventually culminated into a series of legal proceedings, all of which ended in favour of Rushdie and in a legal sense supported the government's position.

One case applied to the magistrate to issue a summons for blasphemous and seditious libel against Rushdie and Viking Penguin, in which the applicant contended that the book was blasphemous to all major religions as its referred to Almighty God, common to all major religions, the prophet Abraham and his Ishmael, Muhammad, his wives and companions. The magistrate, however, rejected the application on the ground that the common law offence of blasphemy applied only to Christianity. The verdict was that even if it were up to the court to extend the law of blasphemy to cover other religions, it would not do so since the matter raised difficult and complex considerations of public policy and it would be virtually impossible by judicial decision to set sufficiently clear

⁵⁷⁸ The Times, 6 July, 1989; Regina v Chief Metropolitan Stipendiary, Queen's Bench Division, [1991] 1 QB 429, 9 April 1989 (accessed on Lexis Nexis)

⁵⁷⁹ Eric Barendt, Freedom of Speech, p.186

limits to the offence. The magistrate also stressed that since the right of freedom of religion protected by Articles, 9,10, and 14 of the European Convention did not require the law of blasphemy to be extended to other religions, the UK did not breach European human rights law. The court stressed that it was a question solely for the parliament whether the law should be altered. With regards to seditious libel, the court's verdict was that it was not sufficient that there was an intention to promote feelings of ill-will and hostility between different classes of subjects. It also had to be shown that there was violence or resistance or defiance for the purpose of disturbing constituted authority.⁵⁸⁰ Another case referred to an Iranian national living in Britain, Sayid Mehdie Siadtan, who informed the Horseferry Road Magistrate's Court that Penguin Books had committed an offence contrary to Section 4 (1) of the Public Order Act 1986 by distributing the *Satanic Verses* whereby it was likely that unlawful violence would be provoked. The grounds of the application were that the novel had provoked unlawful violence, including a bomb attack on the Penguin Books shop at 157 Kings Road and the break of diplomatic relations with Iran and that the publisher must be been aware of such risks. Again the application was dismissed on grounds that a person is only found guilty of such an offence if there was intent to provoke the immediate use of violence by that person or another.⁵⁸¹

Essentially, these rulings established that what was at stake was freedom of speech and legally confirmed the government's position towards Iran. However, the debate and the verdicts had also further sharpened the controversy concerning the scope of blasphemy. Dissenters of the law were not convinced that it would be difficult to define religion and demanded an extension of the scope of the "incitement to hatred" provisions in the Public Order Act to cover hatred against groups by reference to religious belief. In fact, it was only during the aftermath of 11th September 2001, which witnessed increased threats against Muslims groups in Britain that the government proposed in the Anti-Terrorism

⁵⁸⁰ R v Bow Street Magistrates Court, Queen's Bench Division, Lexis UK CD 92, 91 Cr App Rep 393, 9 April 1990; Moreover, during the hearing Rushdie's counsel proposed that even if the law of blasphemy extended to cover Islam, when read in their context and properly understood the passages complained of are not blasphemous in as much they do not amount, as is alleged by the applicant, to a scurrilous and insulting attack by the author on that religion.

⁵⁸¹ R v Horseferry Road Metropolitan, Queen's Bench Division, [1991] 1 QB 260, 9 April 1990

Bill to make incitement to religious hatred an offence. Though this amendment, which would have created a more comprehensive approach to this matter, had been dropped in 2001, a “watered down” version of the new Racial and Religious Hatred Bill became law in 2006. In what they considered an effort to defend freedom of speech, MPs ensured that the final version of the law, (which is designed to stop hatred being whipped up against people because of their religion) would only ban threatening words or behaviour. Parliamentarians also ensured that the offence had to be intentional and specified that proselytising, discussion, criticism, insult, abuse and ridicule of religion, belief or religious practice would not be an offence.⁵⁸² Finally, it should be added that no case of blasphemy has been prosecuted in England and Wales since the passage of the Human Rights Act in 1998. Even if a case of blasphemy would meet the criteria as proscribed in the law, it is likely to fail on grounds of either discrimination or denial of the right of freedom of expression.⁵⁸³

3. British-Iranian Relations: Human Rights Violations and the Reestablishment of Relations to the Chargé d’Affaires level

Following the death of Khomeini⁵⁸⁴, Rafsanjani emerged as the new president and Ali Khamenei as the new Supreme Leader. Whilst the latter lacked the religious credentials and support base of his predecessor, Rafsanjani moved quickly to consolidate the post of the president by abolishing the post of Prime Minister and transferring his prerogatives to the Presidency. According to Ansari, the most fundamental change in Iran’s post-Khomeini political system was the alliance of interests between the “mercantile bourgeoisie”, with a political and economic base in the bazaar and the patrimonial presidency of Rafsanjani who succeeded in establishing a loyal bureaucracy and commercial powerbase.⁵⁸⁵ At the heart of Rafsanjani’s administration was recovery of

⁵⁸² see Times 2 February 2006

⁵⁸³ Select Committee on Religious Offences in England and Wales, HL Paper 95-I, p. 48

⁵⁸⁴ On the question whether the Foreign Secretary will express sympathy to the people of Iran on the death of their nation’s spiritual leader and if the government sought to be represented at the funeral, Minister of Foreign Affairs, Waldegrave replied: “No, in both cases.” House of Commons, Hansard, 9 June, 1989, Column 262

⁵⁸⁵ see Ali M. Ansari, Modern Iran since 1921, pp.243-245

the war torn economy and as such foreign policy would soon become synonymous with economic policy.⁵⁸⁶ The British parliament realized the changed political setting and hoped that the new Iranian executive would follow a more pragmatic approach, which should be reciprocated by the British government. Therefore, it was suggested by parliamentarians that the British Foreign Office should abstain from “an unnecessarily cautious line [towards Iran]” and take Iran’s economic potential into consideration as well as the fate of the three hostages in Beirut and Mr Cooper in Iran.⁵⁸⁷

However, before Britain could consider any rapprochement with Iran on the Rushdie issue, it continued to insist on assurances from Tehran that the *fatwa* would be withdrawn. However, contrary to gradual de-escalation on either side, the Iranian government continued to crack down on dissidents at home and abroad and did little to discourage the assassination of Rushdie.

The level of volatility in bilateral relations mainly reflected previous attacks on bookshops in the UK, which the government directly linked to the *fatwa*. Six months after the *fatwa*, in August 1989 a French Muslim blew himself up in a hotel room in the Beverly House Hotel in Paddington. According to Scotland Yard’s anti-terrorist branch, Moustafa Mazeh, who was of Moroccan descent and who had entered Britain from France, accidentally triggered his 5lb explosive devices whilst seemingly preparing for an attack on Rushdie or anyone linked to his book. A previously unknown Lebanese group called the Organization of the Mudjahedin, immediately claimed that he was the first martyr in the attempt to kill the apostate.⁵⁸⁸ A series of bomb attacks against bookshops, which stocked the Satanic Verses followed suit. In July, Collet’s International Bookshop in Charing Cross Road was badly damaged by an early-morning firebomb attack. In April, Collet’s Penguin Bookshop near by was also attacked and a hitherto unknown Islamic group claimed responsibility. Another arson attack took place in May on a bookshop in King’s Road, Chelsea which was owned by Penguin. On 4 September 1989, four people were injured after a bomb exploded outside the Liberty store in the West End

⁵⁸⁶ Interview with former Iranian Deputy Foreign Minister Abbas Maleki, Tehran 6 September , 2004

⁵⁸⁷ House of Commons, Hansard, 14 July, 1989, Column 1274

⁵⁸⁸ The Times, 17 January, 1990, The Times 5 August, 1989

of London. According to Scotland Yard most of the bombs were crude amateur devices.⁵⁸⁹ For this reason, it seems unlikely that Iranian intelligence or any other group linked to the Iranian authorities were involved in all of the attacks. Yet, whilst most of the firebomb campaigns were organised by groups in Britain and only a few were linked to the Iranians, the government ultimately linked these atrocities to the fact that the President of the Supreme Court in Iran and prominent Iranian politicians and clerics continued to incite the death sentence and promised rewards for Rushdie's murder.⁵⁹⁰ There was also reason to believe that Iranians working on behalf the government contributed to incite the violence and were involved in the plotting of Rushdie's assassination. As a result, between February 1989 and February 1990, the British government expelled a total of 31 Iranian citizens on the grounds that this would be conducive to the public good for reasons of national security.⁵⁹¹ Again, the Iranian authorities reciprocated and expelled numerous British citizens from Iran. The FCO immediately protested via the British Interest Section in Tehran for a move they considered "wholly unwarranted" and reminded the Iranian authorities "to continue to be responsible for the safety [of British residents] in Iran."⁵⁹²

3.1 Diplomatic Manoeuvring and the Assassinations of Dissidents in Europe

A seemingly first diplomatic effort by Rafsanjani to de-escalate the situation, was his declaration in August 1989 which emphasised the Iranian government's respect for international law and that any government position or policy would be limited by such

⁵⁸⁹ The Times, 4 September, 1989

⁵⁹⁰ *see* House of Commons, Hansard, 2 April, 1990, Column 457- Column 458

⁵⁹¹ House of Commons, Hansard, 15 February, 1990, Column 372. One of the expelled was the London Bureau Chief for Iranian Television, The New York Times, 2 February 1990. One of the students was Merhdad Kokabi who was arrested and charged with conspiracy to firebomb several bookshops. Despite evidence, such as fingerprints on two pipe bombs, the Crown Prosecution Service dropped the case, claiming insufficient evidence. Communication sent to the Interest Section in Tehran, however, indicates that the Iranian FM threatened "unspecified reprisals" Kokabi was not freed. On his arrival, Kokabi received a hero's welcome and was appointed Special Adviser to the Education Ministry where he was put in charge of placing Iranian students abroad. *see* Baroness Frances D'Souza's diary of "Fighting the Fatwa"

⁵⁹² Cable from Counsellor G H Boyce to Ambassador N Larsson, Ministry of Foreign Affairs, Sweden, British Embassy, Stockholm, 29 June 1989, B-avd/ Göran Zetterström-GR 1989-06-30 MISO amb Teheran

legal constraints.⁵⁹³ In October 1989 an Iranian Delegation arrived in London to settle the debts to Kensington and Chelsea Council, which amounted to nearly £ 500,000. The debts accumulated because of work done by the council to make safe the former Imperial Hotel in West London, which had been destroyed by fire after being bought by the Iranian government. Months before the delegation arrived the council announced a compulsory purchase of the premises to assure the safety of the building. This was reciprocated by the Iranian government's threat to seize part of the British Embassy compound in Tehran and turn it into a car park.⁵⁹⁴ The purpose of the delegation was strictly to settle the dispute concerning the debt and Whitehall made it clear that no talks to re-establish relations would be on the agenda and continued to demand Iran to remove any threats against British subjects.⁵⁹⁵

Behind Rafsanjani's public diplomacy, however, were Iranian efforts to crack down on dissidents, as well as to follow up the death sentence against Rushdie. Successful assassination campaigns against dissidents, most notably in Austria and France in 1989 and in Germany and Switzerland in 1992 exemplify to what extent Iranian intelligence was involved in human rights violations abroad and portrays how real the threat against Rushdie was. According to a German Federal Police assessment in 1992, Iran systematically misused its diplomatic staff abroad and their privileges of immunity as well as dispatching hit squads from the intelligence services to liquidate dissidents in Europe. As far as Iran was concerned, dealing with dissidents was an internal Iranian affair and at the very core of national security and as such any violent measures needed were seen as legitimate. The report further noted that the new line adopted by Rafsanjani had little impact on this policy of state sponsored terrorism.⁵⁹⁶ Particularly, Kurdish dissidents and their networks in the Diaspora were on top of the agenda in Tehran. Thus, by 1989 the Iranian government decided not only to fight the leadership of the Democratic Party of Kurdistan (DPK) but essentially to liquidate them. The assassination

⁵⁹³ Deutscher Bundestag, Plenarprotokol, 12. Wahlperiode, 117. Sitzung, Bonn, Donnerstag, 5. November, 1992, p. 9980

⁵⁹⁴ The Times, 5 October 1989, The Times, 3 August 1989

⁵⁹⁵ The Times, 5 October 1989

⁵⁹⁶ *see* [Country Risk Assessment: Iran, German Federal Police], Bundeskriminalamt ST 33, Meckenheim, 15.07.1992

of former chair of the DPK Abdul Rahman Ghassemlou and his two aides Abdullah Ghaderi-Azar and Fadel M. Rasoul in Vienna on 13 July 1989, as well as the murder of Kurds in Berlin in 1992 were a direct result of this policy.⁵⁹⁷

Parliamentary enquiries and legal evidence seem to prove the involvement of the Iranian government. Moreover, with regards to the Rushdie affair and Britain's efforts at taming Iran, this evidence also shows, as will be detailed below, how two important allies with considerable influence on Iran tried to avoid prosecuting the perpetrators and, thus, worked against the policy the EU adopted in defence of Rushdie. The meeting in Vienna in 1989, during which the Kurds were shot was initiated by the Iranians and was supposed to establish official contact between the Iranian government and the DPK. The three Iranian envoys were Mohammad Djafari Sharoudi, Amir Mansour Bozorgian Assl and Moustafa Ajvadi. Immediately after the shooting all three sought refuge in the Iranian embassy. Sharoudi accidentally injured himself during the shooting and was taken to hospital before returning to the embassy.⁵⁹⁸ A warrant of arrest was issued the next day by the prosecutor's office against Bozorgian and Ajvafi. However, in what Secretary of State Shulz referred to as an effort to avoid any diplomatic implications, the Foreign Ministry immediately exerted pressure on the criminal judge dealing with the case and appealed to him to refrain from criminal proceedings against the persons, who were in the Iranian embassy. After considerable pressure on behalf of the Iranian Ambassador to Austria who threatened punitive measures against Austrian interests in Iran as well as cancelling a planned economic delegation which was to visit Iran the following month, the Austrian government ceased all police operations and eventually allowed all suspects to return to Iran. It was only after all suspects had fled, that parliamentary pressure in Austria and solid evidence against all envoys, including Sharoudi allowed the courts to issue warrants of arrests against all of them. Since Iran has no extradition agreement with

⁵⁹⁷ Parlament Österreich, Parlamentskorrespondenz/RO/06.05.1997/ Nr. 286

⁵⁹⁸ Stenographisches Protokoll, 84. Sitzung des Nationalrates der Republik Österreich, XX, Gesetzgebungsperiode, Donnerstag, 18. September 1997, Nr. 2432-AB XX. GB

Austria it has continuously refused to hand over any of the suspects to the Austrian authorities.⁵⁹⁹

To the dismay of the British government, which hoped that the new president would be someone to immediately make deals regarding outstanding quarrels, Rafsanjani's rhetoric soon turned uncompromising. In an effort to appease hardliners and the radical majority in the Majlis in exchange for a reduction on their part of their continuing opposition to his efforts to introduce a measure of economic liberalization, he emphasised that the death sentence against Rushdie was still operative and also dashed recent hopes of an early release of Roger Cooper. On the hostage issue, rather than reaching out and offering any intermediary role to *Hezbollah*, he accused Britain and the US of failing to take the necessary steps to secure Iranian help in freeing Western hostages in Lebanon.⁶⁰⁰

The years 1989 to 1992 were difficult ones for Britain to formulate a policy towards Iran. Whilst Britain maintained a hard line on human rights in Iran, mainly through the UN Human Rights Commissions and parliament, it also attempted to play down the Rushdie case in order to re-establish relations. Whilst the government continued its protective measures for the author, the fates of the hostages ranked higher on the agenda in Downing Street. Ultimately, reestablishment of relations to the Chargé d'Affaires level was seen as a prerequisite to achieve any of those objectives. What was more, the fact that Iraq had invaded Kuwait and was defeated by a multinational force, produced a dynamic in the region that positioned Iran to fill the vacuum left by a weakened Iraqi regime and to act as a reliable economic partner and diplomatic player. Thus, Britain could not afford not to have relations with Iran.

By the end of 1989, Rushdie had been moved 56 times to various safe houses in Britain and continued to receive "grade-one" – the highest, usually accorded to visiting dignitaries - Special Branch Protection. Ironically, Rushdie was an outspoken critic of Thatcher and showed little respect for Douglas Hurd because when asked what his most

⁵⁹⁹ Stenographisches Protokoll, 76. Sitzung des Nationalrates der Republik Österreich, Xx Gesetzgebungsperiode, Donnerstag, 5. Juni 1997, Nr. 2364-AB XX. GB

⁶⁰⁰ The Times, 24 October, 1989

difficult task in government had been, the Foreign Secretary had replied: “ Reading the Satanic Verses.” The fact that Rushdie commented “I did not vote for Ms Thatcher and will not, and continue to dislike her policies but I thank her for protecting a British citizen against a death threat from a foreign country” may have been an irony, yet somewhat provided a powerful symbol for the defence of freedom of speech.⁶⁰¹

Concerning the situation of dissidents and freedom of speech in Iran, the years 1989 – 1992 witnessed a continued crackdown of political opponents. Whilst Britain had no specific human rights strategy towards Iran it continued to work via the Human Rights Commission in Geneva. Of primary concern to Britain at that time was the increased number of summary executions and the imprisonment of political prisoners. Following an attack by the Mujahedin led Iran Liberation Army (ILA) which marched into Iran⁶⁰² from Iraq during the last days of the Iran-Iraq war and which resulted in bloody battles in western Iran, the Iranian government prompted a series of summary executions of rebel forces. British parliamentarians, however, sent petitions to the UN Special Representative for Iran alleging that summary executions also involved the killing of dissidents and political prisoners. Reports referred to persons arrested long before the invasion of the ILA and happened in places that were not affected by subsequent military operations.⁶⁰³

The most prominent political prisoners at that time were former Mayor of Tehran and leading member of the Movement for Freedom Mr. Tavassoili and former Prime Minister of the provisional government and President of the Movement for Freedom, Mehdi Bazargan. Both were arrested in June 1988 on charges of activities against the security of the government, activities to topple the government and provide assistance to the enemy. The party was founded by Bazargan in 1961 and only participated in the first election after the revolution, but not in subsequent elections as they were prevented from running for office. Though the party did not violate the principles of independence, freedom, national unity, the criteria of Islam, or the basis of the Islamic Republic as laid out in Art.

⁶⁰¹ The New York Times, 4 November, 1990

⁶⁰² see Wilfried Buchta, Who rules Iran ? The Structure of Power in Iran, p. 114

⁶⁰³ Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl, UN Document E/CN.4/1989/26, 26 January 1989, paragraph 15; paragraphs 67-70; see also House of Commons, Hansard, 16 June, 1989, Column 559

26 of the Constitution as condition to form a political party, the legal situation of the party was kept in suspense. Members were frequently intimidated or harassed and its mail was opened and phones lines tapped.⁶⁰⁴

By and large, the period following the Iran-Iraq war large-scale, witnessed concentrated efforts to remove political opponents from the political scene. Arrests and executions were carried out with reference to the war and national security. Political prisoners, some of whom were non-violent, have also shared the brunt of executions with criminals, most commonly, drug offenders. By 1990, the government moved on to increasingly intervene in the free flow of information in the form of letters, telegrams and telephone conversations. In this regard, a large number of disabled veterans had been hired and placed in the communication offices throughout the country to monitor telephone conversations between citizens. Moreover, despite the government's proclamation about the right of political parties to operate freely, the list of bona fide parties was still limited to pro-regime or apolitical bodies, most of which were proxies for different factions of the clergy. The application of other parties that had filed for legal status met with outright rejection or bureaucratic procrastination. An open letter by Mehdi Bazargan to the President which criticized the government for the worsening economic and social situation and the lack of freedom and security in the country resulted in the arrests and detention of Bazargan and fellow signatories. The main points of the letter demanded to safeguard and guarantee freedom of activity for those political parties and associations and press which have legal and open activities. Regarding freedom of speech Bazargan urged his government to provide the opportunities for free and undisturbed debates, talks and exchange of views for the purpose of resolving problems of the country. Political and intellectual participation of society would thus provide the foundation for the legitimate rule of the people.⁶⁰⁵ The restrictions of freedom of speech, which he criticized, applied both to political groups in and outside the *Majlis* as well as to the printing media. Whilst

⁶⁰⁴ Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl UN Document E/CN.4/1990/26, 12 February 1990, paragraph 218

⁶⁰⁵ Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl, UN Document E/CN.4/1991/35, 13 February 1991, paragraphs 445-446

the Freedom Movement was still kept in a legal limbo, the revolutionary prosecutor in Tehran dissolved the Association for the Defense of Freedom and Sovereignty of the Iranian Nation. This was contrary to Iranian law as it should have been done by a Special Court of the Ministry of Justice upon a complaint by the Ministry of the Interior backed by relevant evidence. In parliament, several MPs had been removed as a consequence of critical statements,⁶⁰⁶ one of which was Ghorban-Ali Saleh-Abadi from Mashad who was taken to the Islamic Revolutionary Court at Evin Prison on 16 May 1991 where he was questioned about critical remarks he had made during plenary sessions.⁶⁰⁷

The situation of the British hostages in Lebanon and Iran's role as influential intermediary put the British government in a situation in which it needed direct channels of communication with Tehran. Thus, reestablishment of relations with Iran was seen as a prerequisite to negotiating on all other outstanding concerns. The Iranians were aware of mounting pressure in Britain regarding the cost of the defense of Rushdie⁶⁰⁸ and the seemingly unsuccessful strategy of no negotiation with hostage-takers. Following an address to the *Majlis* by Speaker Mehdi Karrubi at the first anniversary of the *fatwa* on 15 February 1990 in which he proclaimed "However much Salman Rushdie may be kept under guard, eventually a Muslim will carry out the edict"⁶⁰⁹, the EU Troika met with an Iranian delegation in Dublin two months later. The ever-uncompromising stance on the part of the Iranians and the deadlock regarding the hostages allowed the Iranian envoy Hussein Moussavi to actually link Rushdie with any improvements in Lebanon stating that "if the UK government was prepared to expel Rushdie they would see to it that the British hostages were released."⁶¹⁰ Unlike the USA and France, Britain was not militarily involved in the Lebanese civil war and had no concession to give other than

⁶⁰⁶ *ibid*, paragraph 447

⁶⁰⁷ Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl, UN Document E/CN.4/1992/34, 2 January 1992, paragraph 175

⁶⁰⁸ MPs increasingly questioned the government on the cost of special security measures afforded to Rushdie, which have, however, never been disclosed by the Home Office, see House of Commons, Hansard, 15 February, 1990, Column 37

⁶⁰⁹ IRNA, 15 February, 1990

⁶¹⁰ Baroness Frances D'Souza's diary of "Fighting the Fatwa"

some compromise on the Rushdie front. By this time, however, the Rushdie Defense Committee had made it very difficult for the government to think of any compromise.⁶¹¹

During the first formal Iranian meeting with the EU since the *fatwa* had been issued, an agenda was set. Having started the negotiations with demands the Iranians themselves knew that the British could not meet, Moussavi indicated that no further hostages were likely to be released until the West used its influence on Israel and Lebanon's Christians to release Arab prisoners.⁶¹² The agenda during the meeting was to agree on a basic Tit For Tat strategy. Israel had to release prisoners in return for any further Western hostages. Given the fact that Britain, France and Germany did not want to formally negotiate with the groups that held their nationals, this quid pro quo tactic allowed European governments to somewhat keep face and pretend not to deal with terrorists. Furthermore, before Iran could consider any direct discussions with the British government, Moussavi demanded that the House of Commons would have to pass a resolution disavowing Rushdie's novel.⁶¹³

Despite Iranian verbal commitments given during the talks not to arrange Rushdie's murder, Britain maneuvered carefully as there was continuing evidence of hit men arriving to do just this. Therefore, Foreign Secretary, Douglas Hurd, did not encourage the Rushdie Defense Committee to give this commitment much credence.⁶¹⁴ Nevertheless, the British government needed to show some good will in order to get back into Iran. The only move seen as somewhat acceptable to the Iranian side without publicly compromising any principles was to hold back a paperback edition of the *Satanic Verses*. Usually a common procedure for bestsellers, Penguin Books decided in June 1990, therefore, not to go ahead with a paperback in order to avoid jeopardizing the release of the Western hostages in Lebanon.⁶¹⁵

⁶¹¹ *ibid*

⁶¹² *The New York Times*, 17 May, 1990

⁶¹³ *IRNA*, 17 May, 1990

⁶¹⁴ Baroness Frances D'Souza's diary of "Fighting the Fatwa"

⁶¹⁵ *The New York Times*, 14 June, 1990

A second initiative by the British was rather unforeseen as it referred to humanitarian efforts by Thatcher's government in the aftermath of an earthquake in the Gilan and Zahjan Province later that month, which cost the lives of more than 38 000 and hospitalized over 45 000 Iranians.⁶¹⁶ In a note sent from the British Prime Minister to Rafsanjani she conveyed her "heartfelt sympathy to [Rafsanjani] and the families of all those who have suffered. " It further said "We shall do all we can to help the enormous efforts which will be needed to cope with this tragedy. A consignment of relief supplies from Britain will shortly be on its way to Tehran."⁶¹⁷ Unlike US foreign policy towards Iran, this move by the British suggests that policymakers appreciated the distinction between political and humanitarian matters. Consequently, the fact that the British government sent a team of doctors specializing in post-trauma surgery, medical supplies and emergency shelter⁶¹⁸ did not go unnoticed in Tehran, who had to play by the rules of the Two-Level Game. Diplomats in the Iranian Foreign Ministry needed such gestures in order to lobby hardliners for the rapprochement with Britain. As long as Britain continued to put pressure on Iran through the EU and try to reduce EU –Iran political and economic exchanges, conservative elements were unlikely to agree to renew ties with Britain.⁶¹⁹

The third British move, which was reciprocated by the Iranians, must be seen as an immediate strategic calculation by the British following Iraq's invasion of Kuwait in August 1990. As far as the Iranian Foreign Ministry was concerned, Britain could not afford to be the only European power without ties to Iran during and after that crisis.⁶²⁰ In fact policymakers in Whitehall appreciate strategic and political opportunities, which

⁶¹⁶ Cable sent from the British Interest Section to the Swedish Foreign Ministry Tehran, 1990-06-27, B-avd/Larsson/GR, Pol4 Ambassaden Tehran, 1990-06-27

⁶¹⁷ Note sent from the British Embassy to the British Interest Section in Tehran, Pol IV/kr Ganslandt/1p 1990-06-29 Ex t: Amb Tehran, Ink Utrikes Dep, D. No: 176/001, 1990-0607 25 June 1990

⁶¹⁸ Note sent from the British Embassy to Ambassador Nils Larsson, B-avd/gk Nils. R Larsson/SA 1990-07-02 MISO t. amd: en Tehran Tehran, Ink Utrikes Dep, D. No: 13/B356 29 June 1990, 29 June 1990 ; It should be noted that Rushdie himself pledged \$ 8650 to help Iranian earthquake victims. A move which did not go unnoticed in Tehran. *see* The Independent, 26 June 1990

⁶¹⁹ Interview with Dr Mahound Vaezi, Former Deputy Foreign Minister of Iran, 6 September, 2004, Tehran
⁶²⁰ *ibid*; The US-led war left Iran in an unparalleled strategic position in the Gulf. Anxious to channel all of its resources to the Kuwait crisis, the Iraqi leadership accepted all of the Iranian peace terms in August 1990, releasing Iranian POWs and withdrew Iraqi troops from occupied border areas. Iran Focus, (September, 1990), Vol.3, No. 8 , p. 2

the Kuwait conflict awarded to Iran.⁶²¹ Reestablishment of relations was thus paramount. In a letter to a Member of Parliament Douglas Hurd called “Islam one of the world’s great religions.” He added that “we have the greatest respect for it and its values” and that “the British Government had nothing to do with the publishing of the Satanic Verses, nor has it encouraged its publications in other countries. There is no question of the British government or people wishing to insult Islam.”⁶²² Ayatollah Mohammad Emami Kashani of the Guardian Council welcomed this remark and stated that “by condemning Salman Rushdie and respecting beliefs of the Muslims, Britain has almost met the conditions set by parliament.”⁶²³ With the backing of the National Security Council, Rafsanjani then formally offered to restore relations with Britain via a note sent to the British Interest Section in Tehran.⁶²⁴ Following that move, Britain, who publicly stated that “the Iranians have a very significant part to play”⁶²⁵ in getting the hostages released, demanded Iran pledge its support to help release the hostages and the British prisoners in Iran, as well as assurances to not to carry out the *fatwa*.⁶²⁶ Since it stepped down from previous demands to annul the sentence – the FCO’s approach was that once relations are established, they could take Rushdie’s case further – the Iranian government reciprocated. Avoiding a direct comment on the *fatwa*, Iranian diplomats went only so far as to assure the British to “respect international law and not to interfere in the internal affairs of any other country”⁶²⁷ Britain made the renewal of ties conditional upon Iran living up to its promise to use its influence and achieve the release of hostages in Lebanon and to release Roger Cooper from prison.⁶²⁸ Therefore, it was decided not to exchange ambassadors as relations were subject to Iranian behavior. David Reddaway

⁶²¹ As confirmed in British-Swedish correspondence; Cable sent from British Embassy in Stockholm to British Embassy in Tehran B-sekr./Nils-R Larsson/ SA, 1990-10-24 MISO t.amb:en TEHRAN, 23 October, 1990

⁶²² The Times, 4 August, 1990

⁶²³ IRNA, 5 August, 1990

⁶²⁴ *see* Cable sent from the British Interest Section to Swedish Foreign Ministry, MSG No. 900806-523, Pol IV/kr Ganslandt/1p 1990-8-09, Relex t: amb Tehran

⁶²⁵ The New York Times, 5 August, 1990

⁶²⁶ Note from British Embassy in Sweden to Swedish Foreign Ministry, B-sekr./nils-R Larsson/SA 1990-10-24, MISO t.amb:en Teheran, Ink Utrikes Dep, D. No: 13/B579 23 October 1990

⁶²⁷ *ibid*

⁶²⁸ *ibid*

was acting Chargé d’Affaires and reopened the British embassy on 27 October 1990.⁶²⁹ It should also be noted that parallel to the negotiations through the British Interest Section to reestablish relations, the Rushdie Defense Committee was approached by an Iranian intermediary, who allegedly representing the Iranian Ambassador to the UN, Kamal Kharrazi, proposed to solve the *fatwa* issue. The proposed deal, however, was rejected by the FCO as senior Ministers doubted its sincerity. According to a FCO assessment the initiative, if it had any validity at all, appeared more to reflect complex Iranian politics and may have just been a device to play off internal factions against one another.⁶³⁰

3.2 Release of the Hostages, Human Rights Developments and Attacks on Persons Associated with Rushdie

Following the reestablishment of relations with Britain the years, 1990-1991 witnessed the inconsistency of pragmatists openly engaging with the West and helping to release the remaining hostages while at the same time radical elements, mainly associated with the Iranian intelligence (VEVAK) and the Ministry of Information (MOIS) as well as radicals in and outside the government, continuing to crack down on dissidents at home and abroad.

Domestically, the Ministry of Culture and Islamic Guidance proved the major institutional impediment to the freedom of press, as any permit for newspapers or publishing houses needed the ministry’s prior consent. Equally all literary work needed

⁶²⁹ see Fax sent from British Interest Section, Tehran, to Swedish Foreign Ministry, B-sekr/Gk Nils R. Larsson/GR Ext, brittiska ambassaden, Ganslandt, Pol 4, 29-10-1990

⁶³⁰ The intermediary was an Iranian post-doc fellow at Harvard, who claimed to represent the Iranian Ambassador and who got in touch with the Defence Committee via Mike Wallace, presenter of the US television series “60 Minutes”. During meetings between the First Secretary Khooshro at the Mission and Wallace, he was told that the content of the deal had been approved by Khameni. The deal was as follows: Rushdie would issue a statement of regret about any offence he had caused Muslims, which would be video-taped; the publication would be halted temporarily; meanwhile a new edition would be prepared to include a warning preface acknowledging the offence the book might cause. Furthermore, Rushdie would assist, financially, in setting up a fund for the families of those killed during the riots. Once the Iranian government would have received the videotape, they would issue a video response. Not exactly knowing what the Iranians’ response would be and overall doubting the sincerity of the deal, the FCO thought any video message from Rushdie to be counterproductive if not disastrous. According to the FCO, this initiative was too risky and, precisely because of the wide margin of deniability, it was not to be trusted. *cited from* Baroness Frances D’Souza’s diary of “Fighting the Fatwa”

the approval of the ministry, which prevented non-violent opposition groups and writers from independent publications.⁶³¹ The fact that printing houses were required to obtain formal permission by a political body and that printing paper was distributed by the Ministry only for those publishing houses who publication had been approved proved an effective means by the state to control media and limit public debate. On this matter the government stated in 1991 that “the press is free to publish unless what they print prejudices the Islamic tenets or public rights. The Ministry of Islamic Culture and Guidance has, therefore, invited printing houses to consult with this Ministry prior to their publication in order to prevent the appearance of such articles.”⁶³² In relation to the provision and distribution of printing paper, the government referred to the fact that because of the war it was not financially in a position to provide all the hard currency to import paper and thus only allocated a limited amount of paper to respective printing houses and writers.⁶³³ These restrictions equally applied to members of the religious circles, such as Ashgar Hashemi, a cleric from Mashad and the editor of Khorrasan who was convicted in a secret trial and sentenced to 15 years imprisonment for having published features criticizing certain policies as being contrary to the late Imam’s edicts.⁶³⁴ By 1991, the Special Representative for Iran noted some improvements concerning the freedom of the press and the policy relating to the publication of books. The publication of several new magazines had been authorized and the office for the censorship of books in the Ministry of Culture and Islamic Guidance had been dissolved. Hence, authors were no longer required to obtain authorization prior to publication of their work.⁶³⁵ For Britain and other members of the Human Rights Commission, this must have been interpreted as one step in the right direction. However, whilst books no longer required prior authorization, authors were still liable if they disregarded mandatory “literary principles”.⁶³⁶ Since the substantive restrictions remained in force, writers were

⁶³¹ Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl, UN Document E/CN.4/1991/35, paragraphs 373-377, paragraph 440

⁶³² *ibid*, paragraphs 188-190

⁶³³ *ibid*

⁶³⁴ Report on the human rights situation in the Islamic Republic of Iran by the Special Representative of the Commission on Human Rights, Mr Reynaldo Galindo Pohl, UN Document E/CN.4/1992/34, 2 January 1992, paragraph 179

⁶³⁵ *ibid*, paragraph 322

⁶³⁶ *ibid*, paragraphs 450-453

being kept subject to a form of self-censorship. Therefore, the choice Iranian writers, journalists and artists had to make was whether to write and then to face the consequences. On the Rushdie issue, Ambassador to the United Nations Office in Geneva, Syrous Nasserri strongly rejected previous memorandums by the Special Representative and Resolutions by the HR Commission because they had failed to take into account the many deaths that Rushdie's books had caused all over the world.⁶³⁷ From the onset of the crisis, the Iranian government refused to accept that it constituted a human rights concern and rejected all multilateral diplomatic efforts, which denounced the *fatwa* as being purely politically motivated.

Whilst there were no improvements on Rushdie's case, the Iranian government eventually released Roger Cooper in April 1991. However, Britain continued to exert pressure on Rafsanjani to live up to his commitments concerning the hostages.⁶³⁸ The agenda had already been agreed between the Europeans and Iran. What was needed was someone neutral to offer good offices to negotiate with Iran. Given the fact that the USA and Israel were deeply involved in the Lebanese civil war and neither of which enjoyed ties with Iran, Secretary General Javier Perez de Cuellar and his Special Envoy Giandomenico Picco took over the role as negotiators.⁶³⁹ Moreover, following the revelations of the Iran-Contra affair, Iranian pragmatists did not trust the Americans to keep any direct meetings secret. Direct talks with Israel were out of the question for either side. At this point Iran needed to show some real progress on the hostages issue as Rafsanjani faced economic and political pressure at home. Economically, foreign investments were needed for the first postwar development plan, which called for \$ 120 billion in spending over five years to rebuild oil, energy and other industrial sectors. The plan, however, was staggering under the weight of demands from the growing population (the birth rate added one million Iranians every six months) and rigid business codes had caused many foreign investors to balk.⁶⁴⁰ For the government, any success to bring the hostage crisis to an end was meant to undermine the hard-liner majority in the Majlis,

⁶³⁷ *ibid*, paragraphs 346-348

⁶³⁸ *The New York Times*, 3 April, 1991

⁶³⁹ *see* Giandomenico Picco, *Man Without a Gun*, (New York, Random House, 1999), pp. 88- 263

⁶⁴⁰ Economist Intelligence Unit, *Country Profile Iran, 1990-91*, (EIU, 1991,) pp.40-45

who argued that Israel and the United States would fail to respond to Iranian good will gestures.⁶⁴¹ Hardliners in the *Majlis* continuously questioned the wisdom of détente with the West and as Mussavi emphasized the need “to maintain the principles and causes of the Islamic Revolution”. Rather than meeting demands by foreign powers in order to take the country out of isolation, he demanded that “Iranian diplomacy must be [...] based on the deep-rooted beliefs of the Iranian people.” Whilst such a foreign policy line “might offend some governments” it would also have the “support of the Muslim masses.”⁶⁴² Faced with continuous defiance on part of Iranian lawmakers to government bills of privatization of certain trade ventures, foreign borrowing and the possible devaluation of the Rial to attract foreign investment, Rafsanjani put considerable weight on his diplomatic initiative to have the hostages released.⁶⁴³ The President’s rationale was that success on this front, would vindicate him as skillful statesman and thus ultimately strengthen Iran’s standing abroad and his own at home.⁶⁴⁴

Talks at the United Nations between Iran’s Ambassador Kamal Kharrazi and the Secretary General had already begun in March that year. During that details phase, the strategy crafted was straightforward: give something to everyone without violating American and British determination not to make concession to hostage holders. Because the US and Britain refused to negotiate, Israel became the broker for the West. For Kharrazi the plan seemed acceptable, as it was a package that took into account that the Lebanese wanted their detainees, the West wanted their hostages and the Israelis wanted their servicemen.⁶⁴⁵ Iran for its part was promised by Picco that in return for intermediary efforts the UN would deliver Paragraph 6 of UN RES 598, which would formally blame Iraq for the war. With the benefit of being true, the report by the Paragraph 6 Commission was needed for Iran to come to terms with the war and to

⁶⁴¹ see *The New York Times*, 13 September, 1991

⁶⁴² *Iran Focus*, Vol.4, No.5, (May, 1991), p.8

⁶⁴³ Cabinet Minister Abdollah Noori repeatedly stated that “We completely reject kidnapping and holding of any person, no matter whom. And we want everyone to think of it in the same manner. *Iran Focus*, Vol. 4, No 8, (September, 1991), , p.4

⁶⁴⁴ In fact after the hostages had been released, media outlets in Iran praised the governments efforts. Even Mohtashemi remained from criticising the deal brokered by Rafsanjani., see *ibid* and *IRNA*, 13 August, 1991

⁶⁴⁵ *The New York Times*, 6 December 1991, see also Giandomenico Picco, *Man Without a Gun*, pp. 88-263

establish a basis for war claims against Iraq.⁶⁴⁶ A welcoming side benefit of all this for Iran was of course, the release of Arab detainees out of Israel prisons.

Following meetings with Kharrazi in Geneva and Rafsanjani and Velayatti in Tehran, Picco's step-by-step approach materialized with a series of moves from Tehran. Mohammed Javad Larijani, a member of the National Security Council and longtime aide to Rafsanjani indicated to David Reddaway that the Revolutionary Justice Organization was going to release the British hostages. At the same time Islamic Jihad over which Iran had less influence released two Americans and the British journalist John McCarthy, which carried a message that all Western hostages would be released in return for Sheik Abdel Karim Obeid, who had been abducted by Israeli commandos in July 1989 and the release of Arab prisoners held by European countries and Israel. From the onset, America was opposed to any deal that would allow the early release of two Lebanese brothers in a prison in Germany for their role in the hijacking of Trans World Airlines flight in 1985.⁶⁴⁷ Whilst European countries were equally reluctant to release any convicted prisoners, Israel declared itself willing to release all Arab detainees including Sheikh Obeid, but only after they received authoritative information on its own servicemen. It should be noted that Israel captured most of the fighters as a bargaining chip in the first place. By September, the Secretary General solidified the hostage deal. Having not only met Iranian officials but also the families of the four Iranians who had disappeared at a Christian checkpoint in Lebanon in 1982, his humanitarian intentions and impartiality was reinforced. Hence, by the end of September, the Revolutionary Justice Organization released the British hostage, Jack Mann and less than a month later, Israel received confirmation of the death of an Israeli soldier missing in Lebanon, and two days later released 15 Arab prisoners.⁶⁴⁸ On 18 November, Terry Waite and an American hostage, Thomas Sunderland were freed from captivity. Their release was a direct result of the previous release of Arab detainees from Al-Khiam prison as well as an American-Iranian agreement at the International Court of Justice in The Hague under

⁶⁴⁶ Paragraph 6 of the Resolution specifically requested the Secretary General to "explore, in consultation with Iran and Iraq, the question of entrusting an impartial body with inquiring into responsibility for the conflict [...]" see Giandomenico Picc, *Man Without a Gun*, pp. 149-151

⁶⁴⁷ *The New York Times*, 6 December 1991

⁶⁴⁸ *IRNA*, 20 September, 1991, *IRNA*, 24 September, 1991

which the US government committed itself to return \$ 278 million for military claims by Iran and American exoneration of Iran in the bombing of Pan Am Flight 103.⁶⁴⁹ With the release of Waite, the last British hostage returned home to Britain and closed a chapter in British-Iranian relations. Whilst Israel released hundreds of prisoners throughout the hostage negotiations, the fate of other Arab detainees continued to be a primary concern for Lebanon, Syria and the PLO and would eventually be dealt with at the Madrid Peace Conference.

Though Britain welcomed the end of the hostage saga, it continued to be concerned about the continuous crack down of dissidents abroad, which in 1991 also involved the targeting of persons associated with the publication of the Satanic Verses. On 3 July 1991, Alberto Ettore Capriolo, who translated the novel into Italian, was stabbed in Milan by a hit squad demanding the address of Rushdie's place of residence.⁶⁵⁰ Nine days later, Hitoshi Igarashi, who translated the novel into Japanese, was murdered at the University of Tsukuba, near Tokyo. Britain immediately raised the issue of these attacks to the Iranian government, which denied any involvement.⁶⁵¹ Another attack on French soil, which was linked to Iran, was the assassination of former Iranian Prime Minister Shapur Bakhtiar and his secretary Katibeh Fallouch on 8 August 1991. Having formed a national resistance movement in France with its own newspapers and two clandestine radio stations beaming messages into Iran, Bakhtiar ranked high on the dissidents list in Tehran. A communication from the Iranian Ministry of Intelligence to one of its intelligence posts in Europe, which reportedly requested confirmation of Bakhtiar's death, was intercepted before his body had been discovered by the French authorities.⁶⁵² Following that lead, the French authorities eventually were able to link the Iranian government to the assassination, as three men connected to the Revolutionary Guards were found guilty, two of which were convicted by a French court.⁶⁵³ For the radicals

⁶⁴⁹ The New York Times, 28 November, 1991

⁶⁵⁰ Frankfurter Allgemeine Zeitung, (FAZ), 4 June, 1991

⁶⁵¹ Japanese authorities established that the suspect was a member of a previously unknown Islamist group and had entered the country via China and managed to escape after the murder. See Police Report of Tsukuba Police Authorities sent to Article 19, in Baroness Frances D'Souza's diary of "Fighting the Fatwa", see also The New York Times, 13 July, 1991

⁶⁵² Le Monde, 22 August, 1991; Le Monde, 24 September, 1991

⁶⁵³ Kenneth M. Pollack, The Persian Puzzle, p.248

and Iranian Intelligence, the death of Bakhtiar as an influential exile opposition figure was certainly seen as a vital step to consolidate post-war regime stability. For pragmatists in the Iranian Foreign Office and regarding Rafsanjani's intermediary role regarding the hostages, these series of assassinations were counterproductive and prevented western powers from trusting Iran as a political ally following the sweeping victory over Iraq in Operation Desert Storm.⁶⁵⁴

4. The Launch of the "Critical Dialogue", Expelling *Persona Non Grata* and the German Connection

Following the release of the last British hostage, the Rushdie Defense Committee increased its lobbying efforts towards the British government and also sought more vocal support from European governments. By the end of 1991, the British government seemed to have developed a strategy of "quiet diplomacy". During the hostage negotiations, the Foreign Office expressed the view that the Defense Committee's public campaigning not only adversely affected the hostages in Lebanon but also compromised Rushdie's own safety. Thus, while correctly appreciating that the *fatwa* could never be repealed, policymakers mistakenly thought the best strategy to be adopted was for the matter to wither away.⁶⁵⁵ In support of this assessment Minister for Foreign Affairs, David Gore-Booth wrote to the Committee in March 1991: "On the second anniversary of the imposition of the *fatwa*, in contrast with the first anniversary, no Iranian government official repeated the *fatwa* or commented on it. There were no demonstrations at the British Embassy in Tehran [...] Interest there appears to have dwindled considerably."⁶⁵⁶ Moreover, a FCO diplomat when asked, in July 1992, about the Rushdie matter expressed the view that it was now more of a Home Office problem, implying that the only issue was Rushdie's safety. He admitted, however, that this was "rather a Pontius Pilate" sort

⁶⁵⁴ On 12 September, 1991, the European Parliament condemned the murder and declared that "there are some reasons to think that the assassinations was committed by Iranian government agents." *Iran Focus*, Vol.4, No.9, (September, 1991), p. 7

⁶⁵⁵ Interview with Chris Rundle, Former FCO diplomat at the Iran Desk, 2 October, 2004, London, *see also* Baroness Frances D'Souza's diary of "Fighting the Fatwa"

⁶⁵⁶ Baroness Frances D'Souza's diary of "Fighting the Fatwa"

of thing to say.⁶⁵⁷ Quiet diplomacy was certainly necessary to achieve the deal on the hostage front. However, with the negotiations on Lebanon over and faced with the attacks on persons related to the publication of the Satanic Verses and the detention of the British Third Political Secretary of the Embassy in June 1992⁶⁵⁸, the British government eventually had to put the Rushdie issue back on top of the agenda in bilateral relations.⁶⁵⁹ In Iran, the *fatwa* had certainly never ceased to be a potent issue in the country's domestic arena and when the Iranian Ambassador to Germany confirmed the death sentence in November 1992 and went so far as to sanction its execution in Germany, bipartisan parliamentary support for Rushdie in Germany and Britain was back on.⁶⁶⁰

Iran's continuous crack down on dissidents abroad and the attacks on persons related to the "Satanic Verses" combined with Rushdie's lobbying efforts in European countries eventually resulted in increased international pressure on Iran to revoke the death sentence. In March, 1992, the *fatwa* was particularly condemned in a UN Commission Resolution sponsored by the EU.⁶⁶¹ While Britain in particular was using the UN Commission as a channel to remind Iran of its legal obligations to uphold international human rights standards, the EU was seen as the more effective political forum to exert pressure on Iran.

It was therefore, not unsurprising that the "Critical Dialogue" with Iran was crafted under British EU Presidency at the European Council in Edinburgh in December 1992. With the resolution adopted, it started the first phase of constructive engagement towards Iran and called for improvement in a number of areas, "particularly human rights, the death sentence pronounced by a *fatwa*" [...] "Improvements in these areas" it was stated " will be important in determining the extent to which closer relations and confidence can be

⁶⁵⁷ see The Guardian, 16 July, 1992

⁶⁵⁸ Geoffrey Brammer was arrested and held for several hours on 17 June 1992, the same day the last of the European hostages, two Germans, were released. see IRNA, 18 June, 1992 ,

⁶⁵⁹ see House of Commons, Hansard, 20 February, 1992, Column 226

⁶⁶⁰ The Iranian Ambassador was summoned to the German Foreign Office and warned to be declared *persona non grata* and expelled from Germany. see Deutscher Bundestag, 12. Wahlperiode, 117. Sitzung, Bonn, Donnerstag, den 5. November, 1992, p. 9983

⁶⁶¹ *ibid*, p.9978

developed.”⁶⁶² Whilst it is true that no clear linkage was established under Critical Dialogue between “improvements in behavior” and possible rewards, it is important to note that Europe’s first phase of constructive engagement with Iran did not serve economic interests either.

Contrary to charges by successive US administrations, that the Critical Dialogue was designed to promote economic relations, it established a political framework for negotiations between the EU and Iran, at a time of falling economic interdependence. Exports from the EU to Iran between 1991 and 1995, fell by 44 %, decreasing from \$10,369 billion in 1991 to \$4,622 billion in 1995.⁶⁶³ During the same period British exports fell by 57 % constituting \$909 million in 1991 and \$527 million in 1995.⁶⁶⁴ Iranian oil imports to Britain decreased from 2982 thousand metric tons in 1990, to 1281 thousand metric tons in 1994 and, in fact, Britain ceased to import any crude oil from Iran from 1999 onwards.⁶⁶⁵ From the beginning of the Critical Dialogue British parliamentarians and human rights activists questioned the stance of the government not to employ sanctions against Iran.⁶⁶⁶ As established during the immediate *fatwa*, an embargo of any kind was not seen as desirable to British economic interest. Nonetheless, Britain’s uncompromising position on the *fatwa* and the refusal to upgrade relations with Iran continuously maintained an unfavorable climate for British exporters and oil companies.⁶⁶⁷ It will be shown that, contrary to other EU member states (most notably Germany), Britain enjoyed a relative asymmetrical relationship with Iran, characterized by Iran’s increasing dependence on British hydrocarbon technology and investment in that sector. In the end, Britain managed to translate this dependence into diplomatic capital.

⁶⁶² European Council in Edinburgh, 11-12 December 1992; Conclusions of the Presidency, European Council, RAPID, DOC/92/, paragraph 15

⁶⁶³ IMF, Direction of Trade Statistics Yearbook 1996, p.76

⁶⁶⁴ IMF, Direction of Trade Statistics Yearbook 1996, p.443

⁶⁶⁵ United Nations, 1991 Energy Statistic Yearbook (New York, United Nations, 1993), p. 160; United Nations, 1995 Energy Statistic Yearbook (New York, United Nations, 1997), p.176; United Nations, 1999 Energy Statistics Yearbook, (New York, United Nations, 2002), p.182; United Nations, 2003 Energy Statistics Yearbook, (New York, United Nations, 2006), p.190

⁶⁶⁶ *see* House of Commons, Hansard, 20 February, 1992, Column 845

⁶⁶⁷ Interview with Mr Ahmad Salari, BP Country Representative Iran, (Tehran, 25 August 2005)

Whilst economic interests were certainly a factor for Iran to reciprocate the European offer,⁶⁶⁸ the government in Tehran also had a number of issues it wanted to raise during subsequent Troika Meetings. Of particular concern to the Iranians was Europe's role in the Middle East Peace Process and they demanded more support for the PLO; the human rights situation in the EU (with particular reference to the status of minorities); the fact that the MKO was still permitted to reside and operate in Europe and had not been labeled a terrorist group, and the role of Europe in the war in former Yugoslavia.⁶⁶⁹ When the Iranian FM put these items on the agenda of the Critical Dialogue, Rafsanjani approved Velayati's advise to engage with Europe.⁶⁷⁰ Essentially, by presenting Europe with Iran's issues of concern, the President was able to sell engagement to radical elements in and outside parliament and government. Regarding Rushdie and Britain, the Iranians knew that the initiative of engagement came from Britain as John Major's government needed the EU to increase pressure on Iran. Though the Iranians genuinely regarded this as politicizing a supposedly religious issue - not realizing or admitting that the *fatwa* itself was a political act – they nonetheless believed that dialogue was more important than backing off. The Iranian FM also wanted the opportunity to affirm that the government would not send anyone to kill Rushdie.⁶⁷¹

Between 1992 and 1993, there was certainly much “diplomatic signaling” from Tehran regarding human rights and Rushdie's freedom of speech, none of which, however, could have been interpreted as positive steps towards a resolution. Within and without Iran, the crackdown on dissidents continued on a large scale. The Special Representative for Iran received reports indicating that hundreds of persons had been arrested following demonstrations in Mashad, Arak, Chahar-Mahal, Hamedan, Khorramand, Shiraz, Shushtar and Tehran. Demonstrations, most of which were directed at economic mismanagement of the government, began in Shiraz in mid-April 1992 and spread to all of the country. Members of the IRG and other security forces responded by using

⁶⁶⁸ Between 1991-1995, Iran was heavily dependent on imports from industrialised countries (mainly EU). In 1991 it imported 68.6 % from industrialised countries, in 1992 72.6 %, in 1993 73.5 %, in 1994 64.3% and in 1995 56. 3%. IMF, *Direction of Trade Statistics Yearbook*, 1996, p. 254

⁶⁶⁹ Interview with Dr Mahmoud Vaezi, , Former Deputy Foreign Minister (1988-1999), (Tehran, 6 September, 2004)

⁶⁷⁰ *ibid*

⁶⁷¹ *ibid*

excessive force and opened fire indiscriminately on demonstrators. The judiciary reacted by sending more judges to the affected areas, so that as Ayatollah Mohammad Yazdi, Head of the Judiciary, said “swift and decisive action would be meted out to rioters”.⁶⁷²

Equally, constitutional guarantees of freedom of expression, opinion and the press as contained in Article 24 of the constitution continued to be ignored. In 1992, Rafsanjani stated that “criticism and discussion of problems in the press, dailies and periodicals, without bearing grudges and without hatred, can help the growth and development of society.” In reality, however, criticism of the government or any policies remained subject to punishment. Whilst Iran witnessed a gradual proliferation of newspapers and publications, they were by no means free and remained subject to self censorship and government restrictions. Even though new newspapers opened, many were quickly closed down, such as the sports monthly *Farad*, the cultural weekly *Donya-e Sohan* and the women weekly *Zan-eRous*.⁶⁷³ An editorial of Tehran Times of 27 July 1992 stated that:

[...] most newspapers were afflicted with self-censorship or with a kind of party or group vengeance because, after the victory of the revolution, officials in charge of the country’s important newspapers were mainly comprised of two parts: those who desired to use the newspapers as a ladder of success to reach higher State posts or those who left posts as ministers or top officials and fell in status and turned to be present in the country’s politico-economic scene. [...] ⁶⁷⁴

The editorial added that “ it is below the dignity of the Islamic Revolution of Iran, that after 13 years, a permit for the set-up of the country’s syndicate of journalists has not been issued under conditions when land and automobile brokers have established their powerful unions with government permits.”⁶⁷⁵ Overall, by 1992, government control over the media had increased. Possession of typewriters, photocopiers, computers, faxes or short-wave radios not registered with the authorities incurred severe punishment.⁶⁷⁶ In

⁶⁷² Final Report on the situation of human rights in the Islamic Republic of Iran by the Special Representative Mr Reynaldo Galindo Pohl, pursuant to Commission Resolution 1992/67 of 4 March 1992, UN Doc. Number E/CN.4/1993/41, 28 January 1993, paragraph 7

⁶⁷³ *ibid*, paragraphs 175- 179; 183-188

⁶⁷⁴ *ibid*, paragraph 179

⁶⁷⁵ *ibid*

⁶⁷⁶ *ibid*, paragraph 181

1993, publishers and journalists continued to be charged with various offences ranging from “printing photographs violating public decency” against the weekly *Avay-e Shomal* to the Tehran monthly *Hamshahri* which was closed down for “publishing articles promoting western culture” and *Abrar* whose editor was summoned to court for the publication of “different articles that were considered scandalous, slanderous and offensive.”⁶⁷⁷ It was, however, alleged by journalists and publishers that charges against the above-mentioned papers as well as widely circulated dailies, such as *Salam* and *Kayhan*, were purely politically motivated and constituted concerted efforts by the government as well as judiciary to contain genuine criticism. As *Salam* wrote in September 1993:

Unfortunately, when we report events, some people start a premeditated campaign against us. This plot is now at work with the purpose of closing down our newspaper. On the other hand, any time we try to get some information about affairs of the State, they either do not give us any, or they give us cliché answers of which no reader will be convinced.⁶⁷⁸

In addition to direct efforts by the state to control the free exercise of freedom of speech, it was alleged that gangs of vigilantes claiming to protect Islamic values issued death threats against journalists and attacked publications they disapproved of. These unofficial acts of intimidation and violence were allegedly carried out with the tolerance of the authorities and without fear of prosecution.⁶⁷⁹

Whilst the criticism expressed through media and demonstrations initially reflected discontent with Rafsanjani’s inability to deliver on economic policy it gradually also reflected popular feelings about the lack of political freedoms. Though Rafsanjani

⁶⁷⁷ Final report on the situation of human rights in the Islamic Republic of Iran prepared by the Special Representative of the Commission on Human Rights, Mr Reynaldo Pohl, pursuant to Commission Resolution 1993/62 of 10 March 1993 and Economic and Social Council decision 1993/273, UN Doc. E/CN.4/1994/50 2 February 1994, paragraph 133, paragraph 136, paragraph 127

⁶⁷⁸ *ibid*, paragraph 139

⁶⁷⁹ *ibid*, paragraph 130, paragraph 141; It should also be noted that on 13 August 1993, the authorities ordered the withdrawal of all books by Aziz Nasin, a Turkish writer, because of his support for Rushdie. The Minister of Culture and Islamic Guidance warned all libraries in the country that they will be punished if in possession of his books. *see ibid*, paragraph 142

allowed a certain degree of criticism concerning economic issues, dissent in the political realm, which seemed to be emerging, proved dangerous for the Rafsanjani-Khameini alliance. The emergence of protests of such nature and scale proved intolerable for a regime that by and large relied on popular acquiescence and ideological support.⁶⁸⁰ Condemnations of human rights violations by western states were still being rejected by the judiciary as false, and Ayatollah Yazdi reiterated that convictions of opposition groups, such as the Freedom Movement of Iran was because these groups had endangered the security of the state. He further stressed that: “We believe that Islam enjoys the richest legal sources and supports and observes human rights more than any other school of thought.”⁶⁸¹

The stepped up drive of the security apparatus to suppress the right to freedom of speech largely was deeply rooted in the regime’s appreciation of the success of the Velvet Revolution in East Europe. Whilst rising popular dissent proved a nuisance to the establishment and was countered with a reorganization of the security apparatus⁶⁸², opposition from within the religious circles proved more threatening for the regime. Evidence of such clerical unrest was shown when 70 clerics were arrested in Qom in November 1991 after clashes resulting from their opposition to the proposed elevation of Khameini to Grand Ayatollah. Many of them were put under house arrest, such as Ayatollah Rohani, who was categorically opposed to the principle of *velayat-e faqih*.⁶⁸³ This incident in particular reflected a deeper factional divide about the future course of the country and also explains the reasons for the stepped up suppression of the right to freedom of expression. An editorial which appeared in *Gozaresh-e Hafteh* in November 1993 explains the situation of the press as follows:

⁶⁸⁰ *Iran Focus*, Vol.4, No.8, (September, 1991), p. 8

⁶⁸¹ *Iran Focus*, Vol. 1, No. 10, November, 1991, (Aban/Azar 1370), p.6

⁶⁸² Riot police were increasingly being used to implement curfews, which had been implemented on certain cities where demonstrations occurred. Most significantly, the *basij* militia was increasingly used as anti-riot security forces and thus given a new role following the end of the war with Iraq. *Iran Focus*, Vol. 4, No.9, (October, 1991), pp.7-8; *Iran Focus*, Vol.4, No.8, (September, 1991), p.8

⁶⁸³ *Iran Focus*, Vol. 1, No. 10, November 1991, (Aban/Azar 1370), pp. 6-7

When we started our work and chose journalism as our main profession we had the impression that we would be able with our criticisms and fault-finding to rectify the system's shortcomings and establish a powerful transmission channel between the people and the system. But unfortunately, it was proved we were wrong. Why is it that our press lacks the kind of effectiveness and influence it should otherwise enjoy? Why is that some officials continue to retain office despite all that documented press criticism? We think we have the answer to this question. The genuine press draws its strengths from the people. For instance, a critical article about an incompetent government organization or office could immediately enlighten the public mind on what is really going on there, and following that, the people, due to their authentic, practical involvement in their own political destiny, should be able to influence and alter the state of affairs with the levers they control. But unfortunately, in our country the people are not yet able to intervene or partake in their own political destiny and do not have that lever. That is why our press, despite the relative liberty it enjoys, is practically deprived of its true strength. And that is why we journalists are writing in the "vacuum" and the authorities are going their way.⁶⁸⁴

What was also notable during that period was that the extension of human rights violations abroad on part of the Iranian government directly affected Rushdie. A first and last meeting between the Rushdie Defense Committee and an Iranian diplomat at the Iranian Embassy took place in London in February 1992. During the meeting between Mahmoud Mehdi Soltani and the Head of Article 19, Frances D'Souza respective positions were exchanged on the *fatwa*.⁶⁸⁵ As it was agreed that the meeting had been informal and non-confidential, Rushdie's Delegation informed Soltani that they would put out a press release which included his comment that the bounty had nothing to do

⁶⁸⁴ UN Doc. E/CN.4/1994/50, paragraph 143

⁶⁸⁵ Following the usual letter to the Iranian Chargé d'Affaires in London at the anniversary of the *fatwa*, the Rushdie Defense Committee was asked by the Iranian Embassy to meet the Chargé on 13 February 1992. Though the Charge was not there as he had been recalled to Bradford, an Iranian diplomat, Mahmoud Mehdi Soltani, received Rushdie's Delegation. During what was the first and last direct contact between the Iranian government and the Defense Committee, Head of Article 19, Frances D'Souza, explained their concerns about the illegal death threat to Rushdie who, according her, had committed no crime. Whilst acknowledging that some Muslims had been deeply offended by certain passages in the novel, the delegation argued that those likely to be offended should avoid reading the book. When it raised the issue of the bounty and vocally deplored the involvement of the 15th Khordad Foundation, Soltani replied that it was a private foundation which had nothing to do with the government. He went on to enquire why "there was such a fuss about just one writer, what was so special about this writer?" Repeating the repugnance that European and other countries felt about the death sentence and that underlying it was the conviction that freedom of expression was an individual right, which lay at the heart of democracy, the delegation ended the meeting with a reminder that the Iranian government is state party to the International Covenant on Civil and Political Rights, from which "Article 19" derives. *see* Baroness Frances D'Souza's diary of "Fighting the Fatwa"

with the government. What initially seemed to be first steps in the right direction seemed to have reflected the complexity of the Iranian political system. On 17 February, the Iranian Embassy issued a press statement which essentially denied that any meeting had taken place by denoting Soltani to the status of local employee thus enabling the Chargé to say “None of this Embassy’s diplomats has had a meeting with the representative of the International Committee for the Defense of Salman Rushdie.” Significantly, the statement went on to reaffirm the *fatwa*, which was referred to as “ a global Islamic matter and absolutely irreversible [...] it would be pure fallacy to suggest that the *fatwa* may be withdrawn, now or at any time in the future. Any other interpretation of the above-mentioned meetings and its contents is categorically denied.”⁶⁸⁶ Less than five months later, Mahmoud Soltani was one of three Iranians (two from the Embassy and one student) requested to leave Britain because of “involvement with a foreign intelligence service in the UK”. He and an Iranian on a student visa were believed to have conspired to kill Rushdie.⁶⁸⁷ The meeting may have served to gather information or come closer to people associated with Rushdie. The denial of the meeting that followed must have served to appease radical constituents in Iran.

In contrast to Britain’s uncompromising stance on Iranian intelligence activities stood Germany which, historically, had always been the western power closest to Iran. Following the end of the war with Iraq, Germany advanced to be one of Iran’s biggest trading partners and by 1995 Iran had become Germany’s fourth biggest debtor country owing the government 14,814 billion Deutsche Mark.⁶⁸⁸ This economic interdependence largely dictated German policy towards Iran. German economic and financial power could have been used as incentives for tangible improvements in human rights or on the

⁶⁸⁶ *ibid*

⁶⁸⁷ *ibid*, Concern that a plot to assassinate Rushdie through the Iranian Embassy and the “Union Islamist Student Association in Europe “ was confirmed by a German police report based on surveillance on the Iranian Ambassador’s Residence in Bonn. *see* “Bundesamt für Verfassungsschutz, Bericht der Arbeitsgruppe des BfV vom 29.06.1993, „Die Arbeit der iranischen Nachrichtendienste „ Paragraph 2.1.5 reprinted in Frankfurter Rundschau, 28. März, 1995, Nr. 74, *see also* „Bundesamt für Verfassungsschutz“ VC11-247-S-350 146/93, a. April 2003, in Appendix of Abgeordnetenhaus von Berlin, 12. Wahlperiode, Bericht des 2. Untersuchungsausschusses von Berlin zur Aufklärung möglicher Versäumnisse der Sicherheitsbehörden im Zusammenhand mit dem Mordfall Mykonos, Drucksache 12/5949, p. 57

⁶⁸⁸ “Antwort der Bundesregierung – Iran Politik der Bundesregierung”, 13. Wahlperiode, Drucksache 13/3483, 16.01.1996, p.1

Rushdie issue. This was, however, rejected by the government on financial grounds as Bonn was primarily interested in Iran meeting its obligations rather than to linking any new loans to improvements in Iranian behavior. What was striking about the “German Connection” is that despite knowledge on activities of Iranian intelligence in Germany and Europe, and considering Britain’s position / campaign on the *fatwa*, Germany’s implementation of the Critical Dialogue was uncritical to say the least, but in practical terms actually assisted Iranian efforts to clamp down on dissidents abroad.

From 1992 onwards, the Iranian leadership launched a new campaign to destroy the Kurdish Democratic Party-Iran (KDP-I). Amongst the various opposition groups advocating armed resistance, the KDP-I as well as the MEK continued to pose real political threats to the establishment. The KDP-I for its part had established branch offices in all of the major cities in Europe and enjoyed the support of the Socialist International.⁶⁸⁹ Hence, as had been seen with the deaths of Bazargaan and Quasemlou, strikes against their infrastructure in Europe was seen as a paramount objective in order to wipe them off the political map. As Minister of Intelligence and Security (MOIS), Fallahiyan stated on Iranian TV in August 1982 with reference to Iranian intelligence efforts abroad: “ We have succeeded to strike against many of those groups outside our borders “ and further announced that “ we are continuing our operations against the DKP-I. We are tracking them now and are observing them continuously outside of our country. We managed to infiltrate their central organizational structures and are informed about their moves. “⁶⁹⁰

The way MOIS coordinated attacks was divided between the “operational-team”, which gathered information about the day to day life of the victim and the “hit-team”, which eventually executed the assassination.⁶⁹¹ According to German intelligence, Kazem Darabi, who was working for the Iranian intelligence service VEVAK and also an affiliate of the IRG and the *Hezbollah* was first approached by the Consul in Bonn

⁶⁸⁹ Wilfried Buchta. *Who rules Iran ? The Structure of Power in the Islamic Republic*, p. 104

⁶⁹⁰ Abgeordnetenhaus von Berlin, 12. Wahlperiode, Bericht des 2. Untersuchungsausschusses von Berlin zur Aufklärung moeglicher Versaenisse der Sicherheitsbehoerden im Zusammenhand mit dem Mordfall Mykonos, *Drucksache 12/5949*, p. 22

⁶⁹¹ Bericht der Arbeitsgruppe Iran des BfV vom 29.06.1993, Paragraph 2.1.2.1

Mahmud Amani-Farani to gather information about Kurdish groups in Germany⁶⁹² and eventually was charged with the assignment to kill the leaders of the party during their participation at the Socialist International Conference in Berlin.⁶⁹³

Generally, the German government made it rather easy for Iranian intelligence to locate refugees and dissidents. This was due to the fact that the German Ministry for the Interior insisted that Iranians living in Germany should continue to have their identity cards reissued by the Iranian embassy and consulates. Quite often this was misused by the Iranian authorities to recruit new informants in Germany.⁶⁹⁴ What was more, Section II of the “German-Iranian Agreement of Naturalization” of 1929 proved to be a fatal bilateral treaty particularly for Iranian dissidents as it allowed the Iranian government to veto any Iranian refugee obtaining German citizenship. It was only in December 1995 that this section was bilaterally abrogated.⁶⁹⁵ Most crucially, however, was the practice of German authorities to routinely present the Iranian embassy and consulates with the questionnaire Iranian that asylum seekers had to fill in. This provided the Iranian Intelligence Services with individual asylum seeker’s reasons for seeking refuge in Germany, their residence there as well as details about relatives backs in Iran.⁶⁹⁶

When the three KDP-I leaders, Scharafkandi, Abduli and Erdalan were assassinated on 17 September 1992 in a Greek restaurant called “Mykonos”, German authorities had already gathered considerable evidence that such an attack was imminent, yet due to internal lack of coordination failed to intervene.⁶⁹⁷ Following the assassination, Darabi

⁶⁹² Generalbundesanwalt beim Bundesgerichtshof, Behördenauskunft, Betreff: Anschlag aus iranisch-kurdische Führungsfunktionäre der Demokratischen Partei Kurdistan-Iran (DPK-I) am 17. September 1992 im Berliner Lokal „Mykonos“ *see also* Deutscher Bundestag, Antwort der Bundesregierung, Drucksache 13/3393, 21.12.1995

⁶⁹³ Anklageschrift des Generalbundesanwaltes beim Bundesgerichtshof vom 17. Mai 1993, p. 6

⁶⁹⁴ *see* Bericht der Arbeitsgruppe Iran des BfV

⁶⁹⁵ *see* Gesetzesentwurf der Bundesregierung, „Entwurf eines Gesetzes vom 1. Mai 1995 zwischen der Bundesrepublik Deutschland und der Islamischen Republik Iran zur Aufhebung des Abschnitts II des Schlussprotokolls des deutsch-iranischen Niederlassungsabkommens“, Drucksache 892/95, 29. Dezember 1995

⁶⁹⁶ *see* Norbert Siegmund, Der Mykonos-Prozess, (Hamburg, Lit Verlag, 2000), p. 116

⁶⁹⁷ Despite requests from the BfV (German Federal Intelligence) to the LfV Berlin (State Intelligence Service for Berlin) to tap Darabi’s phone conversations, neither an anti-terror analyst nor linguists were available and the suspect’s conversations, therefore, not monitored, *see* Abgeordnetenhaus von Berlin, 12. Wahlperiode, Bericht des 2. Untersuchungsausschusses, Drucksache 12/5949, p. 26. Another coordination

and three Lebanese nationals were arrested on charges of murder.⁶⁹⁸ Evidently, being aware of the links to Iranian intelligence, the German government for its part, that had so strongly advocated engagement with Iran, wanted to avoid immediate public condemnation of Iran. In an attempt to “cover up” Iran’s state sponsored assassination, the Chancellor’s Office applied pressure on the prosecutor not to reveal the Iranian link as well as prolonging the investigation by refusing to provide crucial intelligence reports.⁶⁹⁹

Whilst economic interests ranked high for Germany⁷⁰⁰, equally important proved the fate of four German nationals, who were imprisoned in Iran. The most prominent of these was Helmut Szimkus, who had been sentenced to life for charges of espionage for the US and Iraq and had already served one year in Iran’s Evin prison. When the investigations finally started, Iranian authorities announced that the German prisoner would now be executed.⁷⁰¹ This new development provided Iran with a bargaining chip and the Germans with a justification to engage with high level Iranian officials for “humanitarian” reasons. For that reason, the German government received an Iranian parliamentary delegation from 26-30 April 1993 and the Iranian Minister of Intelligence Fallahian in October 1993. Hassan Rohani headed the parliamentary delegation in his function as Deputy President of the Iranian Majlis. During consultations with German parliamentarians the Iranian delegation was approached on the issues of the possible execution of Szimkus, the *fatwa* against Rushdie as well the “Mykonos murders.” Rejecting any charges of human rights violations, Rohani pointed out that different cultural circumstances provide for different interpretations of human rights.⁷⁰² Concerning the *fatwa*, he stated “that Iran never sent nor intends to dispatch any hit

failure was Berlin’s Senator’s refusal for special security precautions during the conference as well as failing to provide information to parliamentary commissions after the attack, *see* *ibid*, pp.27-35

⁶⁹⁸ *see* Antwort der Bundesregierung auf die Kleine Anfrage der Gruppe Bündnis 90/ Die Grünen, Drucksache 12/4441, 1.März, 1993

⁶⁹⁹ *ibid*

⁷⁰⁰ In 1992, German exports to Iran constituted 5,105 billion \$ US, which amounted to almost half of the entire export volume of the EU to that country. Though exports were also declining over the years, investment in Iran proved to be high on Germany’s agenda. *see* IMF, Direction of Trade Statistics Yearbook 1996, p.76

⁷⁰¹ *see* Norbert Siegmund, Der Mykonos-Prozess, p.118

⁷⁰² *ibid*, p.126

squads to kill Rushdie.”⁷⁰³ During consultations with Foreign Minister Kinkel, Rohani went further and stated that “If we had wanted to kill Rushdie, we would have done so immediately after the *fatwa*.”⁷⁰⁴ In a rather defensive manner Kinkel told Rohani that his country was charged by the judicial system with terrorist activities in Germany and that he hoped that the verdict would not negatively affect bilateral relations.⁷⁰⁵ Rohani reminded Kinkel that Iran was at war with the DPK-I and could destroy the entire group whenever they wished to⁷⁰⁶, implying they would not need to target them abroad. The most crucial meeting however with reference to German commitment to promote human rights in Iran, defend Rushdie, and generally stay true to the principles of the “Critical Dialogue”⁷⁰⁷ were meetings between Germany’s intelligence coordinator Bernd Schmidbauer and Iranian Minister of Intelligence Fallahiyan.

At that time the Intelligence Minister’s prominent role in the assassinations was already strongly suspected by the Prosecutor and as such he wanted to issue a warrant of arrest against Fallahiyan while he was in Germany.⁷⁰⁸ With reference to the official purpose of Fallahiyan’s visit to Germany, the government stated that he “was an official representative of the Iranian government who had followed an invitation of the German government” and, therefore, “any attempt to arrest him would be inadmissible.”⁷⁰⁹ Thus, instead of being arrested, during consultations at the Chancellor’s Office and at the Bureau for German Intelligence, Fallahiyan reproached Secretary of State and Intelligence Coordinator Schmidbauer with the complaint that though Iran was considerably involved in the efforts which led to the release of the German hostages in Beirut, it now faced a court trial which accused Iran of state sponsored terrorism.⁷¹⁰

⁷⁰³ *ibid*

⁷⁰⁴ *FAZ*, 30. April, 1993

⁷⁰⁵ *IRNA*, 30 April, 1993

⁷⁰⁶ *IRNA*, 30 April, 1993

⁷⁰⁷ Following Rushdie’s visit to Germany in 1992, the German parliament passed a resolution to increase the pressure on Iran to annul the fatwa and provide for Rushdie’s safety, *see* Deutscher Bundestag, 12. Wahlperiode, 117. Sitzung, Donnerstag, den 5. November, 1992, pp. 9976-9988

⁷⁰⁸ Deutscher Bundestag, 6. Dezember, 1995, *Plenarprotokoll 13/76*, p. 6684

⁷⁰⁹ *ibid*

⁷¹⁰ Iran played an intermediary role towards the Hammadi Clan who was holding the two Germans captive (from 1989-1992) in retaliation of a German court which sentenced two Hammadi brothers for their terrorist activities. Demands to free the two convicts in exchange for the two Germans were categorically

During the meeting, Schmidbauer was asked several times to intervene in the trial which he, however, categorically denied to even discuss, explaining that it was out of his hands as it was a matter of the judiciary.⁷¹¹ What was, however, agreed was cooperation of both intelligence services with regards to training and 100,000 Deutsche Mark were given in contributions to Tehran.⁷¹²

Iran's other bargaining chip, which concerned the fate of German prisoners in Iran, however, received more attention and first meetings between Schmidbauer and were held in Tehran September 1993, which eventually ended in the release of one prisoner who had been charged with fraud.⁷¹³ For the Chancellor, the release of the German prisoners was seen as a humanitarian issue, and parliamentary accusations of negotiating with the person who stood behind the assassinations were thus dismissed.⁷¹⁴

For the British Foreign Office, these meetings were unacceptable. The fact that the Germans did not see it as "necessary to inform the British government about the meeting"⁷¹⁵ resulted in a communication from Hurd to Kinkel reminding the German government about the spirit of Edinburgh and the significance of Rushdie's case. Having summoned the German Ambassador to Britain, Hurd demanded an enquiry about the meeting and he reiterated further that contacts between intelligence services should only take place between allies and not with a state sponsor of terrorism.⁷¹⁶

Whilst in 1993, German –Iranian relations seemed undeterred by Iranian intelligence activities, Britain had changed its policy of quiet diplomacy towards Iran to a more "confrontational policy". During a meeting with Assistant Secretary, David Gore Booth, Assistant Secretary Sir Michael Burton and Minister of State Douglas Hogg in February

refused by the German government and legally impossible. After months of negotiations between Picco and Iran, the successful deal entailed the release of the hostages in exchange for a German commitment to reopen the cases against the Hammadis, *see* Giandomenico Picco, Man Without a Gun, pp.274-295

⁷¹¹ Bundeskanzleramt, „Auszug aus dem Vermerk ueber den Ablauf des Gespraches mit dem iranischen Informationsminister Fallahian vom 7. Oktober, 1993“, Drucksache 511-15100- zu Er (VS)

⁷¹² Deutscher Bundestag, 12. Wahlperiode, 186. Sitzung, Bonn, Freitag, den 29. Oktober 1993, p. 16159

⁷¹³ *ibid*, p.16162

⁷¹⁴ *ibid*, p. 16160

⁷¹⁵ *ibid*, p. 16159

⁷¹⁶ FAZ, 15 October, 1993

1993, Rushdie and D'Souza were told that the rationale for the shift lay in the fact that quiet diplomacy had not, in any way, deterred the Iranian government inspired attempts to assassinate Rushdie. According to the Ministers, the risk to his life was as great as it had ever been. Therefore, the FCO had developed three new strands:

1. It demanded an undeniable statement from Iran that it would not attempt to implement the *fatwa*.
2. An equally undeniable commitment to distance itself from the 15th Khordard Foundation.
3. That Iran would enjoin Muslims around the world to obey the laws of the countries in which they lived.⁷¹⁷

Whilst the new strategy was certainly an improvement compared with earlier half-hearted government stances, the fact that it did not demand to withdraw the bounty resulted out of the government's conviction that the Iranians would not even consider such a request. For the Defense Committee this contradicted the government's earlier convictions that the Foundation was totally removed from the Iranian government. Since the FCO knew that it was not and had never been, it seemed that policymakers in Whitehall had mimicked the convenient Iranian denials to avoid having to deal with the matter. What was clear however for Rushdie's defenders was that the FCO now openly endorsed the campaign and even offered to help in raising Rushdie's profile abroad by facilitating visits.⁷¹⁸

Back in Germany, Fallahiyan's visit would affect Rushdie even more when on 11 October, 1993, the Norwegian publisher of the Satanic Verses was shot three times at his home in Oslo and left for dead.⁷¹⁹ William Nygaard, who had only received police protection in the immediate aftermath of the *fatwa* and continued to receive death threats from Muslim organizations, recovered from his severe injuries and, according to the

⁷¹⁷ Baroness Frances D'Souza's diary of "Fighting the Fatwa"; for the Prime Minister's meeting with Rushdie see also House of Commons, Hansard, 18 May, 1993, Column 122

⁷¹⁸ Baroness Frances D'Souza's diary of "Fighting the Fatwa";

⁷¹⁹ The New York Times, 14 October, 1993

Norwegian police, was the third victim related to the Rushdie affair ⁷²⁰ which created outcries in Europe's literary circles. ⁷²¹

Due to slow Norwegian investigations, the alleged assassin, who was Pakistani, managed to leave the country. The evidence, however, which was gradually revealed by Norwegian authorities, strongly indicated that it was another contract hit man hired by Iranian intelligence. ⁷²² As with the previous attacks on persons related to the "Satanic Verses", Iran's skillful mechanism of "cut outs", again obscured attempts to pin concrete blame on Tehran. A Syrian man questioned by the Norwegian police admitted he had been approached by the Iranian Embassy and asked to spy on William Nygaard. ⁷²³ What emerged months after the shootings was that a few hours after the shooting the Pakistani flew to Iran and after being denied entry at Tehran airport took a flight to Pakistan. ⁷²⁴ The police report also centered suspicion on an Iranian diplomat from the embassy in Oslo who met with the Intelligence Minister in Bonn and never returned back to his post in Norway. ⁷²⁵ What German Intelligence asserted was the fact that the Iranian embassy in Bonn and certainly Fallahiyan himself, gave the green light for targeted assassinations across Europe. Moreover, after the attack, Director at the Iranian Foreign Ministry in Tehran, Ibrahim Rahimpour stated that because the Satanic Verses constituted "mind terrorism" attacks such as that against Nygaard were justified. He further commented that no one connected with Rushdie was safe, and Nygaard was only one of several potential targets and that he prayed that Rushdie be killed. ⁷²⁶

⁷²⁰ The Times, 13 October, 1993

⁷²¹ For the "Nygaard Correspondence" see Letters to the Editors in The Times, 15 November, 1993, 17 December 1993 and 7 January, 1994

⁷²² As one NATO official put it: "Unlike the Israeli Mossad, which uses mainly its own men to carry out such killings, the Iranians can rely on freelancers motivated by Islamic fervour on some occasions, see The Times, 13 October, 1993

⁷²³ BBC Documentary "The Terror Network" shown on 19 May 1997, transcripts available on http://news.bbc.co.uk/hi/english/static/audio_video/programmes/panorama/transcripts/transcript_19_05_97.txt, website accessed 5 February 2005

⁷²⁴ see Documentary on Nygaard's attempted assassination broadcasted on Norwegian TV2 on 15 and 16 December 1997, handed to the author by Rainer Gatterman, Scandinavian correspondent in Stockholm for "Die Welt"

⁷²⁵ *ibid*

⁷²⁶ For the interview with Ibrahim Rahimpour see *ibid*

Though the Norwegian authorities never managed to present hard proof for Iranian involvement in Nygaard's shooting, the Iranians certainly did little to discourage the *fatwa* from being implemented. Whilst German policy towards Iran continued to reflect its own agenda rather than being guided by the principles of the Critical Dialogue, Rushdie himself acknowledged that Germany, due to its close relations with Iran, possessed greatest potential to influence Tehran. He further emphasized, however, that a strategy of cooperation with Iran can only be effective if Tehran's interests would be affected.⁷²⁷

Rushdie was right. The year 1993 proved to be difficult for Iran in economic terms. Whilst the Human Rights Commission resolutions sponsored by EU member states continued to put political pressure on Iran and particularly expressed concerns about the *fatwa* and more general human rights violations within the country⁷²⁸, economic stagnation in the country constituted a more serious crisis for the leadership. Whilst mismanagement of the economy was part of the economic decline, the sharp fall of crude oil prices from \$US 20.45 in 1990 to \$ US 14.95 in 1993⁷²⁹ deprived Iran of vital oil rents. As a result, German exports to Iran, which were booming in 1992 with \$5,102 billion fell by 48 % to \$2,455 billion in 1993.⁷³⁰ Furthermore, in 1993 Germany only imported 2484 thousand metric tons of crude oil from Iran, compared with France which imported 11 818 thousand metric tons and Italy which imported 10 107 thousand metric tons in 1993.⁷³¹ In fact in 1994, crude imports from Iran to Germany fell by 20 % to 1993 thousand metric tons.⁷³² Since most of Germany's crude imports came from Norway and Russia, there was very little dependence on Iranian oil. As Rushdie had rightly remarked, Germany was the most crucial player in the EU and in 1993/1994 it was in a key position

⁷²⁷ TAZ, 11 December, 1993

⁷²⁸ *see* Commission on Human Rights, Forty-Ninth Session, Agenda Item 12, UN Doc. E/CN.4/1993/L.35, 4 March, 1993, paragraph 5 ; Britain co-sponsored the resolution against Iran *see* Hansard, House of Commons, 20 July, 1993, Column 91

⁷²⁹ The fall in crude oil prices mainly resulted from the fact that in the final quarter of 1993, supply ran ahead of demand. *see* BP Statistical Review of World Energy, June, 1994

⁷³⁰ IMF, Direction of Trade Statistics Yearbook 1995, p. 212

⁷³¹ In the same year Britain only imported 2168 thousand metric tons of crude oil from Iran, the lowest of all EU countries. *see* United Nations 1993 Energy Statistic Yearbook, (New York, United Nations, 1995), p. 182

⁷³² United Nations 1995 Energy Statistics (New York, United Nations, 1997), p. 176

to turn Iran's economic depression into political capital. German exports to Iran had over the years been secured by state sponsored sureties and by the end of 1993 amounted to as much as 10,8 billion Deutsche Mark ⁷³³ and thus bore financial risks both for Iran as well as German exporters. Whereas German exporters, however, were covered by government sureties, Iran, on the other side, was crucially dependent on imports from Germany. So called "Hermes Sureties" ⁷³⁴ only constituted as much as 1.4 – 2 billion Deutsche Mark in 1993 and ranked Iran as a high risk country for German exporters. ⁷³⁵ By 1993, outstanding Hermes accounts increased to 4.2 billion Deutsche Mark and by 1995 payment deficits from German exporters of approximately 15 billion Deutsche Mark made Iran the Germany's fourth largest debtor country. ⁷³⁶ Realizing Iran's economic decline, the Clinton administration attempted to persuade EU member states during a Troika meeting in June 1993 to adopt more restrictive policies toward Iran. The US did not campaign for a multilateral severance of economic relations with Iran, but it did press for restrictions on arms exports to Iran and a moratorium on the extension or rescheduling of new export credits to Iran. ⁷³⁷ Britain too recognized opportunities of a new direction in Europe's Iran policy. ⁷³⁸ What could have been a chance for conditional debt rescheduling or potential positive sanctions with regards to human rights improvements, was missed when the German government agreed in 1994 on rescheduling 1 \$US billion Deutsche Mark of non-"Hermes secured" export credits. ⁷³⁹

Whilst Iranian vulnerabilities towards Germany were quite high, so were German long-term vulnerabilities towards that country. Iran had accumulated such debts that the German government decided that to conclude reschedule debt servicing arrangements with the Iranians ultimately were in the interest of Germany as "it would enable Iran to

⁷³³ Die Zeit, 7 August, 1993

⁷³⁴ Hermes Sureties [Hermes Bürgschaften] serve as export guarantees by the German government in order to protect German exporting firms from potential payment deficits by the country of destination.

⁷³⁵ Die Welt, 7 August, 1993, FAZ, 15 April, 1993

⁷³⁶ Antwort der Bundesregierung auf die Grosse Anfrage zur Iran-Politik, BT-Drucksache 13/3483, 16 January, 1996, p.2

⁷³⁷ Meghan L. O'Sullivan, Shrewd Sanctions – Statecraft and State Sponsors of Terrorism, p.53

⁷³⁸ House of Commons, Hansard, 16 June 1993, Column 40

⁷³⁹ FAZ, 28 February, 1994; FAZ, 27 December, 1994

meet its obligations to the Federal Government.”⁷⁴⁰ The deal coincided with Deputy Foreign Minister Vaezi’s visit to Bonn for consultations regarding the German prisoner and promised “to push for an amnesty for Helmut Szimkus”.⁷⁴¹ Eventually, by June, 1994, Foreign Minister Velayatti announced that his government had granted the German prisoner amnesty:⁷⁴² ironically genuinely turned out to have been a spy for the Americans since 1980.⁷⁴³ In this regard, it is worth noting that during a meeting with Foreign Minister Kinkel and Rushdie, Kinkel told the author that he “cannot change the foreign policy of Germany for the sake of one man.” For Rushdie these remarks proved “frankly inaccurate since the issue” he claimed “has not to do with me in any way. I just happen to be the location of the issue. The issue has to do with threats against many other people, with European businesses [...] publishers, book sellers and it has to do with high matters of principle which, of course, politicians try not to talk about.”⁷⁴⁴

5. Factional Politics: Explaining Human Rights Violations and Iranian Diplomacy

Rafsanjani drew his support from the middle class, including government employees, technocrats and professionals as well as from Iran’s business community. When he was elected President his agenda mainly reflected the interests and needs of this constituency. Contrary to the radical leftist idea of governance, Rafsanjani inaugurated a “period of *pakazi* (literally clean-up) within the administration, intended to remove some of the diehard dogmatists from sensitive posts in the government”. Essentially, Ansari argues “Rafsanjani was seeking to demobilize politics and society following the war, and to rationalize them in the service of economic reform.”⁷⁴⁵ It became evident that Rafsanjani

⁷⁴⁰ Antwort der Bundesregierung auf die Grosse Anfrage zur Iran-Politik, BT-Drucksache 13/3483, 16 January, 1996, p. 3

⁷⁴¹ IRNA, 25 February, 1994, Süddeutsche Zeitung, 25 February, 1994

⁷⁴² When Secretary of State Schmidbauer travelled to Tehran in July 1994 to accompany Szimkus home, the Iranian government stole him the show by putting him on a Lufthansa plane hours before the German delegation arrived. *see* FAZ, 3 August, 1994.

⁷⁴³ *see* FAZ, 3 August, 1994

⁷⁴⁴ BBC Documentary “Panorama – The Terror Network” shown on 19 May 1997, transcripts available at http://news.bbc.co.uk/1/hi/english/static/audio_video/programmes/panorama/transcripts/transcript_19_05_97.txt; website accessed 5 February 2005

⁷⁴⁵ Ali M Ansari, Iran, Islam and Democracy- The Politics of Managing Change, p.58

did not, however, intend to implement political reforms, thus avoiding any serious ideological and systemic threats to the state. In fact, Rafsanjani sided with Khomeini on political terms and until 1994, when Khomeini lend his entire support to the conservative right, both figures continued to endorse each others' positions. Khomeini allowed Rafsanjani's economic reform initiatives whilst Rafsanjani maintained religious rhetoric particularly with regards to fundamental political and social issues. The executive's need to keep a balance between economic reform and religious rhetoric particularly applied to the Rushdie issue as well as human rights in general. On relations with Britain, Rafsanjani continued to emphasize for most time of his first term the need for Britain "to abandon its intolerance and cease insulting Islam". Once "a proper judgment [against Rushdie] has been made by the British government, relations could be established again."

⁷⁴⁶ Such rhetoric, which essentially catered to domestic constituents, particularly the *Majlis*, dominated by the radical left, were meant to attain support for economic policies aimed largely at attracting foreign investment and securing new export destinations for non-oil exports. Economic policy was thus directly linked to improved relations with the outside world, particularly with the West. ⁷⁴⁷ Yet Iran's inflexibility on the Rushdie affair obstructed these relations. This fundamental contradiction continued to dictate Iranian diplomacy for much of the 1990s. Foreign as well as domestic policy thus had to cater to both a "moderate and radical wing". ⁷⁴⁸ Likewise, domestically, reforms did not translate into political liberalization. Far from it, radicals and ultra-conservative figures replaced key cabinet ministers appointed by Rafsanjani in 1992. Most notably, Ali Fallahian who, having established a department within the Intelligence Ministry dealing with "dissatisfaction and cultural and economic conspiracies" created an efficient security apparatus able to violently crack down on emerging dissidents in Iran as well as in the Diaspora. ⁷⁴⁹ Together with Mohtashemi who chaired the influential *Majlis* Defense

⁷⁴⁶ Rafsanjani when talking to domestic media reiterated this position on numerous occasions. Statement quoted from presidential press conference on 11 June 1990, *Iran Focus* Vol.3, No.7, (July-August) 1990), p.6

⁷⁴⁷ As stated by Mohsen Noorbakash, Economic and Finance Minister in *Iran Focus* Vol. 4, No.9, (October, 1991), pp.12-13

⁷⁴⁸ Mehdi Mozaffari, Revolutionary, "Thermodynamic and Enigmatic Foreign Policy: President Khatami and the "Fear of the Wave"", *International Relations*, p.15

⁷⁴⁹ see Fallahian's own statement on intelligence capabilities, *Iran Focus*, Vol.5, No.9, October, 1992 (Mehr-Aban 1361), pp.8-9

Committee until 1992 and was instrumental in the reorganization of the *Basij*,⁷⁵⁰ the radicals effectively managed to suppress the gradual emerging popular discontent from gaining any significant political momentum.

For the most part, violent riots and large-scale demonstrations in the 1990s exposed underlying economic tensions⁷⁵¹ resulting from Rafsanjani's post-war policies. Essentially it was the average Iranian worker who had to bear the burden of the government's reconstruction policy and the high rate of inflation. By and large, major economic policy strategies were not supported by extensive political and legal reforms, which would have helped the country to replace oil as its sole income-generating basis as well as build the social consensus necessary to mobilize the work force for any such fundamental structural transformation.⁷⁵² Moreover, lacking domestic resources to finance the ambitious growth and reconstruction plans, Rafsanjani did not hesitate to challenge two of the economic linchpins of the Revolution by seeking international loans and direct foreign investments. Declining oil prices in the 1990s, an increasing trade deficit coupled with the inherent increase of foreign debt eventually stifled equitable social and economic development. Essentially, Rafsanjani's policies catered to his mercantile bourgeoisie constituents and emphasized growth and trade over employment, and export-orientated, government-owned industry over a privately owned grass roots national industrial base.⁷⁵³ The *bazaaris*, as an established trading and export orientated mercantile community, benefited immensely from the newly established economic climate and managed to increase their wealth and dominance in political-economic affairs to that extent that by the mid-1990s "commentators were arguing that a new "thousand families" were emerging".⁷⁵⁴ Many revolutionaries on the left as well as increasingly conservative voices feared that the socio-economic imbalances of the Pahlavi regime had returned. As Mohatashami remarked: "The *bazaaris*' interests would foster an unhealthy dependence on the West and an economy where the *bazaaris* got rich

⁷⁵⁰ *Iran Focus*, Vol. 4, No. 8, (September, 1991), p.8

⁷⁵¹ *Iran Focus*, Vol.5, No.7, July-August, 1992 (Tir-Sharivar 1371), pp.6-7

⁷⁵² Kaveh Eshani, "Tilt but Don't Spill: Iran's Development and Reconstruction Dilemma", *Middle East Report, No.191*, (Nov-Dec, 1994), p. 18

⁷⁵³ *ibid*, p.20

⁷⁵⁴ Ali M Ansari, *Iran, Islam and Democracy- The Politics of Managing Change*, p.59

through land speculation, hoarding, and manipulation of the exchange rate.”⁷⁵⁵ Far from meeting the needs of the “oppressed” the revolution seemed being redefined in the interests of this mercantile elite who secured a considerable client-patron relationship with Rafsanjani. It is for this reason that Rafsanjani’s previously alliance with Khomeini and the conservative camp abruptly ended in 1992. With the aid of the conservative dominated Guardian Council the conservative factions had managed to disqualify a number of influential radicals in the 1992 parliamentary election, eliminating opponents to Rafsanjani and thus securing themselves a more than two-thirds majority in the *Majlis*.⁷⁵⁶ However, contrary to Rafsanjani’s expectations, the new *Majlis* proved no more willing to rally behind the President than was the previous one. Whilst the conservatives favored the traditional mercantile capitalism of the *bazaar*, they also wanted to avoid an increasingly modern bourgeoisie based form capitalism as much of their personal fortune as well as political power was linked to state owned-cooperatives (*bonyads*). The conservatives’ vested interests in maintaining these statist elements in Iran’s political economy proved fundamental for the upper reaches of the regime (including Khomeini himself). Whilst generally permitting Rafsanjani’s laissez-faire based economy, these state-run conglomerates provided the very linchpin of this group’s patronage channels and political power. Even though Rafsanjani won a second term in the 1993 presidential elections, these “conservative detractors” enjoyed the backing of Khomeini and represented a formidable opposition to many of Rafsanjani’s policies. Whilst conservatives were concerned about their stake in the economy, they also feared that expanded relations with the West would inevitably increase the influence of Westernized technocrats and experts within the state bureaucracy and public life. The crackdown against dissidents from 1992 onwards largely reflected the conservatives’ concerted efforts to curb this influence. As shown, this manifested itself in the crackdown of journalists, academics and intellectuals and was designed to make sure that the agenda of the most crucial government ministries were closer to theirs than to Rafsanjani’s.⁷⁵⁷ It is

⁷⁵⁵ Mehdi Moslem, *Factional Politics in Post-Khomeini Iran*, p.165

⁷⁵⁶ The radicals saw their share of seats diminish to less than 15 % (40 deputies out of a total of 270 seats). Ali Banuazizi, “Iran’s Revolutionary Impasse: Political Factionalism and Societal Resistance”, *Middle East Report*, No.191, (Nov-Dec, 1994), p. 4

⁷⁵⁷ Many of Rafsanjani’s cronies, such as his brother Mohammed Hashemi who had been in charge of Radio and Television were replaced by the *Majlis*. Fallahian’s authority and jurisdiction was also

evident that both domestic as well as foreign policy were again subject to factional divide and as much Rafsanjani sought détente with the West he seemed restrained by the rules of the Two-Level Game.

6. Conclusion

When Rushdie was brought to court in Britain on charges including offences against the sacred, respective verdicts, which dismissed the cases against him, established that what was at stake was freedom of speech. By the same token, however, these rulings also further sharpened the controversy concerning the scope of blasphemy laws in England and Wales. Faced with what they considered blatant hypocrisy on the part of the state, the Muslim Community in Britain felt alienated and frustrated. As such it was argued, the Thatcher government failed to appreciate the changed multicultural character of British society and failed to positively engage with that community.

Whilst the British government had to take these rulings as the normative basis on which foreign policy towards Iran would have to be conducted, political leverage on the part of the Iranian government did influence Whitehall's diplomatic maneuvering in 1990-1991. The Conservative Government refused to link the fate of the hostages to altering its position on Rushdie (i.e. to condemn the book) and continued to defend Rushdie's right to freedom of speech, yet adopted more benign rhetoric towards Iran. This was mainly based on the FCO's assessment that, with Rafsanjani's emergence, engagement with the Iranians could prove beneficial and would ultimately result in the release of the hostages and the resolution of the *fatwa*. The most significant factor, which shaped British diplomacy, was Iraq's defeat in Desert Storm, which had left Iran in an unrivalled strategic position in the Gulf. Britain felt that it could not afford not to maintain relations with Tehran and decided to upgrade relations to the Chargé d' Affaires level.⁷⁵⁸

expanded. Ali Banuazizi, "Iran's Revolutionary Impasse: Political Factionalism and Societal Resistance", p.5

⁷⁵⁸ Policymakers in Whitehall felt the need to have a British presence in Iran in order to monitor, what many feared as Iran's hegemonic aspirations in the region.

Responding to this in a Tit for Tat strategy, initiated by the UN Special Representative, Rafsanjani played the intermediary and achieved the release of all British hostages. However, faced with ongoing human rights violations, particularly referring to the right to freedom of speech, Britain felt unable to trust the new government as a political ally.

Concerning the respect and protection of the right to freedom of expression in Iran, the years 1990-1994 witnessed stepped up efforts by the state to actively curb the exercise of this right. Violations of Article 19 of the ICCPR expressed themselves on two levels: a) the state, (the government and judiciary) actively sponsored violent acts inside and outside the country as well as measures outside the law which violated the integrity of individuals and violated their right to exercise their rights freely. Faced with the emergence of widespread protest and dissent, the state responded with the use of violence through the security apparatus as well as heavily relied on the judiciary, which, dominated by the conservative-right proved a resourceful ally in the crackdown of dissidents. Whilst the legal statutes governing the press and freedom of speech hardly afforded a legal framework, which fully granted the exercise of free speech, the ongoing political use of courts against writers, intellectuals and dissidents further contributed to an environment of self-censorship. b) Parliament did not pass legislation which would have confirmed the right to freedom of expression, neither did the legislature attempt to offer any progressive amendments to the existing laws governing freedom of speech. The state also failed to prevent the violation of the right to freely exercise free speech by state and non-state actors. On the contrary, by 1994 so-called parallel institutions, (most notably the *basij* paramilitary) were reorganized by the government in order to actively intimidate and threaten critics. Non-state actors, who carried out such acts of violence enjoyed impunity from prosecution.

The years 1992 – 1994 witnessed a change in Britain's diplomacy towards Iran, which in the face of severe violations of human rights within and without Iran and the attacks on persons related to Rushdie, had no choice other than to adopt an uncompromising stance towards Tehran. Particularly the attacks against persons associated with Rushdie or the publication of the "Satanic Verses" were unacceptable and intelligence available to

Whitehall indicated that the Iranians and other groups were committed to carry out the *fatwa*. However, because of Iranian economic decline and financial dependence on the West, this period also presented a window of opportunity for Europe to engage in genuine conditional diplomacy. Against, Whitehall's new strategy, however, stood Germany, which followed its own agenda and in many ways jeopardized its own created policy of "Critical Dialogue". By and large, Germany's long-term vulnerability, i.e. potential Iranian failure to meet its financial obligations towards its creditor as well as the fate of the German spy in Iran, dictated German diplomacy towards Iran.

Constructive Engagement: Hypotheses and Variables
CHAPTER FIVE

Hypothesis	Independent Variable	Dependent Variable
A. NA	NA	NA
B. Asymmetries in British-Iranian interdependence were sources of power for both sides and affected British as well as Iranian diplomacy. (1990-1991)	The British government needed diplomatic representation in order to secure the release of all British hostages as well as prisoners in Tehran. Policymakers in Whitehall also could not afford not to have relations with Iran faced with Tehran's new and unrivalled strategic position in the aftermath of "Operation Desert Storm". At the same time, the Iranian government needed meaningful détente with the West, particular with Britain in order to facilitate the necessary development and reconstruction efforts.	Britain and Iran re-established bilateral relations to the Chargé d'affaires level. UN channels initiated a TFT strategy in which Arab prisoners in Israeli prisons were exchanged for the release of Western hostages in Lebanon. The Iranian government under Rafsanjani offered its good offices and achieved the release of all British hostages as well as prisoners in Iran. Because of severe human rights violations in and outside Iran as well as attacks against persons associated with Rushdie, the British felt unable to trust the new Iranian government as political ally.
C. With the launch of the "Critical Dialogue", the <i>fatwa</i> and human rights in general were on the EU's diplomatic agenda towards Iran. However, German-Iranian interdependence significantly affected British efforts to resolve the Rushdie affair.	Germany's perceived <i>sensitivity</i> and long-term <i>vulnerabilities</i> to changes in its relations with Iran (i.e. import of crude oil, trade and especially Iranian debts to the German government) allowed Iran to ignore any EU or British initiatives. On the contrary, German-Iranian intelligence cooperation assisted Iranian efforts in cracking down against dissidents in the Diaspora.	Britain's resolute position to link any economic / commercial / financial cooperation with Iran to meaningful changes on the Rushdie front was impeded by the German government.
D. Level I negotiations were subject to Iranian domestic constituents. Iranian diplomacy reflected domestic politics. Level I	a) Level II (domestic) "win-sets" were not supported by "internationalist forces", in order to win "isolationists' " support for domestic policies: For most of the 1990s	The Iranian government was forced by its own constituents to defect from British demands on Level I negotiations. Since foreign and domestic policy had to cater for

<p>negotiations were unsuccessful because of the lack of domestic consent.</p>	<p>Rafsanjani faced a hostile 3rd <i>Majlis</i> (1989-1992) and 4th <i>Majlis</i> (1992-1996). Whilst Rafsanjani had to cater to the former in ideological terms (economic, cultural policy and uncompromising position on the <i>fatwa</i>), the latter felt that their political-economic clientalist network was being jeopardized by the government's bid for privatization. Ultimately, the government conceded on / refrained from implementing political reforms and worked to uphold the political status quo.</p>	<p>a moderate and radical wing, Iranian diplomacy continued to be contradictory. On the contrary, intelligence available to the British government indicated that the government was still committed to carry out the <i>fatwa</i>.</p>
	<p>b) NA</p>	<p>NA</p>

CHAPTER SIX

THE JUPPE INITIATIVE AND BRITISH-IRANIAN STALEMATE: THE YEARS 1994-1996

1. Introduction

In February 1994, a French court established Iranian intelligence involvement in the killing of former Prime Minister Dr Shapur Bakhtiar and his aide Soroush Katibeh.⁷⁵⁹ This legal ruling coincided with a series of political initiatives in Europe, which further contributed to the isolation of Iran. In a way, Iran was caught in a vicious circle. Moderate elements inside and outside government sought for détente with western powers, and indeed Rafsanjani's technocrats and his coalition with the mercantile-bourgeoisie needed foreign investment. At the same time, radicals in the political arena were attempting to regain lost ground, resulting in increased repression, which in turn attracted international condemnation.

By 1994, Britain, which had now fully embraced Rushdie's Defence, initiated a series of public condemnations, which ended with the French (Juppé) Initiative in 1995.

To mark the fifth anniversary of the *fatwa*, Mark Fisher, MP, tabled a House of Commons Early Day Motion, which was supported by Neil Kinnock and fifty other parliamentarians from all parties and called for the government to double its efforts to persuade the Iranians to rescind its threat. Prime Minister John Major issued a statement saying that "It is now five years since the late Ayatollah Khomeini, [...] issued a death threat against Salman Rushdie and others associated with the publication of his book, "The Satanic Verses". I met Salman Rushdie last May to demonstrate the government's

⁷⁵⁹Judge Jean-Louis Brugiere's verdict was based on evidence which indicated their provision of logistical aid to the assassins. He further confirmed charges of murder, conspiracy and terrorism against Iranian Ali Rad Vakili, who was arrested in Geneva and extradited to France. *Le Monde*, 8 February, 1994; Former chief of Iranian Radio and Television, Massoud Hendi was sentenced to 10 years imprisonment for helping the killers enter the country. Another suspect of the assassination, Iranian diplomat, Zeynal Abedin Sharhai, who had been charged with assisting the assassins to leave to Switzerland, was released from prison and immediately expelled from France. Commission on Human Rights, Report on the situation of human rights in the Islamic Republic of Iran prepared by the Special Representative of the Commission, Mr Reynaldo Galindo Pohl, pursuant to the Commission resolution 1994/73 and Economic and Social Council Decision 1994/262, *UN Doc. Nr. E/CN.4/1995/55*, 16 January, 1995, paragraphs 27-28

full support for his fundamental rights. [...] We all want to make it clear to the Iranian government that they cannot enjoy full and friendly relations with the rest of the international community unless and until we are satisfied that there is no further direct or indirect threat from the Iranian authorities [...]”⁷⁶⁰ More eloquently, the French Minister of Culture wrote an open letter to Rushdie saying that “ Today there are many people who will pay tribute to you who, through your books, have incurred the wrath of those wishing to restrict knowledge. [...] I hope [your supporters] will take part in the fight against the wall of loneliness and anguish which the terrorists have built around you. Each of them will add their voice to the uproar which one day will deafen the oppressors.”⁷⁶¹ The Norwegian Minister of Culture led a torchlight procession to mark the anniversary and stated that “ we will continue our efforts in support of freedom of speech.” Irish Deputy Prime Minister and Minister for Foreign Affairs, Dick Spring declared that “the incitement to murder of Mr Rushdie is an unacceptable violation of the most elementary principle of civilized conduct, above all by purporting to deny Mr Rushdie the most basic of all human rights, the right to life.”⁷⁶²

2. Human rights developments, Increased Pressure on Iran and the Diplomatic Row with Britain

Following more communications sent to Iranian embassies by respective national Rushdie Defence Committees, Mahmoud Mohammadi, the Foreign Ministry’s spokesperson reiterated that the judgment against the apostate, Rushdie was in fact the judgement of the entirety of the Muslim World. Referring to European Union statements as “attempts to discredit Imam Khomeini’s historic *fatwa*” and as “vivid example of a western and Zionist plot against Islam and Muslims”, Mohammadi pointed out that the Organisation of the Islamic Conference in its 18th, 19th, 20th and 21st assembly as well as in its sixth summit conference had endorsed Khomeni’s edict.⁷⁶³

⁷⁶⁰ Carmel Bedford, Fiction, Fact and the Fatwa – 2000 Days of Censorship, pp.146-147

⁷⁶¹ *ibid*, pp.147-148

⁷⁶² *ibid*

⁷⁶³ IRNA, 14 February, 1994

Whilst such rhetorical emphasis on international support in the Muslim World was politically expedient, it also reflected the ongoing political divide in the political arena. By and large, Rushdie had become a hostage to factional politics. Though pragmatists in government did appreciate that Iran's economic, scientific and technological leaning towards the West needed a non-ideological foreign policy as prerequisite,⁷⁶⁴ an uncompromising stance on the *fatwa* served to maintain religious authenticity and was meant to appease a hostile parliament.

In the mid-1990s, Iran was plagued by economic decline and political dissent, which both sides of the political spectrum used to criticise the administration. A vital aspect of the First Five Year Economic Plan had been to increase imports of goods and services, which had indeed risen to \$25 billion dollars in 1991/1992. However, the Iranian economy was nevertheless increasingly declining. By 1993 external debt was estimated to be between \$18 - \$28 billion dollars.⁷⁶⁵ As Iran's external current accounts deteriorated, so was the rate of growth of the GDP, which had sunk to 2.5 % for 1993/1994. Consequently, imports of important raw materials and machinery for industry began to fall by 1994, consumer prices rose and desperately needed private investment failed to be attracted due to legal, political and economic uncertainties.⁷⁶⁶ Economic decline was used politically by the conservative dominated parliament against Rafsanjani's government. By 1994, day-to-day politics increasingly reflected ideological tension in the form of conflict between radicals, conservatives and pragmatists. As Menashri put it "the revolutionary regime displayed a trend toward pragmatism interrupted by occasional bursts of radicalism, a pattern which persisted despite changes of personalities, issues and alignments." ⁷⁶⁷ With a majority in parliament, conservatives (mainly represented by the Militant Clergy Society) ⁷⁶⁸ had first systematically stymied Rafsanjani's economic

⁷⁶⁴ see Mahmoud Sarioghalam, The Foreign Policy of the Islamic Republic of Iran: A Theoretical Renewal and a Paradigm for Coalition, (Tehran, Center for Strategic Research, 2000), pp.7-10

⁷⁶⁵ see Vahle Petrossian, "Special Report: Iran", in Middle East Economic Digest, Vol. 19 (February 1993), pp.7-15

⁷⁶⁶ Massoud Karshenas and M. Hashem Pesaran, "Economic Reform and the reconstruction of the Iranian Economy", in Middle East Journal, Vol.49, N.1, (Winter 1995), pp.90-91,

⁷⁶⁷ David Menashri, "Iran" in Middle East Contemporary Survey, Vol. XVIII: 1994, p. 298 (thereafter MECS)

⁷⁶⁸ see Economist Intelligence Unit, Country Report: Iran.- 4th Quarter 1994, EIU, 1994, p.5

liberalisation policies and now moved on to claim that his economic reform agenda would only serve the rich and charged him with being politically tepid and gutless.⁷⁶⁹ *Hojjatoeslam* Mohtashami in particular criticised the President on the grounds that rapid inflation meant that the lower strata achieved only insignificant salary raises, while the rich accumulate more and more wealth.⁷⁷⁰ Rafsanjani had lost credibility amongst his own mercantile-bourgeoisie allies as well as in Iranian society. Consequently, economic crisis encouraged dissent, which, was partly directed at the government's mismanagement of the economy, but mainly mirrored the disillusionment with the Islamic Revolution. Dissidents, including writer Ali Akbar Saidi-Sirjani, were arrested and then forced to make public confessions on TV and eventually died whilst in prison.⁷⁷¹ Following Saidi-Sirjani's arrest⁷⁷² and in the view of the overall level of censorship, a group of over one hundred writers, artists and journalists sent an open letter to the authorities, calling for freedom of expression and an end to censorship. The group protested "against the frustrating obstacles, and humiliating attitudes that have to be faced by those who do not respect the government's dictates [...]" and announced the establishment of an association of writers and artists "to oppose, collectively [...] the obstacles to reading, free circulation of thought and the freedom of expression."⁷⁷³ Retired General Azizollah Ami-Rahimi also added his voice to the growing criticism, calling on Rafsanjani in an open letter to make the constitution more democratic. He singled out the practice of vetting electoral candidates (which helped to create a conservative majority in the 1992 elections) as a key example of the lack of democracy and called for free elections.⁷⁷⁴ As a response to increased dissent amongst society, the conservative dominated parliament passed a law which prohibited the importation and use of satellite dishes and charged the *basiji* with the task of dismantling existing

⁷⁶⁹ The New York Times, August, 1994

⁷⁷⁰ MECS, Vol. XVII: 1994, p. 304

⁷⁷¹ ibid

⁷⁷² Saidi-Sirjani's contention that Iran possessed a pre-Islamic tradition of respect for individual rights and opposition to tyranny led the government to ban his books in 1991 and eventually to his arrest in March, 1994. *see* Sandra Mackey, The Iranians: Persia and the Soul of a Nation (New York, Penguin Books, 1996), p. 373

⁷⁷³ Commission on Human Rights, , UN Doc. Nr. E/CN.4/1995/55, pp.9-10

⁷⁷⁴ Following his statement Amir-Rahimi was detained briefly when he failed to respond to a summons issued by the armed forces prosecutor, *see* Economist Intelligence Unit, Country Report: Iran.- 4th Quarter 1994, p. 9

antennas. More significantly, however, it enacted a law, which allowed the *basiji* to use firearms on demonstrators “to restore law and order during illegal armed rallies, at time of unrest and during illegal armed disorders and revolts.” By exempting them from criminal prosecution,⁷⁷⁵ the *basiji* grew further as a powerful parallel institution in Iran and proved to be an effective violent tool of the conservatives in restraining freedom of speech and assembly. By far the most significant of those dissidents was Grand *Ayatollah* Montazeri, who had been dismissed in March, 1989 and eventually put under house arrest for criticizing Khomeini’s wave of executions in the 1980s. Montazeri’s disciples continuously voiced resentment of the elite’s policies and staged occasional demonstrations in Qom.⁷⁷⁶ In October 1994, Montazeri himself published a statement in which, whilst expressing support for the revolution, condemned the monopolization of it by “a certain group.” He charged that the authorities had deviated from the correct revolutionary path, and criticised the injustice toward, and lack of security for, the people. What went largely unnoticed by the West, as it carried more theological significance rather than immediate political authority, was Montazeri’s refusal to endorse the decree against Rushdie until he had personally read “The Satanic Verses.”⁷⁷⁷ Montazeri’s religious authority, who unlike Khameni was fit to attain the *marja’iyya*, constituted a serious challenge both to Rafsanjani and the religious establishment and provided considerable legitimacy to the intensification of public protest.

Following these developments in Iran, the European Parliament passed a resolution condemning the Iranian government “for the use of force against individuals exercising their right to free expression.”⁷⁷⁸ Though such resolutions served to raise and condemn human rights violations in Iran, Europe’s legislature’s main role during the critical dialogue was to remind the member states to stay committed to conditional diplomacy. This was particularly true for Germany (as previously stated) as well as Spain and Austria. Spain entered into cooperation agreements with Iran and the Austrian State Bank agreed to reschedule debt following an official visit by Deputy Foreign Minister Vaezi to

⁷⁷⁵ *ibid*, p. 6, p.10, *see also* The Guardian, 24 November, 1994

⁷⁷⁶ *see* MECS, Vol. XVI, 1993, p.343

⁷⁷⁷ MECS, Vol. XVII: 1994, pp. 296-297

⁷⁷⁸ Bulletin of the European Union, 10-1994, 1.3.106 Parliament resolution on human rights violations in Iran

Madrid and Vienna in March 1994.⁷⁷⁹ Britain, however, continued to link moderate economic pressure with Whitehall's rhetoric on the *fatwa*. In December 1992, a moratorium on export licenses to Iran was imposed, which effectively applied more stringent conditions on the approval of any licenses for any equipment "where there was knowledge or reason to suspect that it would go to a military end-user or be used for military purposes." The new guidelines also included the ban of "any exports for goods and technology on the military or atomic list."⁷⁸⁰ Considering Iran's aging military equipment at that time (e.g. British made Chieftain Tanks and the need for advanced radar equipment), the Iranian Foreign Ministry was aware that improvements on the Rushdie front could possibly soften British strict export guidelines. Concerning Iranian dependence especially on British military equipment as well as high-tech goods, the moratorium had considerable effect on technocrats in the Iranian government, who were seeking rapprochement with the UK and attempting to lobby conservative elements.⁷⁸¹

Nonetheless, Iranian intelligence continued to work against any détente orientated foreign policy initiative. In 1994, the US administration linked the bombing of a Jewish Culture Centre in Buenos Aires, which killed eight-five people to *Hezbollah*, which according to the CIA, was working on behalf of Iran. By 1993, according to the US State Department, Iran had become "the world's most dangerous state sponsor of terrorism."⁷⁸² While the Israeli lobby in Washington certainly contributed to the increasingly uncompromising stance of the Clinton administration towards Iran, Europe continued to follow a more nuanced approach maintaining dialogue whilst condemning human rights violations. Britain strongly criticized Tehran for what it referred to as "the assassination of dissidents in exile" and co-sponsored another UN resolution in December 1994, condemning human

⁷⁷⁹ Baroness Frances D'Souza's diary of "Fighting the Fatwa", Interview with Dr Mahound Vaezi, , Former Deputy Foreign Minister

⁷⁸⁰ The moratorium effectively extended existing ELA guidelines see House of Commons, Hansard, 28 January, 1994, Column 446 – Column 467; House of Commons, Hansard, 18 January, 1994, Column 509

⁷⁸¹ Interview with Former Deputy Foreign Minister Abbas Maleki, (Tehran, 6 September, 2004); IRNA 2 May, 1995

⁷⁸² Kenneth M. Pollack, The Persian Puzzle, p.267; see also The Times, August 12, 1994, The New York Times, 26 July, 1994; In 2006 an Argentinean court accused the Iranian authorities of directing Hezbollah to carry out the attack and called for the arrest of Rafsanjani. accessed on <http://news.bbc.co.uk/1/hi/world/americas/6085768.stm> , 15 February, 2007

rights violations as well as the *fatwa*.⁷⁸³ This allowed Britain to put considerable political pressure on Iran, whilst at the same time abstaining from rhetoric, which would have further fuelled estranged British-Iranian relations.

In May 1994, however, bilateral relations reached an all time low, when the British government accused Iran of having contacts with the IRA.⁷⁸⁴ According to British intelligence, the IRA had attempted to procure a large shipment of weapons from Iran to support more sophisticated terrorist campaigns against British interests. High on the IRA's list of priorities were high-tech surface-to-air missiles such as SAM-7s and Stinger Missiles. The Iranian Ministry of Intelligence allegedly offered to meet the IRA's "shopping list" in exchange for the assassination of three Iranian dissidents. The three persons to be assassinated were former Iranian President Abdolhasan Bani-Sadr, Javad, a spokesperson for the MKO and Farzaneh Taidi, a prominent Iranian actress. The list prepared by the IRA included micro-communications and eavesdropping equipment, semtex explosives, eight Stinger surface-to-air missiles, 400 pistols and 80,000 rounds of ammunition, 100 Uzi submachine guns and 50,000 rounds of ammunition, \$6 US million in counterfeit dollar bills and \$55 million in authentic bills.⁷⁸⁵ Although the IRA turned down the deal, the fact that Iranian intelligence sought contacts with that group proved unacceptable to Britain. What was regarded as a legitimate political struggle for independence by Iran was a terrorist group for the British government, which directly targeted British interests. Britain's response was to summon the Iranian Chargé d'Affaires and Douglas Hogg stated that they continue, "to watch Iran's actions very closely to satisfy ourselves that there are no further exchanges."⁷⁸⁶ The Iranian first secretary was then expelled not because of IRA contacts, but on rather curious charges of forging a document purporting to be from Douglas Hurd, and attributed to the Iranians, which suggested British sympathy for the Serbs in the Bosnian conflict.⁷⁸⁷ Iran eventually retaliated and expelled 1st Secretary Hamish Cowell. Rafsanjani himself refuted these

⁷⁸³ House of Commons, Hansard, 19 January, 1995, Column 526

⁷⁸⁴ House of Commons, Hansard, 14 June, 1994, Column 397 – Column 399

⁷⁸⁵ House of Commons, Hansard, 14 June, 1994, Column 397 – Column 399; The Daily Telegraph, 30 April, 1994, Sunday Telegraph, 1 May, 1994, The Independent, 3 May, 1994

⁷⁸⁶ House of Commons, Hansard, 14 June, 1994, Column 397 – Column 399

⁷⁸⁷ Iran Focus, Vol.7, No.6, (June, 1994, Khordad-Tir 1373), p. 14

allegations during a Friday sermon and argued that the real reasons the IRA allegations had been made was to pre-empt Iranian anger about British surveillance. The President claimed that that a 500 g listening device had been found embedded in the wall of the newly refurbished Iranian Embassy in London.⁷⁸⁸ Overall, this diplomatic row exemplified the volatile nature of British-Iranian relations at that time. Despite pressure from hardliner groups in Iran to severe relations with Britain, Rafsanjani stated that the government:

[..] would not particularly benefit from a policy of severing relations [...] I think the existing weak relations must exist for ordinary dialogues. We have many students in Britain. If we were to bring them all back it would cause damage. If they want to stay someone has to look after their affairs. There are many Iranians there. There are, naturally, ordinary economic relations and such like. We have to see our interests in its totality. Yes of course we to have to reciprocate their actions in kind.⁷⁸⁹

A more serious blow in Iran's bilateral relations came in the form of Norway's uncompromising stance towards the *fatwa*. Even before the attempted murder on Nygaard in Oslo, Norway and the rest of Scandinavia proved to be an outpost in defending Rushdie's freedom of speech. Norway's Minister of Culture Ase Kleveland was the first government representative to meet Rushdie in August 1992.⁷⁹⁰ In 1994, following increased pressure by Oslo (initiated by Rushdie's visit to Norway), Iran's Ambassador to Norway, Abdolrahim Gavahi wrote a letter to the Foreign Ministry which stated "As regards the *fatwa* [...] I would like [...] to clearly state that the government of the Islamic Republic of Iran would certainly honour and respect its mutual commitment to the international laws and regulations, codes and ethic of diplomatic behaviour, and non-interference in the host countries." Fatally, the Norwegians interpreted this statement as a "reversal of the *fatwa* in Norway."⁷⁹¹ Foreign Minister Velayatti responded by summoning Iran's ambassador and by declaring any of his statements null and void and

⁷⁸⁸ *ibid*

⁷⁸⁹ *Iran Focus*, Vol.7, No.7, July – August, 1994, (Tir-Sharivar 1373), p.6

⁷⁹⁰ Niels Fried-Nielsen, *Freedom of Expression: The acid test*, pp.12-16

⁷⁹¹ *ibid*, p.16

reaffirmed the *fatwa*.⁷⁹² Norway, a country that was not a member state of the EU and, therefore, could have pursued an uncritical dialogue, in fact broke relations following Velayatti's statement. That Norway really meant business was evident when the government in Oslo stated that "it would refrain from any publicly financed promotion of trade with Iran and we will raise the the issue of Iran's human rights records in multilateral institutions like the World Bank.[...] Furthermore, Norway will continue to work actively against the *fatwa* [...] at the Commission on Human Rights." In fact, Norway never resumed full diplomatic relations with Iran until after September 1998, after Britain eventually resolved the *fatwa* with Iran.⁷⁹³

3. Background to the Juppé Initiative and Developments on the Community Level

After a year of continuous pressure on Iran, which was mainly carried out via the European Human Rights Commission, the Rushdie Defence Committee, including the author himself, decided to put all previous negotiations with the EU together in a package, and get the EU to submit a communication to Iran asking the government to agree to three simple requests:

1. Not to promote or encourage anyone to carry out the *fatwa* and to condemn terrorism
2. To abide by international law
3. To remove the bounty⁷⁹⁴

The Committee believed that this would provide the Europeans with clear benchmarks. If the Iranians refused then there would have to be consequences for the implied statement of intent to carry out a terrorist attack. If they agreed to sign such a declaration then this would have marked the first step towards normalisation of relations between Iran and Europe and Britain in particular. What became known as the Juppé Initiative (After French Foreign Minister Alain Juppé who was approached by the Defence Committee

⁷⁹² IRNA, 5 July, 1995

⁷⁹³ Baroness Frances D'Souza's diary of "Fighting the Fatwa"

⁷⁹⁴ *ibid*

early in 1995) coincided with the 5th anniversary of the ruling as well as with increased EU pressure concerning human rights violations in Iran.

Before turning to the details of the Juppé Initiative it should be noted that the French presidency of the EU also coincided with two crucial developments affecting the Union's external relations, particularly, towards the Middle East. One was the evolution of the so-called "Barcelona Process" or what Hinnebusch refers to as a benign EU approach to align the Middle Eastern states to international economic norms.⁷⁹⁵ In February 1995, a Communication from the European Commission to the Council and the European Parliament, called for the establishment of a "Euro-Mediterranean partnership, comprising a zone of peace and stability, embracing the Union, Central and Eastern Europe and the southern and eastern Mediterranean." Whilst Iran was not one of the countries which were given the prospect of entering a free trade area and of concluding cooperation agreements with Europe (the first were Israel, Morocco, Tunisia and Turkey)⁷⁹⁶, for the first time EU diplomacy took on concrete dimensions towards the Middle East. The prospect of free trade with the Union, socio-economic development programmes and increased political dialogue was linked to the respect for human rights.⁷⁹⁷ Essentially, for the first time towards the Middle East, the EU attempted to make use of its soft power (or "transformative power") as well as hard power resources. As the communication put it: "Particular emphasis should be placed on those countries prepared both to undertake far-reaching modernization of their economic and social systems and are willing to cooperate with the Community in the management of the interdependence that tie both sides of the Mediterranean."⁷⁹⁸ The human rights clause was referred to in another communication from the Commission, which directed the "inclusion of respect

⁷⁹⁵ Raymond Hinnebusch, "Globalization and Generational Change: Syrian Foreign Policy between Regional Conflict and European Partnership" in The Review of International Affairs, Vol.3, No.2, (Winter, 2003), pp. 190-191

⁷⁹⁶ Communication from the Commission to the Council and the European Parliament (COM (94) 427 final) in Bulletin of the European Union, Supplement 2/95, pp.16-17

⁷⁹⁷ *ibid*

⁷⁹⁸ *ibid*

for democratic principle and human rights in agreements between the Community and third countries.”⁷⁹⁹

It is against this background that one has to understand the Juppé Initiative and the increased pressure on Iran. Following a wave of new repression against dissidents, the European Parliament passed a resolution in May 1995, which strongly condemned the government for the continuing massive human rights violations, including executions without trial, torture, persecution and assassination of opponents of the government abroad, and the repression of women and ethnic minorities. It called, moreover, for the release of all political prisoners, guarantees of a fair trial, and urged the government to do everything in its power to ensure real freedom of information and the press.⁸⁰⁰ Again, repression in Iran reflected the ongoing power struggle between the political factions. Whilst political life in Iran showed “signs of resilience and even vitality”, political openness in the country was not to be confused with political freedom.⁸⁰¹ As Human Rights Watch observed, the “apparent intensity of public debate, variety of publications and the wealth of artistic achievements” created only an illusion of unrestricted discourse.” Freedom of expression was allowed as long as the inviolability of the Islamic tenets, the irreversibility of the revolution, and the absolute sovereignty of the *faqih* were not be questioned. “⁸⁰² The Special Representative for Iran reported that in 1995 the closing down of publications continued and publishers, such as of two periodicals *Gardoon* in Tehran and *Tous* in Mashad, had been sentenced on charges of “publication of lies, contempt and propagation of wicked deeds.”⁸⁰³ Concerning the role of such Press Tribunals, Vice-Minister Ashari of the Ministry of Islamic Guidance and Culture, stated

⁷⁹⁹ The respect for human rights was made an “essential element” of agreements with third countries and thus making human rights violations a “material breach” of any such agreements. Communication from the Commission, “On the inclusion of respect for democratic principles and human rights in agreements between the Community and third countries” in Bulletin of the European Union – Supplement 3/95, pp.12-13

⁸⁰⁰ Bulletin of the European Union 4-1995, paragraph 1.2.9 Parliament resolution on human rights violations in Iran

⁸⁰¹ MECS, Vol. XIX:1995, p. 291

⁸⁰² ibid; Human Rights Watch, Guardians of Thought: Limits of Freedom of Expression in Iran (New York, 1993), p.1

⁸⁰³ Commission on Human Rights, Fifty-second session, Report on the situation of human rights in the Islamic Republic of Iran, prepared by the Special Representative of the Commission on Human Rights, Mr Maurice Copithorne (Canada), pursuant to Commission resolution 1995/68 of March 1995, UN Doc. Nr/E/CN.4/1996/59, 21 March, 1996, paragraph 77

that “there is great freedom of the press [...], but if a person feels insulted he can bring the publisher/editor before a jury in the Press Tribunal. This jury” he added “ is the personification of the culture of the society.”⁸⁰⁴ The Special Representative considered punishing the press in such circumstances to require a balancing of the interests of the complainants on the one hand and the interest of the community in upholding the right to publish criticism on the other. However, he saw no role for either imprisonment or corporal punishment in such circumstances.⁸⁰⁵ Followers of Mehdi Bazargan’s liberal Freedom Movement continued to be subject to harassment and their publications and gatherings remained banned.⁸⁰⁶ What was striking also was that freedom of expression even for devout revolutionaries was often restricted. In one instance, Mohtashami was invited to address a conference at Tehran’s Teachers Training College in August but was prevented from entering, thus restricting him giving a brief sermon outside the gates.⁸⁰⁷ Similarly, *Ayatollah* Sadeq Rohani, an advocate of the separation of religion and the state, was subject to harassment and claimed that armed men had attacked him in his home and threatened to kill him unless he pledged allegiance to Khomeini. He stated that he could not “ remain a spectator while Islam is violated daily and the true religious leader are silenced in a country claiming to be an Islamic Republic. “⁸⁰⁸ Faced with Iran’s failure to uphold international human rights, the European Parliament concluded its resolution that “all Member States should make relations conditional on respect for human rights [...] the disbanding of intelligence service Special Forces deployed against members of the opposition, and a clear condemnation of terrorism and of the *fatwa* against Salman Rushdie.”⁸⁰⁹

It is evident that under Rafsanjani neither respect nor active protection of the right to freedom of expression had been implemented either through pro-active government policy or legislation. In fact Rafsanjani’s position on the press was one which stressed press freedom as long as it served the national interest. Taking the British media as an

⁸⁰⁴ *ibid*

⁸⁰⁵ *ibid*, paragraphs 78 - 85

⁸⁰⁶ *MECS*, Vol. XIX: 1995, p. 291

⁸⁰⁷ *ibid*

⁸⁰⁸ *ibid*, p. 295

⁸⁰⁹ *Bulletin of the European Union* 4-1995, paragraph 1.2.9,

example, which allegedly uncovered Iran's contacts with the IRA, he argued that "it was essential for the [British] press to work in harmony with the government for the benefit of the whole country." Urging the press at the country's first Press Festival not to join in the chorus of criticism initiated by the foreign media he added:

What is presented in the press does not have the necessary depth, is not comprehensive and is not farsighted. Sometimes the articles are self-contradictory. It seems that if the press is able to look ahead and consider the affairs in depth [...] Society will grow and benefit if our print media get away from narrow-minded likes and dislikes, financial problems and trade preoccupations and at the same time consider national interests.⁸¹⁰

4. The Juppé Initiative, German Track-Two Initiatives and the Failure of Linkage Diplomacy

The European Parliament eventually called on the Council of Ministers to agree the proposal put forward by Juppé to enter into a formal dialogue with Iran, requesting their agreement to the three statements, which had been formulated by the Rushdie Defence Committee and conveyed to the French Foreign Minister. On 10 April, the Juppé Initiative was agreed by the EU Foreign Ministers meeting in Luxembourg and on 19 April, 1994 the Troika country ambassadors in Tehran presented the EU démarche to Deputy Foreign Minister Mohamand Javad Zarif, which read:

1. The Iranian Government undertake that it will take no action anywhere with a view to the assassination of Mr Rushdie, nor will it incite, encourage or assist others to do so.
2. The Iranian Government confirms that its relations with other countries are based on international law, including non-interference in the affairs of other countries and respect for international law and regulations.
3. The Iranian Government condemns terrorism in all its forms.

⁸¹⁰ Iran Focus, Vol.7, No. 6, June, 1994, (Khordad-Tir 1373), p.12

D'Souza was told that the bounty question had not been agreed amongst member states and would have to be taken up verbally with the Iranians. There was also no mention of the monitoring period, the Rushdie Committee had argued for.⁸¹¹ What the EU General Affairs Council did, previous to the *démarche*, was to again publicly condemn the *fatwa* and to regard it as null and void as it stood in clear defiance of universally accepted human rights.⁸¹²

The Iranian government initially regarded the initiative as “an effective ceasefire in treating the *fatwa* [...] as a political dispute with Iran”, but still perceived the British government as a block to the French proposal by making renewed claims that Iranian Intelligence was still targeting Rushdie.⁸¹³ Another issue for Iran at this point, was Europe’s failure to effectively intervene in the civil war in Yugoslavia. Following the European Parliament’s resolution condemning human rights in Iran, Mahmoud Maohammadi at the Iranian Foreign Ministry, criticised Europe’s failure to stop the “repeated violation of the four-month ceasefire [...] and the occupation of more than 70 per cent of the Muslim lands”⁸¹⁴ He further charged that “while the European Parliament considers sentenced apostate Salman Rushdie’s insult of the beliefs of one billion Muslims as guarantee of freedom, [...] it ignores the political and spiritual rights of the Muslim people of the world.”⁸¹⁵ What seemed to have made it hard for the British government to take Iran’s guarantees of non-violence seriously was its active involvement in supporting the cause of Bosnian Muslims. Together with the military build up in the Gulf, Iran did little between 1995-1996 to reassure Britain that the government did not follow an Islamic and interventionist agenda.⁸¹⁶

⁸¹¹ Baroness Frances D'Souza's diary of “Fighting the Fatwa” also see IRNA, April, 13, 1995

⁸¹² see “Declaration by the Presidency on behalf of the European Union on the Sixth Anniversary of the Iranian Fatwa against Salman Rushdie”, Rapid Press Release: PESC/95/18, 13/02/1995

⁸¹³ IRNA, 7 April, 1995

⁸¹⁴ IRNA, 9 April, 1995

⁸¹⁵ *ibid*

⁸¹⁶ Iran was one of the first Muslim countries to come to the aid of the Bosnian Muslim government when the civil war began, sending clandestine arms shipments and helping organize units of volunteers. The arms embargo by the West on all former Yugoslav republics made Iranian assistance vital in building up Bosnian forces. Whilst an Iranian training camp outside Sarajevo, discovered by NATO troops was disbanded and Iranians expelled military cooperation between both countries continued. see The New York Times, 3 March, 1996 ; The New York Times, 23 March 1996, 1996; for Britain’s concerns on Iran’s ambitions in the Gulf see House of Commons, Hansard, 24 July, 1996, Column 440; What was not known to the British

Parallel to the Juppé Initiative ran a constructive Track Two initiative by the German Orient Institute. On Iranian insistence, a second human rights roundtable, (the first one had been held in 1992 and was largely of philosophical nature) was held in Tehran in March 1995. Of particular concern to the German delegation was the importance of *nulla poena sine lege*, no punishment without legal basis. Reminding the Iranian side that only codified law can serve as legal basis for verdicts in a court of law, the Germans enquired about the implications of *shari'a* law. Whilst the *shari'a* is being incorporated into the constitution, the German envoy argued, it is not concrete in written and codified law, thus allowing judicial and political arbitrariness.⁸¹⁷ Since the *fatwa* was used as an example of such rulings “above the law”, the representative of the Iranian judiciary stated that the Iranian government would abide by international law and thus refrain from the implementation of the *fatwa*. This was a first step towards what the demarche demanded.⁸¹⁸ It should be noted that Europeans still hoped that another jurist could pronounce a contrary judgment to that of Khomeini’s, thus solving the affair on purely legal grounds.⁸¹⁹ Considering the late Iranian leader’s position among *Shi'a* jurists, this idea was inconceivable theologically as well as politically. However, the approach to resolve the *fatwa* on a purely legal basis did go further when in May, Ayatollah Yazdi declared that Khomeini’s verdict was outside the jurisdiction of Iranian courts and as such possessed no meaning to them. What had been reached through the roundtable was that the Head of Iran’s judiciary in fact affirmed that the *fatwa*, whilst sacrosanct, did not bear any legal significance to the Iranian authorities.⁸²⁰ In addition to these Track Two developments, in Iran the 6th anniversary of the *fatwa* also passed rather quietly. Vaezi’s comments on

or Europeans was that the US covertly supplied arms to Bosnian and Croatian forces as well as shared intelligence on Serbian troop movements. According to the UN, NATO had been manipulated to allow the US to conduct its own unilateral policy in the Balkans. More than Iranian military support, the covert supply of sophisticated US military technology and intelligence prolonged the conflict significantly. *see* “Allies and Lies” BBC News Correspondent 22 June ,2001, on

<http://news.bbc.co.uk/1/hi/programmes/correspondent/1390536.stm>, website accessed 23 May 2006

⁸¹⁷ The human rights roundtable is documented in FAZ, 28 March, 1995

⁸¹⁸ *ibid*

⁸¹⁹ Baroness Frances D’Souza’s diary of “Fighting the Fatwa”

⁸²⁰ FAZ, 15 May, 1995; Another Track II initiative was launched in September 1995 by Sir Edward Heath who had travelled to Tehran and was aimed at paving the way for breaking the stalemate by briefing Velayatti about the British positions. His visit was welcomed by the Iranians and interpreted as an attempt to “depoliticise” the Rushdie affair *see* IRNA 6 September, 1995

the need to implement the verdict, which catered to domestic constituents, were hastily amended and the Iranian Foreign Minister confirmed that whilst the *fatwa* was irrevocable, it stressed that it was a purely religious matter, not exclusive to the Iranian government, and that Iran had no intention of sending assassins after Rushdie.⁸²¹ Likewise, Iranian TV and Radio did not publicise the anniversary, and officials carefully avoided reference to the verdict. Despite some mention of the irrevocability of the *fatwa*, nobody of significance chose to labour the point or make political capital out of it. In line with Yazdi's legal position of the *fatwa*, it seemed that Iranian officials and pragmatists alike intended to send positive signals to the upcoming Troika meeting whilst at the same time saving face to domestic constituents. The fact that the Islamic Propagation Organisation's office of literature and art of resistance announced on 2 February an essay competition, in which prizes would be given for the best short story describing Rushdie's "moments of fear and anxiety"⁸²² and that the 15th *Khordad* Foundation still held on the bounty money showed how carefully Iranian diplomats had to manoeuvre in Iran's maze of power centres.

Before the Juppé Initiative was discussed at the Fifth Session of the Critical Dialogue on 22 June in Paris, developments on the political-economic side considerably affected EU - wide as well as British leverage over Iran. By 1995, Iranian debt was estimated to be between \$28 billion and \$32 billion.⁸²³ Relatively weak international oil prices in 1995 of only \$17.18 a barrel⁸²⁴ and the fall of oil exports levels to 2.25 millions barrels / day (due to the increasing volume of production from outside OPEC)⁸²⁵ failed to create sufficient external revenues to meet the capital requirements of economic planning. Inflation, however was one of the most pressing problems. By 1995, the Rial lost over 2/3 of its value, which led to a sharp increase in the prices for consumer goods⁸²⁶ and thus affected the most vulnerable groups in society. Again ideological conflicts hindered the

⁸²¹ see Foreign Minister Velayatti's statement in May 1995 when he reiterated that the *fatwa* could not be revoked but that Iran would not send anyone to kill Rushdie. *IRNA*, May 18, 1995; *Iran Focus*, Vol.8, No.3, March 1995, (Esfand 1373 – Farvardin 1374), p. 12;

⁸²² *Iran Focus*, Vol.8, No.3, March 1995, (Esfand 1373 – Farvardin 1374), p.13

⁸²³ Economist Intelligence Unit, *Country Report: Iran 4th Quarter 1995*, (EIU, 1995), p. 23

⁸²⁴ *BP Statistical Review of World Energy 1996*, pp.2-3

⁸²⁵ Economist Intelligence Unit, *Country Report: Iran 4th Quarter 1995*, p.16

⁸²⁶ *FAZ*, 12 May, 1995

basic steps viewed by the government as essential to improving the economy. Rafsanjani, the Central Bank, and some Iranian economists supported privatisation and the introduction of foreign investment. Such policies, however, provoked opposition by the Left. Thus, the government failed to abolish consumer subsidies and eighty per cent of the industry remained state-owned and economically inefficient.⁸²⁷ Hence, Iranian dependence on the EU particularly concerning debt rescheduling presented European countries yet again with potential for linkage diplomacy.

Simultaneously, in the U.S., the American Israel Political Affairs Committee (AIPAC) wanted to use economic recession in Iran to advance its own agenda and managed to get support for a tougher U.S. approach toward Iran. Clinton had been increasingly criticised as his policy of dual containment had so far done little to persuade Iran to change its behaviour but rather seemed largely to have become a policy which followed U.S. economic interests. In fact, by 1995, American companies had become one of the largest consumers of Iranian oil.⁸²⁸ Therefore AIPAC and Republican Senator Alfonse D'Amato pressed for a legislation, which would virtually ban all trade with Iran, including overseas subsidiaries.⁸²⁹ An executive order rather than the passing of the D'Amato' Bill through Congress was eventually issued by Clinton, banning all American involvement in the development of the Iranian petroleum industry.⁸³⁰ Secretary of State Christopher also put increasing pressure on EU member states to follow suit.

The government in Bonn was not only approached by Christopher to deny any further debt-rescheduling and credits to Iran, but its own parliament demanded to link tangible improvement in human rights in Iran to any further monetary concession on behalf of the German government. In the face of severe human rights violations, the motion put forward by the Green Party demanded to put respect for human rights as precondition for economic cooperation.⁸³¹ Refusing any such political linkages, the German government

⁸²⁷ *ibid*, *MECS*, Vol. XIX:1995, p. 287

⁸²⁸ Meghan L. O'Sullivan, *Shrewd Sanctions*, p.53

⁸²⁹ Kenneth M. Pollack, *The Persian Puzzle*, pp. 270-171

⁸³⁰ *ibid*, Meghan L. O'Sullivan, *Shrewd Sanctions*, p.54

⁸³¹ Deutscher Bundestag 13. Wahlperiode, Antrag der Fraktion Bündnis 90 / Die Grünen, *Drucksache 13/1620* 2 June 1995

renewed “Hermes Sureties” with Iran in 1995, which were increased to 100 million Deutsche Mark for medium-long term transactions as well as 50 million Deutsche Mark for repayment periods up to 360 days.⁸³² Whilst crude oil important from Iran certainly affected German diplomacy towards that country, the decision to renew credit guarantees largely reflected Germany’s trading relationship with Iran. In 1995 and 1996, Germany had become Iran’s biggest trading partner and proved to be a reliable supplier of sophisticated technology and the necessary capital to invest in Iran’s development programmes.⁸³³

Britain was also opposed to Clinton’s total trade ban on Iran, arguing that sanctions were “ a diplomatic instrument of the last resort and did not view [them] applying in the case of Iran.”⁸³⁴ Emphasising realities of economic interdependence and the apparent influence of British diplomacy towards Iran, the FCO stated that “As a trading nation we have taken the view that trade embargos are not an instrument of policy that we favour. We are not convinced that they work. The US administration is well aware of that.”⁸³⁵ Concerning the issue of debt rescheduling, however, Britain made it clear that it would not extend any state sureties to Iran. In fact, pre-revolutionary Iranian debts to the British government, which amounted to \$100 million, were cleared in September 1995 in bilateral talks between Bank Markazi and the UK’s Export Credits Guarantee Departments (ECGDD). The Iranians hoped that this agreement would clear the way for further accord on liabilities incurred by Iran after the revolution. Whilst these debts were relatively minor, estimated at \$30 million, Tehran hoped it would open the way for a resumption of medium-and short-term cover by ECGDD for firms supplying Iran. As will

⁸³² Deutscher Bundestag 12 Wahlperiode, Beschlussempfehlung und Bericht des Auswärtigen Ausschusses, Drucksache 12/3525 ; FAZ, 3 May, 1995

⁸³³ In 1995, Germany imported 1566 thousand metric tons from Iran. United Nations, Energy Statistics Yearbook-1995, (New York, United Nations, 1997), p.178; In 1995, Iran imported US \$ 1,7 billion from Germany, which was more than the entire import volume from Asia (US \$ 1,6 billion) together. In 1996, it rose to US \$ 2,1 billion. This compared to US \$ 505 million and US \$ 685 million from Britain respectively. IMF, Direction of Trade Statistics 2002, p.264; The German-Iranian Chamber of Commerce was the biggest bilateral chamber in Iran and in the 1990s Germany has consistently been the biggest foreign exhibitor on trade fairs in Tehran. Adam Tarock, Iran’s Foreign Policy since 1990: Pragmatism supersedes Islamic ideology. (Commack, Nova Science, 1999), pp.91-92

⁸³⁴ IRNA, 2 May, 1995

⁸³⁵ Iran Focus, Vol. 8, No.5, May 1995 (Ordibehesht-Khordad 1374), p.13

be seen, failing to resolve the Rushdie affair through the Juppe Initiative, the British government refused to resume any such covers.⁸³⁶

The most significant development, before the démarche was discussed at Paris, however, was when the American oil company Conoco signed a deal with the National Iranian Oil Company which awarded Conoco an estimated \$ 1 billion production agreement for two of its offshore fields.⁸³⁷ What was a goodwill gesture by Rafsanjani to improve relations with the U.S., was not interpreted as such and on 14 March, Clinton announced that the deal was inconsistent with US policy and signed an executive order prohibiting all oil development deals with Iran.⁸³⁸

When the EU Troika received the Iranian delegation headed by Deputy Minister Vaezi in Paris in June 1995, Europe possessed considerable political and economic leverage over Iran. Following Clinton's executive order, European countries and Japan alone were able to invest in Iran, extend credits / demand debt-repayments as well as showing continued willingness to engage in a political dialogue with Tehran. More than ever, Britain particularly made it obvious that improvements in relations were conditional on resolution of the Rushdie affair.⁸³⁹ On the other hand, Iran was plagued by "economic decline, political dissent and internal power struggles". Consequently, domestic as well as foreign policy was decided by "competition and trade-offs, generating inconsistency and contradictions." What the Europeans had to bear in mind during negotiations was that "Iran spoke with many voices."⁸⁴⁰ By and large, the German Track II roundtable as well as the Juppé initiative coincided with a period in Iranian politics, during which the economic situation led the government to present merely a veneer of economic liberalization and political moderation. Domestic pressure in and outside the parliament was vehemently opposed to many of Rafsanjani's economic policies, which aimed to attract foreign investment and engage in effective privatization in order to supplement the

⁸³⁶ Economist Intelligence Unit, Country Report: Iran 4th Quarter 1995, pp. 23-24

⁸³⁷ The New York Times, March 7, 1995. It was the first contract rewarded to a foreign oil company since the revolution.

⁸³⁸ Kenneth M. Pollack, The Persian Puzzle, pp. 271-272

⁸³⁹ Interview with FCO Official "A" (FCO Official at the Iran Desk 1997-2000), 3 March 2006

⁸⁴⁰ MECS, Vol. XIX: 1995, p. 283

country's reliance on trade with a large-scale manufacturing industrial base.⁸⁴¹ Whilst the previous Third *Majlis* (1989-1992) dominated by the radical left opposed privatization on ideological grounds, conservatives in the Fourth *Majlis* (1992-1996) saw it as a direct challenge to their political-economic clientalist structures. In an effort to win over the conservative forces as well as radicals to at least have some of his economic bills passed, Rafsanjani did, therefore, not extend any liberalization agenda to the political realm. Overall, Rafsanjani's task continued to be a difficult one: appeasing the West in order to attract foreign investment and secure trust on part of the Europeans as well as appeasing domestic hardliners. The 6th anniversary of the *fatwa* reflected these developments. Whilst government agencies engaged in conciliatory rhetoric towards the Europeans, state institutions, most notably the 15th *Khordard* Foundations, made it clear that the bounty remained. In 1995, intelligence available to the German government, in particular concluded that the bounty as well as Iranian intelligence activities abroad still constituted a major impediment to any resolution of the matter. This perception led the Europeans to regard any assurances on the Rushdie matter with suspicion.⁸⁴²

During the 5th session of the Critical Dialogue, the Rushdie affair dominated the entire meeting. Instead of the expected signed undertaking from Rafsanjani, the Iranian Deputy Foreign Minister Vaezi offered a letter from Foreign Minister Velayatti, addressed to Juppé, which authorized Vaezi to offer a verbal agreement which included the precise wording on the *fatwa* which the demarche demanded, together with comments on other issues. These included demands for a reciprocal EU statement which affirmed respect for religions and condemned blasphemy and attacks against Islam. In addition, he expressed his government's anger at the declaration issued by the G7 four days earlier in Canada, in which they condemned the death threat against the author and his associates and had

⁸⁴¹ see *Iran Focus*, Vol.8, No.4, April, 1995 (Farvardin-Ordibehesht 1374), pp. 6-7

⁸⁴² The German government decided that numerous comments on the bounty over the years "were vague and contradictory" and failed to show any real commitment on part of the Iranians. Deutscher Bundestag, 13. Wahlperiode, 104. Sitzung, Bonn, Donnerstag, 9. Mai, 1996, *Plenarprotokoll 13/104*, p. 9207. In 1995, German intelligence (BfV) rated Iran's extensive intelligence activities in Germany as "threat to national security". According to the BfV, three Iranian intelligence and security services operated in Germany and established a sophisticated and far-reaching network with the stated aim "of monitoring and destroying opposition abroad" as well as "illegal procurement of weapons". Most importantly, German intelligence could not exclude the potential assassination of Rushdie by an Iranian operative in Germany. see Abegordnetenhaus von Berlin, 12. Wahlperiode, *Drucksache 12/5949*, 6. Dezember, 1995, pp.64-65

called on all countries to avoid any cooperation with Iran that might contribute to Iran's access to nuclear weapon capability. The EU Troika stressed that the EU was not demanding that the *fatwa* be annulled immediately, although this remained its objective, in line with its principles. What was proposed was a realistic approach in line with the law (*Ayatollah Yazdi's* statement, which stemmed from the German Track-Two Initiative, was seen as a step forward) and the requirements of the moment and reiterated that it attached "great importance" to Iran's response for the future of the EU's dialogue with Iran. Iran's response was that it refused to deliver a written statement to the demarche (which was according to the German Foreign Ministry in line with diplomatic protocol as the demarche was verbal too). Rather it conveyed Rafsanjani's declaration from 19 April, which said that his government will not send anyone to kill Rushdie. The *fatwa*, however, could not be revoked, as it constituted an eternally valid religious decree.⁸⁴³ Further Muhammad Jawad Larijani, Vice-Chairman of the Iranian Parliamentary Foreign Relations Committee, defiantly said that the Rushdie issue "is a problem created by western politicians" and that "it is illogical [that the west] demands that the Islamic Republic of Iran change its stance".⁸⁴⁴ Considering alleged past Iranian efforts to assassinate Rushdie and his associates, Vaezi's offer which he himself said essentially carried the explicit reiteration of the "validity and inalterability of the late Imam's *fatwa*"⁸⁴⁵ was not even close enough for the Europeans to seriously consider. Europe's refusal was in line with the FCO's assessment which stated that the "renouncement not to send anyone to kill Rushdie" does not provide for his safety nor does the government clearly distance itself from the *fatwa*.⁸⁴⁶ The FCO believed that there was still too little room for Iranian diplomats backed by pragmatist politicians to manoeuvre. According to British diplomats, the Juppé Initiative failed because the Iranian side was looking for a way out of the consequences of the *fatwa* without actually repudiating it. In 1995, the FCO's assessment was that political heavyweights in Iran were still seriously minded to

⁸⁴³ Carmel Bedford, "Who will break the Deadlock?" in Niels Fried-Nielsen, *Freedom of Expression: The acid test*, pp.12-16; *FAZ*, 30 June, 1995; *IRNA*, 22 June, 1995

⁸⁴⁴ *IRNA*, 24 June, 1995

⁸⁴⁵ *IRNA*, 22 June, 1995

⁸⁴⁶ *FAZ*, 22 May, 1995. In 1995, the Conservative government under Major also experienced increasing critique by opposition and backbenchers over economic mismanagement and recession and was, therefore, careful not to add a foreign policy disaster by prematurely agreeing to the Iranian terms. *see The Guardian*, 19 June, 1995; *The Independent* 18 June, 1995; *FAZ*, 18 June, 1995

carry it out and that there was little comparable weight to restrain them.⁸⁴⁷ Therefore, on 17 June at the EU Summit in Cannes, the Council issued the following statement:

With regard to Iran, the European Union will continue to defend freedom of expression. It regrets the lack of progress recorded with regard to the Salman Rushdie situation. The matter remains before the Council.⁸⁴⁸

The Iranian position reflected the domestic scene and ultimately dictated how far the Foreign Ministry could go with regards to Rushdie's case.⁸⁴⁹ Clearly it was not far enough for Europe and especially for Britain.

The year 1996, which witnessed the sixth anniversary of the verdict, was marked by stalemate on the Rushdie front. The Europeans increased pressure by tabling another resolution at the UN Human Rights Commission condemning human rights violations in Iran as well as the threat against Rushdie.⁸⁵⁰ When the Special Rapporteur for Freedom of Expression visited Iran in 1996, government representative conveyed that they will continue to talk to the Europeans, but restated that "if Rushdie were considered free to express himself to the point of hurting the religious sentiments of a billion Muslims, by the same token, others should have the right to chastise and condemn him."⁸⁵¹ Concerning development of freedom of expression, the Rapporteur noted that because the very basis for all laws and regulations in the country were Islamic criteria, the government was in a position to apply prior restraints and censorship on the press, media and other forms of publication.⁸⁵² He also noted the continuation of threats and use of violence and harassment, including persecution and intimidation, directed at persons

⁸⁴⁷ Interview with former FCO Diplomat "A", 3 March 2006

⁸⁴⁸ Bulletin of the European Union 6-1995, Conclusions of the Presidency, paragraph 1.17

⁸⁴⁹ According to the Iranian Foreign Ministry, they initially intended to give a positive response to the initiative but, in the end, felt unable to do so for two reasons: Apart from the Iranian government's efforts to save face following the G7 Summit declaration, they conveyed to the Danish Foreign Ministry that they had not been given enough help from the Europeans and decried the publicity surrounding the Juppé Initiative. Singling out the Danes on this charge, the Iranian delegation felt that they were unable to manoeuvre vis-à-vis domestic constituents. *see* Baroness Frances D'Souza's diary of "Fighting the Fatwa"⁸⁵⁰ *see* Commission on Human Rights, Fifty-second session, Agenda item 10, UN Doc.Nr. E/CN.4/1996/L.42/Rev.1 23 April 1996

⁸⁵¹ Commission on Human Rights, Fifty-second session, Report in the mission of the Special Rapporteur to the Islamic Republic of Iran, UN Doc. Nr. E/CN/1996/39/Add.2, 11 March, 1996, paragraph 17

⁸⁵² *ibid*, paragraph 62

seeking to exercise their right to freedom of speech both by regular government security forces and the judiciary as well as by parallel institution; all of which enjoy impunity for these acts.⁸⁵³

What should, however, be noted is that despite these restrictions, Rafsanjani's relative liberal approach to the press (compared to Khomeini) allowed for the gradual establishment of non-governmental periodicals and newspapers. Since political parties were not formally allowed, by the mid-1990s, the press virtually started to substitute for this vacuum in formal partisan politics. In line with government restrictions of allowing only 'constructive criticism' the newspaper *Hamshahri*, run by the mayor of Tehran, with a circulation of 150 000, became Iran's most popular newspaper. The criticism expressed in *Hamshahri* encouraged more statist, pro-government papers, such as *Kayhan* (circ. 150 000) and *Etela'at* (cir. 150 000) to establish clearer political lines. Whilst *Kayhan* shifted more to the right and continued to serve as hard-line critic of the government, *Etela'at* took on a more pragmatic approach and mirrored more Rafsanjani's positions. On the Left, *Resalat* with a circulation of 30 000 (founded in 1936) was mainly associated with the anti-government agenda of the leftist opposition in the *Majlis*. In 1994, *Iran* was eventually founded by state-run IRNA as a response by the government to the politicised press atmosphere and the government's need to tilt the balance of anti-government partisan papers.⁸⁵⁴ While all papers reflected variations on pro-regime political opinion, much of the press had become organs of the factional divide and served as forums for political discourse whilst adhering to the restrictive legal framework in which the media had to operate. However, Rafsanjani's emphasis on "constructive criticism" was a far cry from introducing new legislation or government policies allowing for Article 19 of the ICCPR to be implemented in Iran's legal statutes.

Faced with these ongoing restrictions, efforts were stepped up on the Community level. Another session of the critical dialogue was held in Dublin, which demanded concrete results on human rights and Rushdie. The European Parliament passed another resolution

⁸⁵³ *ibid*, paragraph 65

⁸⁵⁴ *Iran Focus*, Vol.8 No.6, June 1995, (Khordad-Tir 1374), pp.12-13

calling on the Iranian government to make a declaration that it will not carry out the *fatwa* and will do all in its power to prevent Iranian citizens from trying to do so. It also urged the Council to insist on such a declaration and to reassess the value of continuing the Critical Dialogue if the Iranian government proved unwilling to make enough concessions.⁸⁵⁵

Iranian defiance towards the EU at that time was largely dictated by developments of the Mykonos Trial in Germany. In March 1996, the German investigating magistrate issued a warrant of arrest against Intelligence Minister Fallahijan as he had been identified as a key figure responsible for the assassinations of the Kurdish dissidents in Berlin.⁸⁵⁶ Immediate efforts on behalf of the Iranians to refute any cooperation with the German authorities regarding witnesses eventually turned more volatile when religious circles in Qom extended threats against the two German prosecutors. Thousands of clerics and their students passed a statement which said “that the mercenary prosecutors will have to pay the highest price for this betrayal” and went on to warn that “ if these [...] fascist prosecutors do not ask for forgiveness for insulting our sacred values, we will sentence them like Rushdie”.⁸⁵⁷ Threats like these did little to persuade the Europeans of any good-will on behalf of the Iranian side to resolve the Rushdie issue and only stepped up condemnation by the Council:

The European Union is concerned by recent developments in Iran, which have involved accusations and threats directed at an EU Member State. These are taking place against an ongoing trial of Iranian nationals which is being conducted in accordance with the principles of the rule of law in that Member State.

The judiciary in all EU Member States is independent of Government and Parliaments. The Iranian Government has recognized this principle in relations to Germany. [...] In the context [of the

⁸⁵⁵ Bulletin of the European Union 6-1996, Conclusions of the Presidency, paragraph 1.12; Bulletin of the European Union 7/8-1996, paragraph 1.2.10 Parliament resolution on the fatwa against Salman Rushdie [OJC 261,9.9.1996]

⁸⁵⁶ Der Ermittlungsrichter des Bundesgerichtshofes, 2 B-Js295/95-8 Haftbefehl, Karlsruhe, 14 März, 1996, pp.6-9

⁸⁵⁷ Sueddeutsche Zeitung, 21 November, 1996, FAZ 21 November, 1996

Critical Dialogue] it urges Iran to restore calm in the current situation and, in particular, to discourage threats against persons involved in the trial [...] ⁸⁵⁸

Though Rushdie's fate was still caught in a stalemate, it should be noted that the Europeans were still holding on to their idea of engagement with Iran. Despite the deadlock, isolation was not regarded as a viable strategy. This was particularly evident when the U.S. administration passed the Iran Libya Sanctions Act, which first advocated a secondary boycott of any foreign firm trading with Iran. The démarches that followed by the European Union to the U.S. eventually spurred the Clinton administration to negotiate for a softening of terms of the bill, which still mandated sanctions on any foreign company which invests more than \$20 million a year in the Iranian or Libyan energy industry. The EU quickly moved on to condemn the legislation and reserved the right to challenge it through the WTO and other international fora. ⁸⁵⁹ The most significant of such declarations came from Commissioner Papoutsis, who in fact affirmed EU dependency on imported oil, which, according to the Commissioner, amounted to 80 %, of which Iran and Libya have a 20 % share. He also reminded them that the US imports 50 % of its oil from Venezuela, Mexico, Saudi-Arabia, Nigeria and Norway. Admitting to what extent EU diplomacy was subject to European-Iranian interdependence, he reiterated that "a disruption in the supply of oil from these two countries to world markets would have an impact on both volume and prices ⁸⁶⁰, as these supplies at present amount to 10 % of world trade." ⁸⁶¹

⁸⁵⁸ Bulletin of the European Union 11-1996, paragraph 1.4.14 Council Conclusions

⁸⁵⁹ Meghan L. O'Sullivan, Shrewd Sanctions, p.55; Bulletin of the European Union EU-4-1996, paragraph 1.4.82 Council conclusions on the Helms-Burton Act; Bulletin of the European Union 7/8-1996, paragraph 1.4.14; EU Rapid Press Release, Irish Presidency and Commission protested to the U.S. Administration against the Iran Libya Sanctions Act. Rapid Reference IP/96/793, 9 August, 1996

⁸⁶⁰ Whilst global oil demand grew by 2.4 %, oil prices moved sharply higher in 1996 up to 21.1 % to \$ 20.81, the highest annual average since the second Gulf War, see BP Statistical Review of World Energy, 1997, pp.2-3

⁸⁶¹ EU Rapid Press Release, "D'Amato Bill – Commissioner C. Papoutsis' Reaction" Rapid Reference: IP/96/778, 6 August, 1996; Between 1994 and 1995 crude imports from Iran to France increased by 28%, rising from 7892 thousand metric tons to 10 306 thousand metric tons. Italian crude imports from Iran also increased by 35 % rising from 7508 thousand metric tons to 11 402 thousand metric tons. By 1995 Italy and France had become Iran second and third largest importers of crude oil respectively. By comparison, British imports constituted merely 1161 thousand metric tons in 1995. In the same year, the U.S. imported 58 571 thousand metric tons from Saudi Arabia and none from Iran. see United Nations, 1995 Energy Statistics Yearbook (New York, United Nations, 1997), p.176

5. Conclusion

Human rights developments under Rafsanjani between 1994 and 1996 remained largely unchanged and neither the Iranian government nor parliament implemented policies or passed legislation respectively to provide respect as well as protection for Article 19. On the contrary, the bill passed by the *Majlis*, which banned the use of satellite dishes, obstructing free access to information and granting the *basiji* with more powers, proved detrimental to freedom of speech. Though the decision for the bill was a political compromise with the conservative-right as well as the leftist opposition in return for support of the government's economic policy⁸⁶², policies granting the full enjoyment of the right to freedom of speech and expression were not part of Rafsanjani's political agenda. Whilst newspapers gradually emerged as a substitute for the lack of political parties, the government's insistence on allowing only "constructive criticism" and urging the media to represent the national interest over its own political or intellectual agendas did little to encourage the genuine free flow of ideas, criticism and intellectual discourse. On the contrary, the government's position ensured an environment of self-censorship and intimidation for criticism or thoughts outside the restrictive legal framework. In fact, faced with growing opposition amongst society, politicians and religious circles, the government was keen to control dissent, and what followed, could best be described as a "policy of co-optation" concerning public debate in general and the press in particular.

During the same period the British / EU approach to protect the right to freedom of speech was largely confined to tabling of a UN Resolution at the Human Rights Commission and condemnations through EU-démarches. Despite the 1992 Edinburgh declaration of pursuing a Critical Dialogue with Iran, EU human rights diplomacy towards that country failed to extend to a genuine linkage strategy in which economic or political cooperation was subject to improvements in human rights. Britain, however, because of its commitment to defend Rushdie's right to freedom of speech, pursued a genuine policy of constructive engagement in which the upgrading of bilateral relations was conditional on Iranian assurances to guarantee the author's safety.

⁸⁶² see *Iran Focus*, Vol.7, No.9, October, 1994, (Mehr-Aban 1373), p.8

It had also become evident that pragmatists represented in the Iranian government and in the bureaucracy had to play by the rules of the Two-Level Game. As a result, efforts by Rafsanjani to appease hardliner and conservative constituents whilst trying to meet British demands were interpreted by Whitehall as falling short of guaranteeing Rushdie's safety. However, Track Two efforts by the German Orient Institute provided an effective problem solving approach in which participants sought for legal solutions to the problem and eventually led to *Ayatollah Yazdi's* ruling that the *fatwa*, as a religious ruling, was outside Iranian domestic jurisdiction and bore no political significance.⁸⁶³ Again, because of the factional divide and Rafsanjani's uneasy alliance with the establishment, Whitehall saw this as a step in the right direction but felt unable to give unquestionable credence to this ruling. Alleged efforts to seek contact with the IRA, German intelligence on the activities of Iranian security services in Europe, and Iran's interventionist policies in the Balkans had further contributed to this level of mistrust on the part of the British government.

Eventually, with the launch of the Barcelona Process and the directive of the Commission and resolution by the European Parliament to make relations with third countries conditional upon the respect for human rights, linkage diplomacy on the Community Level ceased to be a mere option and became a legal requirement for the EU's external relations. The German case, however, shows that this did not necessarily extend to individual foreign policies of member states. During the period of the Juppé Initiative, Iranian vulnerability on EU investment and financial investment allowed for effective linkage strategies concerning the granting and extension of loans to Iran. Whilst Britain followed such rationale until the Rushdie issue had been solved and refused any loans to Iran, Germany's perceived sensitivity on potential payment deficits on part of Iran led the government in Bonn to renew the so called "Hermes Sureties". Unlike Britain, Germany

⁸⁶³ It should be noted that *Ayatollah Yazdi's* statement on the *fatwa* should be seen within the wider context of his bid for political power. In the same month (May 1995), Yazdi also offered amnesty to Iranian exiles and welcomed them back to the country. As this was seen as the prerogative for the Supreme Leader, Yazdi was criticised by many of the conservative and radical camp alike for overstepping his authority. Though no opposition was voiced to his ruling on the *fatwa*, Europeans felt that it was not representative for all camps. *Iran Focus*, Vol.8, No.5, May 1995, (Ordibehesht-Khordaf 1374), p.7

also imported a considerable amount of crude oil during that time, as did France and Italy. There is little doubt, however, that trade interdependence in particular dictated Germany diplomacy towards Iran and thus jeopardized Britain's unilateral strategy of conditionality.

What had become evident by late 1996, however, was that the EU and especially Britain seriously advocated human rights in Iran and pushed for the Rushdie affair to be resolved. Nonetheless, the deadlock on Rushdie was unlikely to be broken. Rather Germany's resolute stance following the developments of the Mykonos trial, presented Iran with the loss of its most important European political ally and further aggravated various power centres in Iran. What was also evident, however, was that economic realities and fluctuating asymmetries in European-Iranian interdependence dictated diplomatic manoeuvring on both sides. As will be shown, Britain, which enjoyed relative independence towards Iran concerning energy (In 1996, Britain produced 2735 thousand barrels / day, which amounted to 2.5 % share of world production and only consumed 1752 thousand barrels / day)⁸⁶⁴ was able to use asymmetrical interdependence for its advantage in its dealings with Iran. Thus, the final chapter in British-Iranian relations saw a British, rather than an EU initiative to solve the stalemate.

⁸⁶⁴ BP Statistical Review of World Energy, 2005, p.6; p.9; *see also footnote 856*

Constructive Engagement: Hypotheses and Variables
CHAPTER SIX

Hypothesis	Independent Variable	Dependent Variable
A. NA	NA	NA
B. NA	NA	NA
C. Iranian economic dependence on the EU provided for potential linkage diplomacy as means to solve the <i>fatwa</i> issue. Whilst British-Iranian relations were relatively asymmetrical (to the benefit of the former), EU-wide, particularly German-Iranian relations influenced EU diplomacy negatively.	Iranian <i>vulnerability</i> on the granting of foreign loans and debt rescheduling from EU countries provided for linkage diplomacy. Economically and politically, the British government was in such a position as to demand changes (concerning the <i>fatwa</i> human rights) in return for any economic concessions. At the same time, German-Iranian trade interdependence and increased Iranian debt towards Germany dictated German diplomacy towards that country. German <i>vulnerability</i> in terms of loss of a crucial export destination and its <i>sensitivity</i> on potential payment deficits on part of the Iranian government precluded any conditional diplomacy. Contrary to the US, EU-wide energy dependence on Iran excluded the use of negative sanctions for political purposes (e.g. <i>fatwa</i> , human rights)	The British government enjoyed a relative leverage over Iran, but bilateral linkage-diplomacy was jeopardized by Germany's unconditional " <i>Iran-Politik</i> ".
D. Level I negotiations were subject to Iranian domestic constituents. Iranian diplomacy continued to reflect domestic politics. Level I negotiations were unsuccessful because of the lack of domestic consent.	a) Level II (domestic) "win-sets" were supported by "internationalist forces", but were significantly constrained by the "isolationist" camp. Even though pragmatists in the government were keen to meet European demands and took part in diplomatic initiatives, Iranian diplomats felt	The Iranian government was forced to defect from EU demands on Level I negotiations. Ongoing human rights violations in and outside the country exacerbated this stalemate.

	unable to provide what the EU considered credible assurances.	
	b) NA	NA.

CHAPTER SEVEN

THE RISE OF KHATAMI AND THE RESOLUTION OF THE RUSHDIE AFFAIR: THE YEARS 1997-1999

1. Introduction

Concerning the stalemate on the Rushdie front, the year 1997 initially saw few prospects for any resolution. On the eighth anniversary of the *fatwa*, the Revolutionary Guards insisted that Rushdie be killed. As the FCO had correctly assessed the previous year, the pragmatists were in no position to make concessions on the issue, and the IRG went further and “vowed to confront anyone seeking to dilute the fatwa or working to prevent it from being implemented.”⁸⁶⁵ Despite Rafsanjani’s statement that “he did not support the move” the bounty was also increased to \$ 2.5 million.⁸⁶⁶ It was evident that Rushdie had become a pawn in the power struggle between the moderate-pragmatists and the hardliner faction. Therefore, sustained pressure by the EU on Rafsanjani, which in a *démarche* demanded that he “take appropriate steps against any initiative [the bounty increase] that might endanger ongoing efforts to reach a solution”, proved futile.⁸⁶⁷ It was, therefore, not surprising that opposition in the House of Commons over the overall value of the FCO’s strategy with Iran intensified. As Conservative MP, Sir Cyril Townsend commented:

Does my right honourable and learned Friend agree that nether western Europe’s critical dialogue nor the United States’ policy of dual containment have been particularly successful in recent years? When a new course is being decided, will he resist the temptation to turn Iran into a pariah state, beyond the bounds of the international community? Does he agree that Tehran is just the sort of place where a British ambassador, with his skills and expertise, would have plenty of work to do?⁸⁶⁸

Resisting any such calls to upgrade relations to ambassadorial level, the British government maintained its uncompromising stance.⁸⁶⁹ This position reflected ongoing behind the scenes negotiations. Following the failure of the Juppé initiative,

⁸⁶⁵ The Times, 14 February 1997, IRNA, 15 February, 1997

⁸⁶⁶ The Times, 14 February 1997

⁸⁶⁷ Bulletin of the European Union 1/2- 1997, paragraph 1.3.11 ; *see also* Bulletin of the European Union 1/2- 1997, paragraph 1.1.7 Parliament Resolution on Iran

⁸⁶⁸ House of Commons, Hansard, 12 March, 1997, Column 344

⁸⁶⁹ *see* statement by Minister for Foreign Affairs Rifkind, *ibid*

communications between Iran and the EU had been exchanged; all of which the FCO rejected as falling short of any genuine commitments on the part of Iran.⁸⁷⁰ At a meeting of the Council of Ministers meeting in February 1997, all EU Foreign Ministers rejected Iranian “follow-ups” of the Juppé initiative and espoused the principles of freedom of speech and the necessity to uphold them, leading the Dutch representative to go as far as to warn “not to give into Iranian blackmail.”⁸⁷¹

More serious than the Rushdie deadlock, however, proved to be the verdict by the court in Berlin on the “Mykonos Case”. The judge eventually confirmed what the German government had known since 1992. On 10 April 1997, the defendants Darabi and Rhyael both received life sentences for murder. More importantly, however, the court ruling established the primary role the Iranian political establishment had played in the assassinations. The judge ruled that “decisions to carry out operations [against dissidents] abroad lies with the secret and unconstitutional Committee for Special Affairs, whose affiliates are the President, the Intelligence Minister (VEVAK), Secretary of State for Foreign Affairs, Representatives of the security forces, as well as the Supreme Leader himself.”⁸⁷² In the light of this ruling, European states, particularly the German government eventually had to concede that the Critical Dialogue had lost its momentum when atrocities, organised and implemented by the highest officials in the Iranian political system, had been carried out parallel to diplomatic dialogue.⁸⁷³ Following the break of relations at the ambassadorial level between Germany and Iran, EU countries followed suit and recalled their ambassadors from Iran. The Council Declaration on 30 April 1997 further agreed on the following:

⁸⁷⁰ In one draft communiqué the Iranians affirmed the blasphemous character of the book. Whilst reiterating that “the *fatwa* is a valid and irrevocable religious injunction” it stated that “the government of Iran however [...] has not and will not send anybody to kill the apostate writer.” The draft also ambiguously emphasized that “governments have a special responsibility to prevent actions that may encourage blasphemy.” cited in Barones Frances D’Souza’s diary of “Fighting the Fatwa”.

⁸⁷¹ *ibid*;

⁸⁷² “Pressemitteilung Nr.38/97 der Senatsverwaltung fuer Justiz vom 10. April 1997 betr. Urteil im Mykonos-Prozess“, p.2, documented in Frankfurter Rundschau, 12 April 1997

⁸⁷³ *see* Entschließungsantrag der Fraktionen der CDU-CSU und F.D.P. zu der vereinbarten Debatte zur Iran-Politik, Deutscher Bundestag 13 Wahlperiode, Drucksache 13-7441, 16 April, 1997

Confirmation that under the present circumstances there is no basis for the continuation of the critical dialogue between the European Union and Iran;

The suspension of official bilateral visits to or from Iran [...];

Cooperation to ensure that visas are not granted to Iranians with intelligence and security functions;

Concertation in excluding Iranian intelligence personnel from European Union Member States.⁸⁷⁴

2. The Triumph of the Reformists

The Mykonos verdict reflected a characteristic of Rafsanjani's administration. Since much of the President's political power depended on his *bazaaris* coalition⁸⁷⁵, clientalism became a dominant feature of the Iranian political system. As Mozafari put it "each group had its own chief and its specific domains to control, its own members of parliament and its *groupe de frappe* which could be mobilized at any time." As a result "Iran witnessed a flourishing of a multiplicity of decision-making processes. A parallel and complex chain of decisions were installed which concurred with each other, neutralized mutually and cooperated sporadically."⁸⁷⁶ The Rushdie stalemate was one aspect of this lack of consistency and web of competing groups in the decision-making process. More importantly, however, these parallel power centres essentially prevented economic recovery as well as political liberalization.

It is against this background that one has to understand the elections in spring 1997. Until shortly before the actual polling day for the new Iranian President, Majlis Speaker *Hojjatoleslam* Ali Akbar Nateq Nuri was confident of victory, having been groomed for the post by the conservative establishment and enjoying the backing of the Supreme

⁸⁷⁴ Bulletin of the European Union EU 4-1997 paragraph 1.4.13 Council Conclusions

⁸⁷⁵ The *Jamiat Mo'talefeh Eslami*, or Islamic Coalition Society (ICS), formed in the late 1960s by *bazaaris* increasingly gained influence in Iranian politics following Khomeini's death and enjoyed greatest support under Rafsanjani's administration. Profoundly traditionalist in their religious outlook, *baazaris* like Asgarowladi, Ali-Naqi Khamouchi and Asadollah Badamtchian also enjoy strong influence in the Revolutionary Guards and as such have political clout that extends well beyond their extensive personal wealth. For the ICS, an economic open-door policy was not seen as synonymous with political liberalization. Rather the political status quo based on patterns of mercantile-nepotism had to be defended against opposition and dissidents. *see* Farhad Khosrokhava "The New Conservatives Take a Turn" on <http://www.merip.org/mer/mer233/khosrokhavar.html> website accessed 19 February 2006

⁸⁷⁶ Mehdi Monzaffari, "Revolutionary, Thermidorian and Enigmatic Foreign Policy: President Khatami and the Fear of the Wave", International Relations, Vol.XIV, No.5, (August, 1999), p.17

Leader. The result, however, was a landslide victory of Muhammad Khatami, representing the *Majma-e Rowhaniyum-e Mobarez* (MRM), the Militant Clerics Society. Whilst Nateq-Nuri represented a symbol of establishment dogmatism and political status-quo, Khatami was perceived by the young electorate as a symbol of pragmatism, openness and change. Sensing the discontent and alienation felt by young people, his campaign largely focused on reform and pressed for a modification of the revolutionary path.⁸⁷⁷ Khatami made democratisation, the creation of a civil society and the respect for human rights fundamental issues of his platform. It was evident that his victory represented a revolt from below, a peaceful referendum against the institutionalization of people's disempowerment on one side and the misuse of power on behalf of the elite on the other. What was also evident was that for the first time in post-revolutionary Iran, the government under Khatami did not regard human rights as alien to Islam.

3. The Early Khatami Years and the Impact on Freedom of Speech

Khatami's project of reforming the Islamic Republic was largely based upon the rule of law and respect for human rights. It should also be noted that the reformists' agenda was not otherwise substantially different from that of Khomeini. Unlike Khomeini's treatises, however, Khatami made a distinction of what is essential in religion and what is not. Thus the new president emphasised ethics, derived from religion, instead of dogma. As he states:

The other main problem we face is the parochialism and regressive visions of the dogmatic. Religious dogma is nothing more than ascribing sanctity and eternity to the limited and incomplete interpretations of human, and giving priority to emotions over rationality and realistic appraisal.⁸⁷⁸

Overall, Khatami followed a liberal interpretation of the Iranian Constitution. This meant that whilst he accepted the the *faqih*'s authority, he did not consider the leader as immune from criticism, as nobody should be above the law. The central concepts of his

⁸⁷⁷ MECS, Volume XXI, 1997, pp.343-345

⁸⁷⁸ Mohammad Khatami, *Hope and Challenge- The Iranian President Speaks* (Institute of Global Cultural Studies, Binghamton University, 1997), p.26

administration required the inculcation of democratic values and the establishment of democratic institutions.⁸⁷⁹ Concerning the protection of human rights standards, two aspects of Khatami's political manifesto are of particular importance. They are the institutionalization of civil society and the provision of the rule of law under which all policies ought to operate. At the same time, however Khatami's discourse emphasised an Islamic civil society:

The citizens of Islamic civil society have the right to determine their destiny, supervise the implementation of their affairs and question their rulers and statesmen. Furthermore, in such a society, the state is the people's servant not their patron, and, as such, it is at all times accountable to the people upon whom God has bestowed the right of self-determination.⁸⁸⁰

What was extraordinary was not necessarily that the head of the executive would advocate the advancement of civil society, but rather what it meant for the course of the Islamic Republic. It was with the election of Khatami that government and society gained enough momentum in Iran to attempt to engage in the depersonalisation of power and to manage to develop a "civic culture". This was one in which pre-existing patrimonial relationships would no longer govern politics and, most importantly, people would think and write freely.⁸⁸¹ As human rights activist and Nobel Peace Prize Laureate Shireen Ebadi put it: "For a few stretches during the years 1998-1999, the country experienced a flowering of open debate and freedom of the press that some optimist souls called a Tehran spring." In an attempt to end the practice of censorship Khatami gave "his Culture Ministry free run to issue press permits for new publications, and for a brief time the media operated in an atmosphere of relative freedom and independence."⁸⁸²

It was in the early period of Khatami's presidency that intellectual and political journals, which were not linked to the government, began appearing. The Special Rapporteur noted that between mid-1997 and 1999 the new government succeeded to some extent "to

⁸⁷⁹ R.K. Ramazani, "The Shifting Premise or Iran's Foreign Policy: Towards a Democratic Peace?" Middle East Journal, Vol.52, No.2, (Spring, 1998), p. 181

⁸⁸⁰ Ali Ansari, Iran, Islam and Democracy, p.146

⁸⁸¹ for Khatami's discourse on civil society see Mehran Kamrava, "The Civil Society Discourse in Iran" in British Journal of Middle Eastern Studies, Vol. 28, No.2 (November, 2001), pp.165-185

⁸⁸² Shireen Ebadi, Iran - Awakening (New York, Random House, 2006), pp.147-148

strengthen the public's confidence in the press as circulation from 17 per 1000 population increased to 35 per 1000 population. Moreover, during the same period, the number of provincial publications had grown considerably to 281 of which 12 were dailies. Press Licences in the country reached 1200 of which 800-900 were active. Across the whole country, the Special Rapporteur noted the circulation of 50 dailies.⁸⁸³ The press essentially became an "agent of change" which set the terms of political discourse and dictated the agenda.⁸⁸⁴

Concerning the respect and protection of Article 19, the Special Rapporteur noted that "there were quite evident differences of opinion over the press law regime among the executive, legislative and judiciary."⁸⁸⁵ Whilst Khatami attempted to push for greater respect for the right to freedom of speech and favoured more progressive legislation to ensure protection of this right, such efforts were largely frustrated by a hostile parliament and the conservative-right dominated judiciary. In fact, Khatami's press advisor said in an interview published in an Iranian daily, that though she favoured an amendment to the press law, with a conservative dominated parliament such efforts were likely to result in a loss of freedom of the press. She further commented that it was the responsibility of the Press Supervisory Board, which had representatives from the judiciary and the legislature, rather than the courts to supervise the press.⁸⁸⁶ Reiterating such pleas to the judiciary to respect the right to free speech, Khatami's Minister of Culture and Islamic Guidance, referring to Article 24 of the Constitution, which provides that the press should be free to express views and opinions subject to certain restrictions, also defended critical accounts in the public sphere. This legal provision is echoed in Article 3 and 5 of the Press Law, which also defines constructive criticism or fair comment. The Minister reiterated that nine types of criticism are defined in the law as unconstructive; some of these have, however, never been invoked.⁸⁸⁷ Essentially, the government urged for

⁸⁸³ Commission on Human Rights, Report on the situation of human rights in the Islamic Republic of Iran, UN Doc. E/CN.4/1999/32, 28 December 1999, paragraph 19

⁸⁸⁴ Ali Ansari, Iran, Islam and Democracy, pp.118-119

⁸⁸⁵ UN Doc. E/CN.4/1999/32, paragraph 15

⁸⁸⁶ *ibid*

⁸⁸⁷ *ibid*, paragraph 18

greater press freedom and public debate without really being able to ensure protection of the right to free speech.

Against this background Iran witnessed a tentative beginning of intellectual tolerance and with it the publication of journals, such as *Adineh* (Friday), which were couched in Third World idiom, denouncing poverty in Iran and advancing socialist ideas. *Adineh* was followed by a journal containing short stories, poetry and essays for the first time in a decade; all of which expressed criticism only euphemistically. However covert political messages and philosophical debate eventually emancipated itself and became more challenging of existing political realities. With the birth of *Jame'eh* (Society) and *Rahe-No* (New Path), *Iran-e Farda* (Tomorrow's Iran) boundaries of freedom of expressions were constantly being pushed as the authorities were publicly questioned, politicians held accountable, corruption at the elite level denounced and more rights for the people demanded.⁸⁸⁸ Most significantly, the short period of open debate, encouraged by the government, witnessed the rise of Soroush, who openly questioned the rule of the *velayet-e faqih* in his writings, in which he pointed out that the rule of the clergy was “based on the logic of power, not the logic of liberty.” Using religion as an ideology, he emphasised, “makes it intolerant and authoritarian.” He further claimed that “government and economic were the province of intellect and reason, not the domain of faith.”⁸⁸⁹ In line with such hermeneutics, *Hojjatoleslam* Mohsen Kadivar, who was part of the reformist camp, maintained that Islamic rulings had elicited different, often conflicting views, and there could thus be no exclusive interpretation of Islam. In 1999, he went so far as to claim that “in order for a society to advance and flourish, the community must free itself from the shackles of past traditions and adopt new practices in line with the spirit of the era.” Openly advocating the separation of political and religious institutions his published articles went further and claimed that “no government may claim a special mission from God.” Such a prerequisite of any government, he believed would lead to “tremendous problems in society” and was bound to suppress freedoms. What eventually

⁸⁸⁸ Zaris Merat, Pushing Back the Limits of the Possible: The Press in Iran, *Middle East Report*, No. 212, Pushing the Limits: Iran's Islamic Revolution at Twenty. (Autumn, 1999), p.33; Behzad Yaghmaian, *Social Change in Iran- An Eyewitness account of dissent, defiance, and new movements for rights*, (New York, State University of New York, 2002), pp.18-19

⁸⁸⁹ *MECS*, Vol. XXII, 1998, p. 258

lead to his arrest was one of his articles in which we wrote “The basic problem of Iran is the *velayat-e faqih*.” While according to Islam, he noted, “each person is considered adult and mature (*rashid* and *balegh*), the principle of *velayat-e faqih* is based on the notion that people are irresponsible and incapacitated (*mahjur*).⁸⁹⁰ His and Soroush’s dialectics on reform, civil society and human rights reflected the general intellectual and political mood between 1997 and 1999.

4. The Road to Resolution

The same year when Khatami came on the political scene in Iran, New Labour won the parliamentary elections in Britain. New Labour’s Third Way eventually spilled over to British foreign policy when Foreign Secretary Robin Cook announced an ethical foreign policy with human rights as a core commitment in the government’s foreign relations. Cook spoke of the promotion of human rights in terms of both duty and self-interest in that the United Kingdom is “better able to trade with countries that are stable and free.” Advocating a strategy of seeking dialogue, on the observance of human rights, “long term engagement”, Cook believed “provided the best means to secure sustained change.”⁸⁹¹

This paradigm in UK foreign policy objectives soon translated into the FCO’s strategy towards Iran. By March 1998, the British government welcomed the changes that were taking place in Iran since the election of Khatami and stated: “we hear the noises and see the potential of warming relationships.”⁸⁹² That Khatami wanted to extend his reformist agenda to the international level in the form of international rapprochement was obvious when at the OIC summit in December 1997, he pledged a gradual assimilation of positive elements of western society and politics in the Islamic world.⁸⁹³ For the British government, a first step in the right direction was Iran’s ratification of the chemical weapons convention as well as Iranian condemnation of terrorism and the terrorist attacks

⁸⁹⁰ *ibid*, pp.258-259; *see also* Azadeh Kian-Thiebaut, “Political and Social Transformations in Post-Islamist Iran”, *Middle East Report*, No. 212, (Autumn, 1999) pp.12-16

⁸⁹¹ Richard Little, Marck Wickham-Jones, *New Labour’s foreign policy – A new moral crusade*, p.187

⁸⁹² *House of Commons, Hansard*, 18 March, 1998, Column 1267

⁸⁹³ For Khatami’s speech *see* Wilfried Buchta, “Richtungswechsel in Irans Außenpolitik in *Internationale Politik*, Vol. 53/3, (1998/03), p. 44

in Algeria and Egypt that year. Whitehall, however, also maintained at meetings with Iran that “[the British government] is prepared to judge the new regime not by the rhetoric of the past, but by its record and what it achieves and sets out to do in the future.”⁸⁹⁴

Concerning Britain’s revised strategy, the FCO maintained a double-headed tactic, which wanted to ensure encouragement of the reformist movement, while being cautious about other developments and characteristics of the regime.⁸⁹⁵ Blair’s government demanded concrete and positive indications from the Iranian government. According to the Foreign Minister, the *fatwa* against Salman Rushdie remained a significant impediment to better relations with Iran and it would be “wholly alien to us to negotiate in any way or conciliate about our own basic values. Salman Rushdie’s right to publish and his freedom of speech are crucial elements in our political democracy, and we therefore, should not allow those basic rights and principles to be negotiable.” Indicating that the government was still waiting for a positive response on this matter, FCO Minister Fatchett reiterated that “we know what the regime has said in the past, and it has not gone far enough.”⁸⁹⁶ Though UK-Iranian relations were still facing a stalemate, intermediary efforts by a third country were dismissed as a way to make progress on the *fatwa*. Rather “the best way to make progress on the fatwa [...]” it was believed by the FCO “is through direct contact between Iran, the European Union and the United Kingdom. The *fatwa* and Salman Rushdie will be key elements in the development of the relationship, and they must be tackled by the Iranians in discussions with the United Kingdom and our European Union partners.”⁸⁹⁷

Even more than under the previous government, it was obvious to British diplomats that the drive for inward investment was an important factor in Khatami’s administration. During meetings with the FCO, capital influx from Britain was always at the top of the list of issues that the Iranians wanted to raise. The underlying assumption in and outside the British government was to increase economic cooperation between both countries, to

⁸⁹⁴ House of Commons, Hansard, 18 March, 1998, Column 1267

⁸⁹⁵ ibid

⁸⁹⁶ House of Commons, Hansard, 18 March, 1998, Column 1267- 1268

⁸⁹⁷ House of Commons, Hansard, 18 March, 1998, Column 1268

the extent that Iranian dependence would prevent hardliners from jeopardizing bilateral relations. As Tam Dalyell, MP put it: “The demonising of Iran should be something of the past, and the *fatwa* and the difficult case of Salman Rushdie should not cut out negotiations with the new political leadership in Tehran. The more locked in we are in commercial relations, the harder it will be for the hardliners to wreck relations.”⁸⁹⁸ Efforts by the Iranian Foreign Ministry to attract FDI and transfer of technology, did not only reflect Khatami’s overall economic policy of ending the mercantile-clientalist structures in the country, but were largely dictated by economic realities.

The price of oil was still a crucial determinant of the Iranian economic bargaining position, which again shifted into the political realm. In 1998, crude oil prices reached an average of \$13.11, which were 32 % below 1997 and the lowest since 1976.⁸⁹⁹ The continuing weakness of the crude oil market considerably lowered Iranian export revenue and subsequently affected the government’s ambitious debt repayment programme. Since late 1995, the government had adhered rigorously to this strategy, which was based on a policy of import compression in order to maximise current-account surpluses. However, with Iranian crude selling at close to \$10 / barrel, Iran’s obligations in 1998/99 - both external and internal - were in jeopardy.⁹⁰⁰ As a signal of more serious intent to open up to the West but also in response to the government’s financial problem, the new government pushed through a legislative bill to encourage foreign investment in Iran’s free zones.⁹⁰¹ At the same time, the external debt situation dictated Iran’s Central Bank and Bank Markazi to seek \$1 billion in advances each from Germany, Japan and Italy, using pre-paid oil sales as collateral.

⁸⁹⁸ Notes on “Diplomatic Relations between Iran and the UK in the early reform period, 1997-2000”, by Dr Michael Axworthy (FCO Official at the Iran Desk, 1997-2000 / FCO Official “A”) handed to the author on 19 June 2006. House of Commons, Hansard, 18 March, 1998, Column 1262

⁸⁹⁹ A crucial factor in the low oil price of 1998 was the UN Oil for Food Programme, which resulted in a 3.2 % increase in OPEC production which was largely due to an 80 % increase in Iraqi production, which constituted 2.2 million barrels per day. BP Amoco Statistical Review of World Energy, June 1999, p. 3

⁹⁰⁰ The Economist Intelligence Unit, EIU Country Report 4th Quarter 1998 Iran, p. 15

⁹⁰¹ *ibid*, p. 16

Whilst Iran's need for foreign investment certainly presented opportunities to British firms⁹⁰², many saw the upgrade to full diplomatic relations between both countries as a prerequisite to enter the Iranian market.⁹⁰³ During negotiations, the Iranian delegation explained that they needed such inward investment (especially in the non-oil sector) to create jobs, to reverse the trend of rising unemployment, and to reduce the dependence on oil.⁹⁰⁴ Now more than ever before, the Rushdie deadlock had become an intolerable impediment, determining too many political and economic aspects of Anglo-Iranian relations – both for the British as well as the Iranian side. At the same time, however, a reform minded government and considerable leverage on the part of Britain, presented the Labour government with a unique incentive for Iran to finally close the Rushdie chapter in bilateral relations. The FCO also assessed that under Khatami there was a measure of confidence that the Iranians would keep any commitments made over the *fatwa*.⁹⁰⁵ The key for the British government was to translate these crucial economic assets it enjoyed over Tehran, into an incentive for the Iranians.

Pre negotiations between both countries solely on the Rushdie issue began after the British government initiated a new series of talks between the EU and Iran. As the British wanted to encourage the process of reform, the Council agreed that a first step was to “resume ministerial bilateral visits and that exploration of the scope for enhanced political dialogue should continue at the EU level.”⁹⁰⁶ Under the British presidency the “Critical Dialogue” was then replaced with a new “Comprehensive Dialogue” with the Iranian Government.⁹⁰⁷ During the meetings that followed under this revised framework,

⁹⁰² Once relations had been restored in 1998, London hosted one of the first conferences on “Investment in Iran” which had been organized by an Iranian economic delegation. In connection with the ratification of the Third Economic and Social Development Plan, investment opportunities for British firms in Iran were discussed. Iranian Ambassador Sarmady emphasised that the government had provided ample facilities for foreign investors so that they could freely repatriate their profits and principals. *see* “Conference on Investment in Iran” in The Iranian Journal of International Affairs, IPIS, Vol. XII, No.4, (Winter 2000-2001), pp. 719-723

⁹⁰³ Interview with FCO Official “B”

⁹⁰⁴ Notes on “Diplomatic Relations between Iran and the UK in the early reform period, 1997-2000”, by Michael Axworthy (FCO Official at the Iran Desk, 1997-2000) handed to the author on 19 June 2006

⁹⁰⁵ Interview with FCO Official “A”

⁹⁰⁶ Bulletin of the European Union 1/2 - 1998, paragraph 1.4.101 Council conclusions on Iran

⁹⁰⁷ Bulletin of the European Union 6 - 1998, paragraph 1.4.101 Council conclusions on Iran

which was guided by a “spirit of increased international cooperation”⁹⁰⁸, the Iranians appreciated the fact that Britain was the driving force behind the initiative for EU-Iran détente. During the first rounds in Brussels on 25 May 1998, EU envoys paved the way for more constructive relations between the EU and Iran. The incentive given to the Iranians was increased political cooperation and the transfer of technology and investment.⁹⁰⁹

The Iranians eventually reciprocated by circumventing constitutional constraints in order to attract the promised foreign investment. The problem was that the Iranian Constitution, effectively prohibits private sector investment in the oil and gas industry. Since the 1987 Oil Law permits contracts between State organisations and Iranian and foreign companies, in 1998, the government introduced the so-called Buy Back Scheme. Buy backs are agreements under which the foreign company acts as a contractor. The contractor finances capital investment in an oil or gas field and recoups that investment over a short period of time, usually 3-5 years, through the sale of the product on a fixed rate of return plus a fee from the National Iranian Oil Company (NIOC)⁹¹⁰ In the upstream hydrocarbon sector, opportunities for foreign companies arose from the technical and economic challenges facing Iran. NIOC needed the logistical, technical and resource base of international petroleum companies to be applied to many of the older oil and gas fields. Many of these older fields had (have) comparatively large remaining reserves, but these required significant investment and the application of modern engineering techniques.⁹¹¹ Particularly in the gas sector, Iran needed foreign technology. In 1999, proved reserves for natural gas constituted 812.3 trillion cubic feet, the second largest

⁹⁰⁸ *ibid*

⁹⁰⁹ *IRNA*, 15 May, 1998

⁹¹⁰ British Embassy, Tehran, “Iran: Oil and Gas Sector (Upstream)” British Embassy, Tehran, June 2002, handed to the author on 23 November 2003 by UK Trade and Investment

⁹¹¹ Practical engineering issues included: hole stability issues in fractured formations; reservoir testing and monitoring procedures; management, monitoring and treatment of hydrogen sulphite; the application of horizontal and multilateral drilling; scope to handle high gas-oil ratio and wet crude; the expansion of increased oil recovery projects; the implementation of artificial lift; reservoir simulation and geo-modelling of reservoir compartmentalisation and updating of old and war damaged onshore and offshore facilities *see* UK Trade and Investment, “Study of the Oil and Gas Sectors in Iran”, (UK Trade and Investment, March 2003), given to the author on 15 December 2003 by UK Trade and Investment, pp. 47-50

reserve in the world.⁹¹² More than in the oil sector, the gas industry in Iran was largely underdeveloped at the time and Iran signalled ambitions to export gas to India and to construct a series of LNG plants. What gave Britain a particular margin over Iran in this respect was the fact that British Petroleum and British Gas were two of only four firms worldwide, which possess the required LNG technology. Yet, not only because of Rushdie, but also in the light Britain's historical baggage in Iran, neither BP nor BG wanted to establish themselves without official British representation.⁹¹³

During the 1998-1999 buy back tender, a total of 24 development projects were eventually offered for international participation. They included three gas injection development projects, nine onshore-enhanced oil recovery projects, 8 offshore development projects and four gas field developments. Especially interesting for foreign firms was the South Pars Gas Development Project, which is the Iranian portion of the largest gas field in the world (as it shares a territorial boundary with the Qatari North Field.)⁹¹⁴ In this way Iran had set the economic foundation for increased commercial cooperation with the West, what was now needed was a political commitment on behalf of the government in Tehran.

5. The End of the Rushdie Affair and the Exchange of Ambassadors

Following the first roundtable which had paved the way for economic and political cooperation between the EU and Iran, the British government continued to link potential investment to renewed demands on the Rushdie front. On 22 July, 1998, Foreign Minister Derek Fatchet emphasised that his government would “welcome a more constructive bilateral relationship with Iran.” Fatchet proposed political cooperation with Iran regarding Afghanistan, Central Asia and the international drug trade. Likewise economic cooperation with Britain presented a prospect of mutual cooperation, yet was conditional upon finding a solution to the *fatwa*. Avoiding any demands to lift the *fatwa*, Fatchet

⁹¹² BP Amoco Statistical Review of World Energy, June 1999, p. 20

⁹¹³ Interview with Alan Stott, BG Country Manager for Iran, (Tehran, 4 September, 2004); Interview with Farzin Aram, Country Representative for BP in Iran, (Tehran, 28 August, 2004)

⁹¹⁴ UK Trade and Investment, “Study of the Oil and Gas Sectors in Iran”, (UK Trade and Investment, March, 2003), p. 43

proposed to remove the bounty on Rushdie's head, which would be interpreted as a first positive step on the part of the Iranian government.⁹¹⁵ Eventually this initiated a series of roundtables at respective embassies in Tehran and London during which senior ministers assured the British that the government distanced itself from the death sentence whilst at the same time reminded them that they could not revoke the verdict.

During the meetings preceding a meeting at the UN between Foreign Ministers Cook and Kharazmi, the Iranians were left in no doubt that significant European investment would be contingent on a settlement of the Rushdie case. The only agenda item was how this would be achieved with face saving all round. One agreement concerned the going ahead with credit loans and oil industry investment prior to any resolution of the *fatwa*. The exchange of ambassadors would also be separated in time from the statements about to be made during the UN General Assembly in September in New York in 1998.⁹¹⁶ If an agreement would be reached, the Iranians guaranteed that they would hold the first Buy-Back Conference in London, which would be announced prior to the UN meeting, thus underlying its commitment to renewed British-Iranian relations.⁹¹⁷ In August 1998 the British government reciprocated and granted Iran a \$ 2 billion credit loan and started to refurbish the Embassy in Tehran presumably in readiness for the arrival of an ambassador.⁹¹⁸

In many ways, Britain's strategy was paying off. The FCO believed that engagement with Iran was beneficial all around, and that the longer it went on and prospered, the less likely retrograde movement would be. The rationale behind this strategy was that increased economic cooperation with Britain gave the Iranians something to lose, a vested interest in the continuation of good relations, and most importantly, a reason to change its policy in Britain's remaining areas of concern, such as human rights.⁹¹⁹ During the last meeting before the first encounter between a British Foreign Secretary and an Iranian Foreign

⁹¹⁵ *IRNA*, 22 July, 1998; *IRNA*, 25 July, 1998

⁹¹⁶ Baroness Frances D'Souza's diary of "Fighting the Fatwa",

⁹¹⁷ Interview with Former Deputy Foreign Minister for Iran, Dr Mahmoud Vaezi, (1988-1999), (Tehran, 6 September, 2004)

⁹¹⁸ Baroness Frances D'Souza's diary of "Fighting the Fatwa"

⁹¹⁹ Notes on "Diplomatic Relations between Iran and the UK in the early reform period, 1997-2000", by Michael Axworthy (FCO Official at the Iran Desk, 1997-2000) handed to the author on 19 June 2006

Minister since the Iranian revolution, the British further demanded for the Iranians to dissolve the 15th *Khordad* Foundation in future and cancel the bounty money. Thus, it was believed, Khomeini's *fatwa* would be allowed to gradually wither away. Following these last meetings, the FCO was absolutely confident that the Iranian government was intensely serious about its commitment not to implement the *fatwa*. Derek Fatchet himself made it very clear to his Iranian counterparts that the British Government had put its own credibility on the line and would never have done so unless they had been thoroughly convinced that this was a real deal. The final proof, which Britain received from the Iranian Foreign Ministry about its commitment, was that there had been a prior agreement between all factions in Iran, including Khomeini, to issue a joint statement at the UN on the Rushdie Affair and to refrain from negating it publicly at any later stage.⁹²⁰ The Iranian Foreign Minister, backed by the President was indeed able to manoeuvre in such new ways because of the momentum Khatami had created since his elections. The reformists and the Iranian Foreign Ministry had been assured that Khomeini would not interfere in this matter anymore.⁹²¹

By September, the *fatwa* was eventually ripe for resolution and the 1998 UN General Assembly plenary session was used to discuss the final statement between both countries. Rushdie's fate was eventually discussed at the highest level between Robin Cook and Iranian Foreign Minister Dr Kamal Kharazmi.

It should be noted that moments prior to the statement, Derek Fatchet briefed Rushdie, Frances D'Souza and Carmel Bedford about the breakthrough of what essentially was an assurance not to kill the author. In her diary, D'Souza described the moment when Rushdie, who had then been in hiding for the last nine years, was told about the resolution:

Salman took off his glasses and covered his face. He held out against a belief that this might be the breakthrough for a full 20 minutes, he could no longer hang on to his resistance. Could he now allow himself to think that it was all over? Despite his public anger, his refusal to compromise on his

⁹²⁰ Baroness Frances D'Souza's diary of "Fighting the Fatwa"

⁹²¹ Interview with Former Deputy Foreign Minister for Iran, Abbas Maleki, (Tehran, 6 September, 2004)

writings or his dignity, he was still terribly vulnerable. His best public defence had always been a show of spirit, aggression even, but this is just the other side of someone who bruises very easily. Carmel was tearful, the security men looked on in sympathy and some embarrassment. I put my arms around Salman and then Carmel. Derek, with immense tact, left the room taking his officials with him. He returned after a decent interval with a tray full of drinks. The New York press conference, beautifully timed, one had to admit, was about to start. ⁹²²

At the press conference Kharrazi made the public assurance that the Iranian government would not take any action to threaten the life of Rushdie or anybody associated with his work, and would neither encourage anyone to do so. The Iranian Foreign Minister also dissociated the Iranian Government from the bounty on Rushdie's life. "Accordingly the Government disassociates itself from any reward which has been offered in this regard and does not support it." Kharrazi further stated that the "Government of the Islamic Republic of Iran remains firmly of the belief that the prevention of insults to religious values and beliefs will greatly contribute to mutual understanding and confidence between the Islamic World and Europe." He further highlighted the he "explained to Mr Cook the offence and distress the book *The "Satanic Verses"* had caused to Muslims throughout the world, and repeated the Government of the Islamic Republic of Iran's strong condemnation of this book." ⁹²³ Cook in return affirmed the UK's commitment to a constructive dialogue with Iran aimed at encouraging and supporting reform. ⁹²⁴

Ultimately, the elements set out in the Juppé initiative three years earlier were there: The Iranian Government would not itself, nor encourage anyone else to carry out the fatwa and it distanced itself from the bounty. ⁹²⁵ The wording by Kharrazi whilst reflecting careful manoeuvring in order to meet domestic constituent's expectations went further

⁹²² Baroness Frances D'Souza's diary of "Fighting the Fatwa"

⁹²³ The New York Times, 24 September, 1998; House of Commons, Hansard, 28 October, 1998, Column 199

⁹²⁴ House of Commons, Session 2000-2001, Foreign Affairs Committee, 2nd Report, Iran: Interim Report, Ordered by the House of Commons to be printed 30 January 2001, HC 80, p. 4; It should also be noted that during the discussion Kharrazi informally approached Cook and asked whether the British Council could be re-established in Iran as the Iranian Ministry for Higher Education felt the need for the British Council to resume its works after it was forced to leave following the Iranian revolutions. Considering demographic trends in Iran, the Council was seen as vital by the Iranians to cope with demand by students to learn English and sit their English tests required for university entrance in the US and UK. Interview with Dr. Mehrdad Zarinagad, Science Project Manager, British Council, (Tehran, 25 August, 2004)

⁹²⁵ House of Commons, Hansard, 28 October, 1998, Column 199

than ever before. Most significantly, there was no reiteration of the validity of the *fatwa*. With the press statement, both Ministers had ultimately closed a chapter in British-Iranian relations, which in many ways was unique in international relations, as essentially a book constituted the reason behind the break of relations. After an agreed monitoring period during which British Intelligence indicated that Iranians kept true to their word ambassadors were exchanged in May 1999⁹²⁶. On Rushdie's express wish, the Rushdie Defence Committee was dissolved in October 1998.⁹²⁷

Following the resolution, the British government was finally able as Viscount Waverly put it "to plot a clear future path together [with Iran] – developing political and practical cooperation." What was the first expression of the mutual reward for the resolution was the creation of a joint chamber with the Iran Chamber of Commerce, which aimed to pool business communities from the UK and Iran.⁹²⁸ During the period from April 1999 to March 2000, the DTI also supported five outward missions and three exhibitions in Iran. The Government also actively supported the formation of the British-Iranian Chamber of Commerce and established an investment, promotion and protection agreement, which was designed to provide UK investors with added confidence to invest in Iran.⁹²⁹

By the year 2000, limited term ECGD had been resumed. A bilateral agreement on construction ventures had been agreed and negotiation on an Investment Promotion and Protection Agreement started.⁹³⁰ Investment in the oil and gas sector was the real "reward" for Iran and soon after the exchange of ambassadors, a number of British companies such as Shell, BG, BP and LASMO started to actively pursue major business interests offered by the Iranians under the buy-back scheme. In 2000, the first British firm, Shell Exploration, an affiliate of the Dutch-Anglo Royal Dutch/Shell Group was awarded a project under this scheme to develop two oil fields at a total cost of \$ 800

⁹²⁶ House of Commons, Hansard, 21 May, 1999, Column 457

⁹²⁷ House of Commons, Session 2000-2001, Foreign Affairs Committee, 2nd Report, Iran: Interim Report, HC 80 (13 February, 2001) p.4; Baroness Frances D'Souza's diary of "Fighting the Fatwa"

⁹²⁸ House of Lords, Hansard, 11 November, 1998, Column 825

⁹²⁹ ibid, Column: 834

⁹³⁰ House of Commons, Session 2000-2001, Foreign Affairs Committee, 2nd Report, Iran: Interim Report, p. 5

million.⁹³¹ In July 2000 BG also concluded a joint-venture agreement with the Oil Industry Engineering and Construction Company (OIEC) to build gas liquefaction facilities. The \$ 1 billion project was initiated to produce liquid natural gas for the Iran-Pakistan-India pipeline, which went on stream in 2006. The annual export capacity of the two sites stand at 6 million to 7 million tons of LNG.⁹³² In February 2001, BP, Reliance and the NIOC endorsed a memorandum of understanding to undertake a feasibility study on the building of an 8 million ton liquefied natural terminal in Iran. The two foreign partners would each hold a 25% stake in the project and the remainder will go to NIOC.⁹³³

Given Britain's history in the Iranian oil market the British entry into the Iranian market proved not to be without hurdles and tough negotiations between these firms and the NIOC were lying ahead. What was evident was that political negotiations had ended and opened the way for business negotiations, which quite often failed to offer lucrative conditions for foreign investors. In fact, British exports between Britain and Iran actually declined between 1997 and 1999 by 14 % falling from \$ 649 million in 1997 to \$559 million in 1998 to \$395 million in 1999.⁹³⁴ From 1999 onwards, Britain also ceased the import of crude oil from Iran.⁹³⁵ For the FCO the minor positive aspect of this development was that the figures were a good answer to critics in Britain who accused the government of selling out human rights for the sake of trade.⁹³⁶ On the contrary, human rights had become a fundamental guiding principle for Britain in its relations with Iran. As will be shown in the period 2000-2004, it was the promotion of human rights and the genuine attempt on the part of Britain and the EU to support the reformist agenda,

⁹³¹ *ibid*

⁹³² *Iran Focus* Vol. 13 No. 9, October, 2000 (Mehr–Aban 1379), p.3; The green light for the pipeline had been given by the Pakistani government a months prior to BG's deal. *see Iran Focus* Vol. 13 No 6, June, 2000, (Khordad–Tir 1379), p. 4

⁹³³ *Iran Focus* (March 2001 Esfand 1379–Farvardin 1380) Volume 14 Number 3 p. 3; The most lucrative aspect of BP's re-entry into the Iranian market, however, was its cooperation with Castrol to produce GTX motor oil in Iran for the world market. Interview with Farzin Aram, Country Representative for BP in Iran, 28. August 2004, Tehran

⁹³⁴ IMF, *Direction of Trade Statistics – Yearbook 2003*, p. 112

⁹³⁵ United Nations, *1999 Energy Statistics*, p.180, p.182; United Nations, *2001 Energy Statistics Yearbook*, (New York, United Nations, 2004), p. 180

⁹³⁶ Notes on "Diplomatic Relations between Iran and the UK in the early reform period, 1997-2000", by Michael Axworthy (FCO Official at the Iran Desk, 1997-2000)

which was a top item on the agenda of the comprehensive dialogue. Between 1989-1998, Britain had been the only EU member states which was committed to constructive engagement based on conditional diplomacy. Coupled with political will on both sides, in the end, it was this strategy, which eventually managed to resolve the Rushdie issue. As will be shown, with the launch of the comprehensive dialogue, the years 2000-2004 witnessed a unified EU stance on this matter.

6. Conservative Backlash

Whilst conservative elements refrained from jeopardizing Khatami's diplomatic breakthrough with Britain, the domestic scene witnessed a backlash against private and public constituents of the reformist movement. The short period of freedom of speech in post-revolutionary Iran was thus obstructed before it would have become a serious political threat to the elite. Soon criticism of the government was interpreted by the judiciary as "treason" and certain political publications labelled as "activities against national security."⁹³⁷ Kadivar's arrest in 1999⁹³⁸ reflected the overall counter-offensive launched by the judiciary, which backed the conservative majority in parliament and the political establishment close to Khomeini. In June, 1999, the *Majlis* eventually passed new legislation that clamped down even further on the press. Ignoring the constitutional clauses about press rights and freedoms⁹³⁹, the legislation instituted a stricter degree of legal censorship. It placed the press under the jurisdiction not of the Press Courts but of the Revolutionary Courts and the Special Clergy Court. Under the new law, journalists and publishers were also required to reveal their sources. Moreover, responsibility for published material extended beyond the publisher to include photographer, editors and journalists. The new legislation which further diluted the reformists' control over facilitating free public debate was, according to the reformist newspaper *Salam*, initiated by Sai'id Emami, the former Intelligence Vice Minister.⁹⁴⁰ What was more, however, was that prior to such legal amendments to restrain freedom of speech, Emami had been a

⁹³⁷ UN Doc. E/CN.4/1999/32, paragraph 13

⁹³⁸ Kadivar was arrested on charges of "acting to weaken" the Islamic system and undermining the regime

⁹³⁹ see UN Doc. E/CN.4/1999/32, paragraph 15; paragraph 19

⁹⁴⁰ Ramin Karimiam and Sha'banali Bahrampur, "Iran Press Update", *Middle East Report*, No. 212 (Autumn, 1999), pp.38-39

key figure in the 1998 series of assassinations of several intellectuals and dissidents in Iran. It was evident that the voices of dissent had reached such a degree that it was no longer tolerable to the establishment. In 1997 and 1998, several prominent figures disappeared and were later found dead. Amongst them were Daryush and Parvaneh Forouhar (leading nationalist figures), who were murdered in their homes (November, 1998) and authors Mohammad Ja'far Puyandeh and Mohammad Mokhtari, who were the founders of the Writers Association, who were also found to have been killed violently. Ebrahim Zalzadeh, editor of the monthly magazine *Me'yar* was also reported killed by officials of MOIS. The killing followed after *Mey'ar* had to be shut down for publishing an article criticising the government.⁹⁴¹

The British, recognizing the changes that had been occurring in Iran, managed to read between the lines and interpreted these serial murders as an attempt by the hardliners within the Ministry of Information and Security to confront and discredit the new President.⁹⁴² Whilst the British were still convinced that Khatami was someone to do business with, it was raised at the EU level which immediately condemned “the disappearances and killings of dissidents in Iran.” and “recognised the commitment of the Government [...] to investigate these incidents.”⁹⁴³ Remarkably, Khatami's enquiry into the murders, which was backed by public pressure and liberal editorial serials, which defended him as “the last chance for the survival and development of the Islamic revolution”, eventually, produced the confession by the Intelligence Ministry.⁹⁴⁴ In an unprecedented move of transparency and accountability, the Ministry of Intelligence issued a statement, in which it admitted. “With much regret, a number of our

⁹⁴¹ MECS, Vol. XXII, 1998, p. 258; By 1998, the establishment of several professional press associations had been an important milestone concerning freedom of speech. Founded in 1997, it had 1000 members by 1998 and had been actively engaged in defending the rights of journalists and in criticising some of the procedures used against them. *see also* Interim Report on the situation of human rights in the Islamic Republic of Iran UN Doc. A/54/365, 21 September, 1999, paragraphs 39- 44; *see also* Report of the Special Rapporteur, Mr Bacre Waly Ndiaye, submitted pursuant to Commission on Human Rights resolution 1997/61, UN Doc.E/CN.4/1998/68/Add.1 19 December 1997, paragraph 224 (b)

⁹⁴² Notes on “Diplomatic Relations between Iran and the UK in the early reform period, 1997-2000”, by Michael Axworthy (FCO Official at the Iran Desk, 1997-2000)

⁹⁴³ Bulletin EU 12-1998, Common Foreign and Security Policy (13/23) paragraph 1.3.12. Presidency Statement on behalf of the European Union on the disappearances and killings of dissidents in Iran

⁹⁴⁴ Behzad Yaghmaian, Social Change in Iran- An Eyewitness account of dissent, defiance, and new movements for rights, p. 130

irresponsible, devious, and wilful colleagues in the ministry [who were] used as tools by unknown [foreign] agents in furthering their cause, were among those committing these crimes.”⁹⁴⁵ For the first time in post-revolutionary Iran, the press had been effectively used against the state machinery. Though it was a modest success for the advancement of civil society in Iran, the British government judged that Khatami had strengthened both his own position and the reform process. Overall, Whitehall appreciated that the executive’s efforts at international rapprochement, now more than ever before, was obstructed by conservative-rightist forces in the system.⁹⁴⁶ Following the resolution of the Rushdie affair, Khatami’s administration, in an effort to promote freedom of speech, continuously expressed concern at efforts by the judiciary to limit free expression. On one occasion Khatami himself declared that the “closure of certain journals and the trial of some of the persons involved was a great loss for the system and society.”⁹⁴⁷ Following the new legislation passed by parliament in 1998, the general courts (in particular Tehran Branch 1410), the revolutionary courts and clerical courts had all asserted jurisdiction over newspapers and their publishers. The legislated press control system, as vested in the Constitution, which has its own tribunal had thus been completely substituted. In fact one judge went so far as to bring the Press Tribunal to the brink of being dysfunctional. Whilst the judge was reprimanded for dismissing five of the Press Tribunal jurors, he was not removed and managed to challenge the integrity of this body by insisting on sitting in with the jury during consultations.⁹⁴⁸ In addition to courts increasingly taking on the authority of closing publications and prosecuting journalists for obvious political motives, the *Majlis* also continued to work against the executive’s efforts to allow greater public debate. A bill, which addressed the definition of political offences, had been drafted so broadly as to constitute a *carte blanche* for more severe repressive measures to be taken against the press.⁹⁴⁹

⁹⁴⁵ *ibid*, p. 131

⁹⁴⁶ Notes on “Diplomatic Relations between Iran and the UK in the early reform period, 1997-2000”, by Michael Axworthy (FCO Official at the Iran Desk, 1997-2000)

⁹⁴⁷ Report of the Special Representative, Maurice Danby Copithorne, submitted pursuant to Commission resolution 1999/13, UN Doc. E/CN.4/2000/35 18 January, 2000, paragraph 10

⁹⁴⁸ *ibid*, paragraph 11

⁹⁴⁹ *ibid*, paragraph 12

The most serious backlash against public dissent, however, came in 1999 in the form of raids upon student dormitories at the University of Tehran following large-scale demonstrations in Tehran and Tabriz in which up to 1500 students had been arrested. In the Special Representative's view, many facets of their arrest, trials and subsequent detention were in clear violation of international human rights standards. Four students were sentenced to death for organising the demonstrations, however, their sentences were subsequently commuted to various forms of imprisonment. Also two thirds of the 1500 arrested had been released by 2000.⁹⁵⁰ Following pressure by the government and public alike, the instigators of the attack on the dormitories were eventually taken to court. Twenty policemen and senior officers had to disclose the conduct of the police and unnamed and uncharged paramilitary forces. Whilst the judge found that "the incident had taken place on the whole as charged by the students and that 34 of them should be compensated from state funds." The judge, however, acquitted all but two of the accused.⁹⁵¹ Overall, during Khatami's first term, two trends seem apparent. The government explicitly promoted the exercise of free speech and critical public discourse and, in fact, saw it as a prerequisite for genuine democracy in Iran. The judiciary, backed by the conservative-right dominated legislature, responded with draconian new press regimes. However, since much of Khatami's authority stemmed from legitimacy and enjoyed widespread support amongst the Iranian electorate, the government did manage to openly challenge both the increasingly sweeping jurisdiction and extraordinary procedural freedom which the courts had given themselves, as well as the traditional impunity enjoyed by state security forces and non-state paramilitaries.

7. Conclusion:

Under Khatami's first term the right to freedom of speech was explicitly being advocated by the executive. Since the advancement of civil society and promotion of human rights had been part of Khatami's political agenda, his cabinet members and the President himself frequently openly pleaded for freedom of expression and condemned the

⁹⁵⁰ *ibid*, paragraphs 62-63 ; Interim Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Islamic Republic of Iran, [UN Doc. A/55/363](#), 8 September, 2000, paragraph 16

⁹⁵¹ [UN Doc. A/55/363](#), 8 September 2000, paragraph 18

judiciary's increased jurisdiction over the press. It was also evident that the judiciary and security forces increasingly took over the role as agents of the conservative-right and establishment to maintain the political status quo. This was largely due to the fact that during the first term of Khatami, the press and intellectual public discourse had reached such political momentum as to pose a serious threat to the political system. Thus, it can be concluded that the executive promoted the right to freedom of speech without being able to actually grant full respect of this right. Unable to fully control all organs and agents of the state, only the government respected the right to freedom of speech whilst the judiciary and security forces continued with "legal" (mainly through unconstitutional and politically motivated court trials in violation of international human rights standards) and violent measures respectively to crack down on the press and dissidents in the public sphere. Concerning the protection of the right to freedom of expression, the *Majlis*, dominated by the conservative-right factions, constituted a hostile legislature towards the executive and rather than passing bills in support of the right to free speech, passed legislation and amendments which gave various courts, most notably the Revolutionary Courts, jurisdiction over the press. This created an environment in which legally defined defamation ceased to be distinguished from politically incorrect and critical points of views and judges took over the authority of closing down publications and sentencing journalists based on their political agenda rather than according to Iranian Law and certainly not in line with international human rights standards.

The resolution of the Rushdie case built on previous efforts by the Iranian and British government, but also reflected the fact that newly elected government emerged in both countries. Khatami sent all the right signals of sustainable détente with the West in general and with Britain in particular, as well as showed genuine commitment to domestic reform. On the whole, however, the successful resolution of the *fatwa* was due to Britain's commitment to constructive engagement. Rather than rushing into fully re-establishing political and economic relations with the Iranians, Whitehall demanded meaningful commitments on the part of the Iranians to ensure Rushdie's safety. Aware of the Two-Level Game the Iranian counterparts had to play diplomats in the FCO used asymmetries in British-Iranian interdependence as economic incentives in order to extract

formal assurances to withdraw support for the *fatwa*. The Iranians eventually reciprocated these offers when they modified Iran's economic framework so that foreign investment and foreign oil firms could enter the Iranian market. In line with the model of constructive engagement: due to the political momentum the "internationalist forces" enjoyed during Khatami's first term, they managed to agree to a "win-set" with the isolationist camp which was also acceptable to the British during Level I negotiations. In the end, both sides managed to reach a win-win outcome, which resulted in mutual rewards for both sides.

The *fatwa*, however, never ceased to be an issue in Iran's religious circles. Senior clerics, including Khamenei continue to denounce Rushdie as a man who had insulted the name of the prophet and who can therefore be killed. However, following the resolution of the Rushdie affair, which closed an exceptional chapter in British-Iranian relations, such rhetoric remained largely within the context of religious sermons and never translated into government policy.

What also has been shown is that Britain's commitment to constructive engagement was by and large confined to solving the Rushdie affair and conditional diplomacy concerning the promotion of human rights in general did not manifest itself until the Human Rights Dialogue within the context of the EU Comprehensive Dialogue with Iran in the period between 2000-2004.

Constructive Engagement: Hypotheses and Variables
CHAPTER SEVEN

Hypothesis	Independent Variable	Dependent Variable
A. It was a strategy of constructive engagement that managed to resolved the Rushdie affair.	The British government offered a variety of incentives in exchange for a resolution of the <i>fatwa</i> .	A strategy of TFT resulted in a win-win outcome for both parties: economic rewards were exchanged for Iranian concessions on the <i>fatwa</i> and British firms were able to invest in the Iranian market.
B. Britain enjoyed a relative asymmetrical relationship with Iran, which allowed Whitehall to launch a new unilateral diplomatic initiative.	Iran's significant dependence on rents from its hydrocarbon sector vis-à-vis Britain's relative energy self-sufficiency coupled with the offer of technology transfer allowed policymakers in Whitehall to initiative "cooperative moves", i.e. demanding concessions and offering incentives in exchange.	Iran reciprocated first economically (legal framework for foreign investment) and then offered credible and meaningful political concessions concerning the <i>fatwa</i> .
C. NA	NA	NA
D. Level I negotiations were subject to domestic constituents. Iranian diplomacy concerning the <i>fatwa</i> was a reflection of changes occurring in domestic politics	a) NA	NA
	b) All domestic camps support Level II "win-sets". "Internationalists" (i.e. reformists) enjoyed more influence over "isolationists" (i.e. conservatives, radicals) Because of the popular momentum Khatami enjoyed, rival factions refrained from interfering in the government's diplomatic initiatives. Europe's decision to engage peacefully also contributed to the empowerment of the reformists on the international level.	The Iranian government was able to agree to a "win-win" outcome with the British government. However, following the resolution, the domestic scene witnessed a conservative backlash against reformists.

CHAPTER EIGHT

THE COMPREHENSIVE DIALOGUE: THE YEARS 2000-2004

1. Introduction

In 1999, the European Union considered entering into negotiations with Iran for a Trade and Cooperation Agreement (TCA), which it needed as a legal framework for its dealings with Third Countries. By 2000, member states, most notably Britain, increased pressure on the Commission to move towards such a TCA. The rationale behind the TCA was to extract trade concessions from Iran, to demand economic and judicial reform and later expanded its agenda to include issues such as the NPT. It was an attempt by the EU to translate its economic power into political leverage. By offering the Trade and Cooperation Agreement as an incentive for such political and economic concessions, the EU wanted to create a stake for Iran which would tie the country closer to the EU both politically as well as economically.⁹⁵² Given Khatami's rhetoric of détente and reform, it was believed that by drawing Iran into a cooperation agreement, the EU would assist the reformist agenda by tilting the balance of interests and encourage moderate policies and improve the human rights situation in the country.⁹⁵³ In 2001, a communication from the Commission was eventually sent to the Council demanding a mandate for a TCA. However, post-9/11 U.S. foreign policy, which classified Iran as part of an axis of evil, ultimately dampened enthusiasm amongst member states to move towards closer contractual relations with that country. In the end, however, it was the British government which pushed for the mandate, provided that benchmarks for improvements in Iranian behaviour were clearly expressed in the TCA proposal. In order to avoid alienating the Americans, who continued with their policy of containment against Iran, as well as having learnt lessons from the policy of diffuse linkage during the Critical Dialogue, political conditions were clearly expressed in the proposal.⁹⁵⁴

⁹⁵² Interview with EU Commission Official, Commission of the European Union, Director for External Relations with the Mediterranean and the Middle East, (Chief Negotiator for the TCA with Iran) St Andrews, 5 March, 2005

⁹⁵³ *ibid*

⁹⁵⁴ *ibid*

2. The Framework and Strategy of the Comprehensive Dialogue

In its final communiqué sent to the Council, the Commission recognized the changes that were taking place. It noted that the parliamentary elections in April 2000 witnessed another victory for the reformist faction and recognized that Khatami continued to pursue a peaceful civil and economic evolution within the existing political framework of the Islamic Republic.⁹⁵⁵ With regards to freedom of expression, the communiqué noted that that matters had deteriorated under the previous parliament (dominated by the Militant Clergy Association and other factions on the right) as it succeeded in adopting a more restrictive press law before the February elections. Following this new legislation, more than 20 reformist journals and magazines had been closed and their editors put on trial or indicted. Moreover, following the reformists' victory at the 2000 *Majlis* elections, Khomeini intervened to bloc a new progressive Press Bill from being debated in parliament.⁹⁵⁶ Given the fact that Khatami had made press freedom and judicial reform a priority for his administration, the British government as well as the EU recognized that the judiciary under Ayatollah Ali-Hashini Sharoudi remained a formidable instrument of the conservatives.⁹⁵⁷ However, the communiqué further assessed that “despite the mixed

⁹⁵⁵ Commission of the European Communities, Brussels 7/2/2001, COM (2001) 71 Final, Communication from the Commission to the European Parliament and the Council, “EU Relations with the Islamic Republic of Iran”, p.4; Concerning the improvement of human rights standards, the British government appreciated that Khatami's policies were being blocked by radical elements in Iran as Lord Moynihan put: “It is true that rapid progress has not been made towards President Khatami's goal of a tolerant and law abiding society in which human rights are respected. This is not least because Iran stands at a critical crossroads between the demands of conservative elements who would isolate Iran and take her backwards, and reformists who would modernise and take her forward.” House of Lords, Hansard, 22 June 1999, Column 864. Since the reestablishment of relations in 1999, Britain continued to push for tangible improvements in human rights in Iran. Whilst Whitehall noted the Iranian government's commitment to building civil society based on the respect for the rule of law, it continued to take up with the Iranians directly significant cases of human rights abuses. Two of which were the trial of 13 Jews in Shiraz for alleged charges of spying for Israel as well as the trial of intellectuals participating in the Berlin Conference. Despite vocal opposition by Britain and the EU both cases received harsh and what the Europeans considered legally unjustified and solely politically motivated verdicts. House of Lords, Hansard, 22 June 1999, Column 867; House of Commons, Hansard, 14 July, 1999, Column 320-325; House of Commons, Hansard, 12 July, 2000, Column 229- 230 WH

⁹⁵⁶ Commission of the European Communities, Brussels 7/2/2001, COM (2001) 71 Final, Communication from the Commission to the European Parliament and the Council, p.4

⁹⁵⁷ ibid, p.4p; *see also* House of Commons, Hansard, 18 July, 2000, Column 199

picture [...] the prospects for positive and gradual political evolution are better than they have been since 1979.”⁹⁵⁸

For Britain, the Comprehensive Dialogue and in particular the Human Rights Dialogue, with the parallel running TCA negotiations as incentive, was considered as a viable strategy to improve rights standards in Iran. The key incentive during the Critical Dialogue was, according to the British, contact itself, that is for Iran to gain international legitimacy and to be accepted as a power. The phase between 2000-2004, however, was seen by Whitehall as crucial for Britain to actively empower reformist factions within Iran. More than any other EU member state, the British government emphasized that good relations could not be an end in itself.⁹⁵⁹ As such it was made clear that the deepening of economic and political relations between the EU and Iran should be matched by similar progress in all other aspects of relations with Iran.

In particular, the EU was expecting significant positive developments on four areas of concern: human rights, non-proliferation, support for radical groups and the Middle East Peace Process. Reflecting this commitment, the Council adopted its recommendation on the Iran policy based on following approach:

- Encouragement of political and economic reform through
 - more frequent official and unofficial bilateral contacts.
 - development of exchange/co-operation in areas of mutual interest and concern (such as drugs, rule of law, refugees etc).
 - readiness to engage in dialogue on human rights.
 - strengthening the CFSP dialogue by deepening the dialogue in areas such as regional security, weapons of mass destruction , nuclear proliferation).
 - seeking appropriate ways of developing people to people contacts.

- Promotion of bilateral economic relations through
 - negotiation of a Trade and Co-operation Agreement.

⁹⁵⁸ *ibid*

⁹⁵⁹ Interview with FCO Official “C”

– continuation of Commission – Iran working groups on energy, trade and investment.⁹⁶⁰

From an EU capitalist perspective, by strengthening Iranian economic capabilities, the objective was to incorporate Iran more closely into the EU and international trade market. Essentially, the aim was to increase political and economic interdependence between the EU and Iran (as an expression of Europe's transformative power) to such an extent that Europe would be able to determine the political agenda in this relationship.

In terms of statecraft, the EU presented Iran with a much-needed political and economic carrot. Politically, the TCA offered Iran a legal framework for diplomatic and increased political relations with the EU. Economically, the Iranians welcomed the TCA negotiations in order to secure more non-oil exports to the EU, increased foreign direct investment from member states and more joint venture projects.⁹⁶¹ In fact, since the EU was seen by all political factions as the only reliable provider of technology and capital, some pragmatists and institutions associated with oil and energy went so far as to advocate rapprochement with the US in order to reduce this dependency on European economic might.⁹⁶²

The principles agreed to engage in a genuine human rights dialogue with Iran was that it was established without prejudice to the tabling of a resolution at the Third Committee of the UN General Assembly or the UN Commission on Human Rights. The Iranians agreed that all human rights issues can be discussed, each party can choose to terminate the dialogue at any time and that the dialogue was based on realistic and concrete benchmarks to evaluate progress. These benchmarks included, *inter alia*, Iran's signing, ratification and implementation of international human rights instruments; cooperation with international human rights procedures and mechanisms; openness and transparency; the fight against discrimination and improvement to the prison system.⁹⁶³

⁹⁶⁰ Commission of the European Communities, Brussels 7/2/2001, COM (2001) 71 Final, pp.8-9

⁹⁶¹ Statement by Shamsedin Khargani, Iranian Foreign Ministry – Director for Western Europe, IRNA, 28 October, 2002

⁹⁶² Iran Focus, Vol.13, No. 100, November, 2000, (Aban-Azar 1379), p. 13

⁹⁶³ Interview with Catherine Magnant, European Commission - External Relations Human Rights & Democratization Unit, April, 13, 2005; Council of the European Union, EU Annual Report on Human Rights 2003, Doc No. 13449/03, Brussels, 10 October, 2003, p.39

The strategy behind the dialogue was a multi-track approach as the format of the dialogue consisted of a round-table and a restricted officials' meeting. The round-table included, in both the Iranian and EU delegations, academics, experts and members of civil society, including representatives of some of the major international human rights NGOs, as well as the Iranian Islamic Human Rights Commission. Representatives of the Iranian government, judiciary, and parliament also took part in the roundtable. The restricted officials' meeting immediately followed the round-table and was conducted by the EU Troika, the Iranian government and judiciary. Between 2002 and 2004, two sessions a year were held in Brussels and Tehran.⁹⁶⁴ During the talks, the Europeans were demanding specific structural changes and new legislation for the protection of human rights. Between these roundtables, EU member states coordinated carefully to monitor alleged violations of human rights. On a regular basis, the German and British embassies invited European NGOs and human rights experts, which as a German diplomat said, "are able to confront the Iranian government on alleged violations without constraints."⁹⁶⁵ These Track II initiatives were also meant to show to the Iranians that EU member states themselves are subject to scrutiny by NGOs, as well as intended to encourage joint ventures with Iranian Human Rights NGOs in order to support their technical knowledge and advocacy work.⁹⁶⁶

Overall, for the British, the key was to expose human rights violations and give credit to efforts done by the reformist camp to introduce bills in the legislature aimed at protecting political and civil rights.⁹⁶⁷ Thus, Britain's strategy, as well as that of the EU in general,

⁹⁶⁴ The first session of the dialogue took place in Tehran in December 2002. The topics were Discrimination and Prevention of Torture. The second session of the dialogue was held in Brussels in March 2003, where the roundtable focused on the themes of fair trial and the rule of law. The third session was held in Brussels in October 2003 where the topic of freedom of expression and the right to development were discussed. The fourth roundtable and last one before the Presidential election in 2005 discussed the issue of administration of justice and promotion of international cooperation and solidarity in the field of human rights. Note on the EU-Iran Human Rights Dialogue given to the author by Catherine Magnant, European Commission - External Relations Human Rights & Democratization Unit, 13 April, 2005;

⁹⁶⁵ Interview with Tjorven Bellman, 1st Secretary German Embassy in Tehran, (Tehran, 28 August, 2004)

⁹⁶⁶ *ibid*

⁹⁶⁷ One should bear in mind that it is not easy for British diplomats and Ministers to manoeuvre in Iranian politics and often quite dangerous for the individual Iranian partner. It is particularly difficult for the British FCO to establish effective working relationships or joint ventures in the political or human rights realm.

was to name and shame Iran for any alleged human rights violations. Démarches in particular were seen as valuable means for that purpose. The FCO knew that it may take time until one sees results from such diplomatic communications or Council resolutions in the form of political implementation. Appreciating the political system in Iran, Britain's calculation was that such pressure would stimulate like-minded agencies within the system to lobby hardliners to respond to any such demands through a change of policy or legislation.⁹⁶⁸

Whilst this was certainly a viable strategy at trying to work with as well as against the contradictory elements in Iranian politics, it also proved to be a very long-term approach to say the least. As such, it will be shown that Europe's decision to launch the Comprehensive Dialogue in order to promote human rights resulted in some changes in legislation, largely led to the depoliticising of human rights, gave Iranian NGOs and activists a forum and voice and generally helped the human rights discourse in the political realm to gain momentum. At the same time however, Europe's carrots and sticks approach was not without difficulties as the EU quite often found itself caught in the maze of competing power centres in Iran with hardliners determined to thwart any human rights initiative by the government or parliament. Since the roundtable, developments in the area of freedom of expression and representations made on this subject are of more relevance to this particular study, the other three thematic areas of concern are only discussed briefly.

3. Roundtable on Discrimination and Prevention of Torture

Before the first Human Rights roundtable took place in Tehran criticism in Britain of the Comprehensive Dialogue was increasingly voiced in and outside the British government. Faced with ongoing human rights violations in Iran, Lord Clark asked whether "the time [had] come when we should recognise that constructive dialogue with the regime is not bearing fruit." He went on "It is not crumbs of comfort from diplomatic resolutions that

Any meetings with parliamentarians or academics may result in their arrest or harassment by the judiciary.
Interview with FCO Official "C"

⁹⁶⁸ *ibid*

the people of Iran deserve; they want the free world to speak out loudly and firmly against the barbaric methods of justice that the regime routinely uses in its endeavours to cling to power.”⁹⁶⁹ Moreover, following the post 9-11 U.S. declaration of the war on terrorism, Britain came under pressure from the administration in Washington and on numerous times had to defend what it now called a “twin-track approach in respect of Iran.” A strategy, through which the UK “support[s] reform in Iran while maintaining a robust dialogue on matters of concern, such as human rights and weapons of mass destruction.”⁹⁷⁰ What Britain and the EU, at that time, needed, however, were results stemming from the dialogue.

Thus, during the first roundtable, which was preceded by negotiations over the directives for the TCA⁹⁷¹ and the initial financing of some operations aimed to strengthen transparency with 298,514 € ,⁹⁷² the EU Troika focused on what it called “ the systematic discrimination against women and girls, as well as against minorities” and recalled “its longstanding position against the use of the death penalty [...] and cruel forms of executions such as stoning. “⁹⁷³ As the UN Special Representative noted, the status of women in the Islamic Republic had over the years shown steady improvements in some respects such as education, but witnessed no change in the “foundational, legalized discrimination faced by women almost across the board.”⁹⁷⁴ In this regard, the EU delegation encouraged existing groups within Iran who were pressing to ratify UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW). It reminded the Iranian delegation that one of the ideas challenged by CEDAW was in fact rooted in Iranian domestic law, that of a natural and desirable separation between men and women. Emphasising that such divisions were culturally constructed rather than

⁹⁶⁹ House of Lords, Hansard, 25 April, 2001, Column 259

⁹⁷⁰ Statement by the Parliamentary Under-Secretary for State and Foreign Commonwealth Affairs (Mr. Mile O’Brien) House of Commons, Hansard, 23 July, 2002: Column, 845; Much of these demands from the Bush administration soon translated into Britain’s Middle East policy to be more aligned with the U.S. than with the rest of the EU. In many ways international security concerns over the Iranian nuclear programme took precedence over human security in Iran.

⁹⁷¹ Bulletin of the European Union, 6- 2002 paragraph 1.6.78 Council conclusions on Iran

⁹⁷² Bulletin of the European Union, 12 – 2002 paragraph 1.2.10 Financing of operations to promote democracy and human rights

⁹⁷³ *see* Bulletin of the European Union, 10- 2002 paragraph 1.2.4 Council conclusions on human rights in Iran

⁹⁷⁴ UN Doc. A/56/278, Situation of human rights in the Islamic Republic of Iran, p.5

enjoyed religious authority, the ratification of CEDAW would ultimately necessitate a change in some principles of Iranian law and society and would provide women with equal footing in the labour market and public sphere.⁹⁷⁵ More generally, concerning the issue of discrimination of national, ethnic, religious and linguistic minorities, the EU delegation urged the government to establish a national minorities policy and explained numerous legal provisions against discrimination.⁹⁷⁶ Such demands and concerns voiced during negotiations reflected the Special Rapporteur's concern, who referred to the treatment of minorities in Iran as contrary to international norms and called it a "implicit policy of assimilation".⁹⁷⁷ With regard to the use of torture, the delegation tried to urge the Iranian government to ratify the UN Convention Against Torture and its Optional Protocol but also emphasised that the prohibition of torture is a rule of customary international law and therefore, binding on all states irrespective of whether they have ratified any of the principal treaties.⁹⁷⁸ As Malcom Evans put it during the roundtable: "Indeed, the individual criminal responsibility of those who are responsible for torture has attained the status of a peremptory norm of international law (*ius cogens*) meaning that it takes precedence over other rules of customary international law or treaty law [...] setting it apart as one of the fundamental principles on which the international community is founded."⁹⁷⁹ These demands for changes in legislation and the emphasis on personal accountability and responsibility for offences involving torture was indeed reflected in legislation debated in the Iranian parliament. Prior to the roundtable a substantial majority of the *Majlis* signed a petition identifying a number of acts of torture that occur during the interrogation of prisoners and called for the creation of a council of representatives of the judiciary, the legislature and the executive to supervise the

⁹⁷⁵ Danish Institute for Human Rights, Collected Papers From the First Roundtable Under the EU-Iran Human Rights Dialogue, Tehran, 16-17 December 2002 "Discrimination and Prevention of Torture", (Copenhagen, Danish Institute for Human Rights, Copenhagen, 2003) (handed to the author by the Danish Institute for Human Rights), pp.67-68

⁹⁷⁶ *ibid*, pp.47-48

⁹⁷⁷ Report on the situation of human rights in the Islamic Republic of Iran, UN Doc. E/CN.4/2002/42, 16 January, 2002, paragraph 67

⁹⁷⁸ The EU Troika also pointed to Art. 38 of the Iranian Constitution which clearly prohibits the use of torture

⁹⁷⁹ Collected Papers From the First Roundtable Under the EU-Iran Human Rights Dialogue, Tehran, 16-17 December 2002, p. 90

treatment of prisoners, with the right to visit places of detention at any time and the duty to report any act of torture to these three branches of government.⁹⁸⁰

Overall, the agenda of reformist representatives at the roundtable was precisely to show the parliament's and Khatami's efforts and the impediments his faction was facing in implementing any such reforms. In fact, the first roundtable provided Khatami's group with a forum for voicing his determination to demand more presidential authority. Coinciding with a bill presented by Khatami asking for more power for the president to oversee the implementation of the constitution in October 2002, former Guardian Council member, Hossein Mehrpour stressed Art. 113 of the Constitution during the roundtable and emphasised the president's responsibility at safeguarding and implementing the constitution. Khatami's argument centred on his conviction that in order to implement the Constitution and hence safeguard the rule of law and human rights he will need instruments to enforce constitutional provisions and penalise breaches of the constitution. One of these instruments proposed in the bill was the creation of a "Constitutional Court" overseen by the President with jurisdiction over state officials, including judicial figures. The impact of the bill would have provided the president with the authority to take those state authorities and individuals to court that undermine national interests in violation of constitutional provisions.⁹⁸¹ The second bill proposed by Khatami was aimed at abolishing the so-called Approbatory Supervision – the right that has been used by the Guardian Council to disqualify candidates for elections.⁹⁸²

Generally, the roundtable in 2002 coincided with a new phase and discourse in Iran's reform era. Vowing to bring about change not through revolutionary means but through legal reform and détente, Khatami had, however, reached a stalemate. The parallel institutions, most notably the Supreme Leader and the Guardian Council, representing the underlying dichotomy between dogma and Khatami's notion of political progress and accountability,⁹⁸³ had prevented the President from implementing his reformist agenda.

⁹⁸⁰ [UN Doc. E/CN.4/2002/42](#), 16 January, 2002, paragraph 31

⁹⁸¹ *see Iran Focus*, Vol. 15 No. 9, October 2002, (Mehr-Aban 1381). pp. 2-3

⁹⁸² Both bills were presented to the Majlis on 24 September 2002, *see IRNA*, 25 September, 2002

⁹⁸³ *see* Mohammad Khatami Hope and Challenge – The Iranian President Speaks, pp. 26-27

Ironically, the President himself was to blame for the deadlock. Since 2000, Khatami had been under pressure from two groups. His reformist allies, who have been pushing for him to take an active stance against the hardliners and have time and again approached the President to shift to a more confrontational approach, for that they argued would be the only language Iran's nomenklatura would understand.⁹⁸⁴ The other group, which has been lobbying the President to stay aligned with their agenda, could be referred to as mainstream conservatives. Consisting of a number of political groups and individuals, they tried to talk Khatami into accepting a more gradual top-down reform process that would still be controlled by the political establishment.⁹⁸⁵ Taking advantage of Khatami's vow to adhere to lawfulness, constitutionalism and a non-confrontational approach the latter group managed for much of the President's first term (until 2002) to ensure a somewhat political hegemony for themselves, thwarting the reform process and thus alienating the people from the reformists. Hence, the launch of the EU Human Rights Dialogue has to be seen against this domestic background. It coincided with a juncture when Khatami had become determined to change the political status quo in the country and together with the parliament wanted to find in the words of Deputy *Majlis* Speaker Mohammad Reza Khatami – "legal solutions to [Iran's] problems."⁹⁸⁶ Particularly with regards to human rights legislation demanded by the Europeans, lawmakers in parliament (6th *Majlis*) showed, as a MP put, it "vigour and eagerness to take charge of foreign and domestic policy matters and adopted rational perceptions and solutions to the political and economic difficulties Iran was facing."⁹⁸⁷ Following the roundtable, the Parliament passed a bill on the ban of torture which was rejected for the second time by the Guardian Council, despite the fact it had been amended by the Parliament in December to meet the Guardian Council's requirement.⁹⁸⁸ It was not until April 2004 and after renewed

⁹⁸⁴ This would have entailed the public naming and shaming of unlawful practices by conservative elements by Khatami himself as well as the call for a public referendum on constitutional changes and crucial pieces of legislation.

⁹⁸⁵ *Iran Focus*, Vol. 15 No. 9, October 2002, (Mehr-Aban 1381), pp. 3-4

⁹⁸⁶ *ibid*

⁹⁸⁷ Interview with Elaie Koualie, Former Member of the Iranian Parliament (6th *Majlis*), (Tehran, 27 August 2005)

⁹⁸⁸ *see Iran Focus*, Vol. 16, No. 5, May 2003, (Ordibehesht-Khordad 1382), p. 14

pressure from the EU⁹⁸⁹ that Ayatollah Sharoudi announced the ban and the subsequent renewed passage of related legislation by the Parliament, which was eventually approved by the Guardian Council in May 2004.⁹⁹⁰ Concerning the demands by the EU on changes on minorities' legislation, the 6th *Majlis* approved a bill on 12 January 2003 granting non-Muslim minorities the right to the same "blood money" as Muslims. Since Khomeini had supported the bill, the Guardian Council eventually approved it.⁹⁹¹ The law, which by no means empowered Iran's diverse minority communities also only applied to recognized minorities, such as Christians, Jews and Zoroastrians, excluding the Bahá'ís, Iran's biggest religious minority.⁹⁹² Prior to this bill the *Majlis* deputies had also re-established the Human Rights Committee of the *Majlis*⁹⁹³ and established the National Committee for the Promotion of Human Rights of Religious Minorities.⁹⁹⁴ Concerning the advancement of women's rights, a women parliamentary delegation from the House of Commons visited Iran in January 2003 and made several representations with Iranian officials to discuss the issue of gender inequality in Iranian family law. A bill, which was passed by the Parliament granting women equal custody rights over their children was rejected by the Guardian Council but later approved by the Expediency Council. Though this piece of legislation certainly owes more to lobbyists and activists such as Shireen

⁹⁸⁹ Human rights problem solving workshops had been organised by the EU to discuss the ban on torture and find alternatives to existing practices, *see* Interview with Achim Fabig, 1st Secretary, German Embassy in Tehran, (Tehran, 28 August, 2004)

⁹⁹⁰ *see* Iran Focus, Vol. 16, No.1, January 2003, (Dey – Bahman 1831), p. 11; UN General Assembly Resolution, UN Doc. A/C.3/60/L.45, 2 November, 2005, p. 2; The law bans any form of torture or violence during arrest, interrogation or custody. Ayatollah Ahmad Djannati of the Guardian Council declared in a communication to parliament that the law was in conformity with the Constitution and Islamic principles, added, however, that torture was banned in Iran through Islamic Law anyway. Iran Report, Heinrich Böll Stiftung, Nr.6/2004, p.8

⁹⁹¹ The value put on the life of a Muslim man at that time in Iran was \$ 19, 000, twice as much as that of a woman. Female MPs were pressing for the bill to make women equal to men in this respect, have, however failed so far. *see* Iran Report, Nr. 02/2003, pp. 8-9; After initial rejection of the bill, the Guardian Council eventually approved of it in January 2004. House of Commons, Foreign Affairs Committee, Iran – Third Report of Session 2003-2004, House of Commons HC 80, 19 March, 2004, pp. 28-29

⁹⁹² The human rights situation of the Bahá'ís far beyond the scope of this thesis, yet is of great importance to the overall success of any human rights diplomacy pursued towards Iran. For the situation of the Baha'is *see* Nazila Ghanea, Human Rights, the UN and the Baha'is in Iran

⁹⁹³ Also referred to as "Article 90 Committee" with reference to Article 90 of the Iranian Constitution. It fulfils an ombudsman-type role and spends much of its time investigating alleged miscarriages of justice. In 2004, the UN Working Group Arbitrary Detention noted that the Commission investigated situations of arbitrary detention, Report of the Working Group on Arbitrary Detention, UN Doc. E/CN.4/2004/3/Add.2, 27 June 2003, paragraph 65 (2)

⁹⁹⁴ *see* Commission on Human Rights, Summary Record of the 49th Meeting, held at the Palais des Nations, Geneva on 22 April 2002, UN Doc. E/CN.4/2002/SR.49, 26 April 2002, paragraph 12

Ebadie and female *Majlis* Deputies than to the British delegation, it proved an important follow-up visit after the roundtable.⁹⁹⁵ The most significant bill passed by the *Majlis*, which again directly corresponded to the benchmarks and demands by the EU, was the Parliament's decision to accede to CEDAW.⁹⁹⁶ On grounds that it was "against Islamic principles" and backed by four grand ayatollahs, including *Ayatollah* Makarem Shirazi, who issued a *fatwa* against the convention stating that it would lead to a higher divorce rate and corruption, the Guardian Council, yet again, rejected the bill.⁹⁹⁷ Another significant and more sustainable development, which can be seen as a direct result from the EU Human Rights Dialogue – though denied by *Majlis* deputy Jamileh Kadivar as corresponding to EU talks – was the judiciary's ban on death by stoning. During talks, Commission negotiators talked in detail about cruel and inhuman forms of execution and amputations of limbs and pointed to existing bans on such practices in Iran's statutes. Essentially, the moratoriums by *Ayatollah* Sharoudi to ban death by stoning and juvenile capital punishments were effective ways to circumvent the Council's veto.⁹⁹⁸

4. Roundtable on the Rule of Law and Fair Trial

Before the next roundtable on the Rule of Law and Fair Trial started in Brussels in March 2003, it had become evident for the British government that demands for human rights improvements were, yet again, caught in the factional power struggle between reformists and hardliners. Khomeini and those close to him were using the judiciary, the Guardian Council as well as most of the senior *ulema* in Qom as levers of power to constrict Khatami. Between 1997 and January 2004, when reformists lost control of the parliament, the Guardian Council vetoed a total of 111 of Khatami's 297 legislative initiatives.⁹⁹⁹ The most significant for Khatami's own authority was the rejection of his

⁹⁹⁵ The delegation also met with Shireen Ebadie. *see* House of Commons, Foreign Affairs Committee, Iran - Third Report of Session 2003-2004, House of Commons HC 80, pp.25-26. The bill also referred to the establishment of equal divorce rights. *see* House of Commons, Hansard, 1 September, Column 801 W

⁹⁹⁶ Iran Report, Heinrich Böll Stiftung, Nr.08/2003, p.7

⁹⁹⁷ Iran Focus, Vol. 16, No.8, September 2003, (Shahrivar – Mehr 1382), p.11

⁹⁹⁸ Interview with Commission of the European Union Official; It should be noted that after the EU had managed to have the moratorium announced on stoning, several hardliners in the judiciary increased the number of public hangings in towns near Tehran *see* Iran Focus, Vol. 16, No.1, February 2003, (Bahman-Esfand 1381) p. 3; Interview with FCO Official "D"

⁹⁹⁹ Ali Gheissari and Vali Nasr, Democracy in Iran – History and the Quest for Liberty, (Oxford, Oxford University Press, 2006), p. 137

Twin Bills¹⁰⁰⁰, designed to strip the Guardian Council of its right of vetting candidates for elections, and to grant the executive more power to implement policies.

For the diplomatic community in Tehran, one trend became increasingly obvious: The conservatives' tactic of limiting Khatami's room of manoeuvre eventually had reached such a political and economic stalemate for them to be able to accept arrangements of economic liberalization without fear that it would endanger the ideological underpinnings of the Islamic Republic. What diplomats referred to as the "Chinese Model" was originally developed by the Centrist Technocrats (e.g. *Kargozaran-e Sazandegi* Party), which favoured capitalist development whilst maintaining the political status quo.¹⁰⁰¹ Essentially what presented itself to the EU, was top-down economic liberalization without political liberalisation. An indication of this phenomenon was the conservative establishment's approval of some of Khatami's economic reforms. Meeting EU demands for the realization of the TCA, the following economic benchmarks were met: unification of foreign currency exchange rates as pursued by the Central Bank of Iran; ratification of the Law on Encouragement and Protection of Foreign Investment as well as Iran's new Direct Taxation Act.¹⁰⁰² Yet, parallel efforts to close the lid on political liberalisation manifested themselves on two levels: (i) a strategy to jeopardize reformist bills and policies through the "legal process", a role which was efficiently exercised by the Guardian Council as well as judiciary; (ii) the intensification of systematic attacks on *Majlis* Deputies, reformist intellectuals and clerics, as well as journalists by radical vigilantes. Between 2000 and 2004, informal paramilitary groups, such as the *Basiji* and *Hezbollah* stepped up their systematic grass-roots attacks against reform-minded politicians and intellectuals close to Khatami. Despite the President's open challenges to these groups, which essentially amounted to constitutional warnings to the judiciary,¹⁰⁰³ *Ayatollah* Sharoudi remained defiant and continued to pose a serious challenge to the

¹⁰⁰⁰ *Iran Focus*, Vol.16, No.5, January 2004, (Orbibehešt-Khordad 1382), pp.12-13

¹⁰⁰¹ Interview with Roberto Tuscano, Italian Ambassador to Iran, (Tehran, 2 September 2004); Between 2000 and 2004 EU exports to Iran almost tripled as they increased from \$ 4.94 billion to \$14.80 billion. *International Monetary Fund: Direction of Trade Statistics* Yearbook 2005, p. 36

¹⁰⁰² Interview with Antonio Hernandez, Spanish Embassy (speaking on behalf of the Spanish EU Presidency in 2002) in *Iran Focus*, Vo.15, No.7, July-August, 2002, (Tir-Shahrivar 1381), p.7

¹⁰⁰³ For Khatami's strongest stance against Sharoudi see *Iran Focus*, Vol 14, No, 10, November, 2001, (Aban-Azar 1380), p.12

reformist cause. Acting through these radical and unaccountable parallel institutions, the hardliners gradually managed to regain political momentum. Whilst the reformists had only legitimacy as their power asset, hawks in the hardliner camp, enjoyed such an established political, economic and military power base, for them to employ an effective strategy of obstruction, intimidation and suppression outside the constitutional realm as well as within the “legal process.”

Given this domestic background, it is, therefore, no coincidence that the next EU roundtable dealt with the rule of law. In an attempt to push for an end to what it considered the political use of the judiciary, the EU Troika was determined to establish the basic rights of citizens as the benchmark of an independent judiciary, that through a system of checks and balance, determines the constitutionality of policies and legislation. However, the judiciary’s own perception of its role in governance was made candidly obvious during Commissioner Chris Patten’s visit to Iran preceding the roundtable.¹⁰⁰⁴ In his effort to approach the concern of rule of law via this very notion of division of power, Khatami told him that with regards to Montesquieu, unfortunately, the government does not have any power. Rafsanjani interpreted the idea of checks and balance as a bargaining situation in which one can buy and sell according to leverage and demand and where rule of law did not apply. *Ayatollah* Sharoudi, the head of the judiciary, simply replied that “we don’t need to seek balance of power, the power is mine.”¹⁰⁰⁵ On 1 January 2003, just before the roundtable and in an effort to promote basic negative rights, the parliament approved the outlines of a law that would have made all officials accountable for

¹⁰⁰⁴ Patten explained to the Iranian FM that the reason for the EU member states refraining from tabling a resolution at the UN General Assembly the previous year was to give the Iranians time to come up with concrete results and improvements on concerns raised during the Dialogue. He also emphasised that the same EU position cannot be expected for the UN Commission on Human Rights in Geneva. For Patten’s speech in Tehran see “The Iranian Choice- An opportunity to embrace the Family of Nations” Speech by the Rt. Hon Chris Patten, Teheran, 5 February, 2003, in “Speeches and Viewpoints” *The Iranian Journal of International Affairs*, The danger behind such tactic was, however, that some groups in Iran increasingly saw engagement as an end in itself.

¹⁰⁰⁵ Lecture given to the Middle East Society of the University of St Andrews by Christian Leffler, Commission of the European Union, Director for External Relations with the Mediterranean and the Middle East, (St Andrews, 4 March, 2004)

violating the “personal freedom of individuals”.¹⁰⁰⁶ What was extraordinary for the European delegation during the second roundtable was that Iranian Human Rights experts and activists used Islamic principles and arguments to advocate the advancement of the notion of the rule of law.¹⁰⁰⁷ The most critical statement concerning the lack of the rule of law came from Ardeshir Amir-Arjomand whose main arguments centred on his demand for the potential of the Constitution to be released in order to safeguard the rule of law and protect basic human rights. Pointing to the fact that the general policies passed by the Supreme Leader “are more goal and aspiration than a legal rule with fixed boundaries and unconditional and specific orders and prohibitions” he emphasised that Khomeini has not been designated the legislator of the country. In fact he went so far as to state that “legislation by one individual is strictly contradictory with both the philosophy of the rule of law and the democratic principles of republicanism.”¹⁰⁰⁸ Referring to the close political and clientalist relationship between the Supreme Leader and the Guardian Council and the latter’s unconstitutional prerogative of vetoing parliamentary bills, which it deems inconsistent with “general policies”¹⁰⁰⁹, he concluded:

The general policies of the system become the last and effective link in the chain of reducing [...] particularly the Islamic Consultative Assembly to the Leader’s Office and the principle of the separation of powers to the pure and simple separation of functions [...] and of transforming the rule of law to a police state.”¹⁰¹⁰

Iranian delegate Mohammad Rassekh made an equally authoritative contribution. Using Islamic sources on the significance of justice in Shi’a doctrine, Rassekh argued that according to the Islamic *Mu’tazilite* school of thought¹⁰¹¹, justice is a rational principle in

¹⁰⁰⁶ According to the new law, the officials would have to be imprisoned if they violated the personal freedoms of citizens or deprived them of rights stated in the Constitution. see *Iran Focus*, Vol. 16, No.1 January 2003, (Dey – Bahman 1831), p. 11

¹⁰⁰⁷ see Interview with Drewery Dyke, Iran Desk Officer, Amnesty International, (London, 3 March, 2004)

¹⁰⁰⁸ Danish Institute for Human Rights, Collected Papers From the Second Roundtable Under the EU-Iran Human Rights Dialogue, Brussels, 14-15 March 2003 “Rule of Law and Fair Trial” (Copenhagen, Danish Institute for Human Rights, 2003), p. 123

¹⁰⁰⁹ referring to rulings by the Supreme Leader

¹⁰¹⁰ *ibid*, pp. 129-130

¹⁰¹¹ Rassekh summarized the underlying principles of *Mu’tazilism* as follows: (1) the principle of rationalism – that justice is determined by reason’ (2) the principle of voluntarism – that man’s acts are the product of his own free will (ikhtiyar); and (3) the principle of responsibility – that man would ultimately be rewarded or punished in accordance with his choice between justice and injustice. According to this

the sense that it can be understood by human reason. Taking on the notion of Republican Islamism, as vested in the Constitution, he argued that “Islamism provides us with a license to appeal to rational theorizing as to justice while Republicanism is in fact one of the most tenable conceptions of justice and a just state at any moment.” On this footing, he concluded that in fact “Islamism is a restatement and reinforcement of republicanism. Therefore, a proper reading of the Iranian Constitution authorizes us to take the *Mu’tazilite* approach seriously for a republican Islam: an Islam that takes democracy and rights seriously.”¹⁰¹²

Considering the fact that the notion of the rule of law constitutes the very political foundation of any state, the question is whether there were any results stemming from this particular roundtable. Again, important positive developments, which met EU demands, were the formation of two supervisory committees. Immediately following the roundtable, the executive formed a special commission for monitoring the judiciary’s performance. Formally approved by parliament on 3 September, 2003, the *Majlis* spokesperson claimed that the commission was founded in response to numerous complaints the deputies had received about the judiciary and its violation of the Constitution regarding political activists and the press.¹⁰¹³ The other initiative was a response to the Guardian Council’s rejection of Khatami’s bill demanding a Constitutional Court. Instead he founded the parliamentary Supervisory Committee for the Implementation of the Constitution. Lacking the mandate of a Constitutional Court, the committee adopted a mechanism to follow up individual cases of alleged human rights violations and unconstitutional actions by state institutions, thus trying to ensure the respect for procedural, structural and individual human rights. This entailed representations or communications to the judiciary demanding enquiries and insisting on the right of the accused to appear before the appeals court. Furthermore, judges were asked to give explanations for their respective verdicts and reminded to grant fair trials within the legal framework of the ICPCR. The Committee mostly had to deal with cases

Islamic school of thought, God would be committing an injustice were he to punish man, devoid of responsibility; such an act is inconceivable according to reason and is also contrary to the revealed which states that “God is never unjust unto his servants” (*Qu’ran* 8:51) , *ibid*, pp.164-165

¹⁰¹² *ibid*, pp. 170-171

¹⁰¹³ *Iran Focus*, Vol. 16, No.8, September, 2003 (Sharivar-Mehr 1382), p.11

where the hearings were not held publicly and persons were arbitrarily detained. In most cases the committee reminded the judiciary that Iran is legally obliged to follow the two UN covenants it ratified. By establishing this group, Khatami gave the legislative power an additional control mechanism to scrutinize the judiciary, who often, according to the President of the Committee, had no choice but to implement the necessary changes and follow ups.¹⁰¹⁴

Concerning the issue of fair trial, the British government made several representations that acknowledged the re-establishment of the prosecutor's office which reduced the absolute discretion the judge was enjoying¹⁰¹⁵ as well as the re-introduction of *res judicata*, which granted referral to the Supreme Court for a second hearing.¹⁰¹⁶ However, in an effort to reduce the prosecutor's power and his politicized role in the courtroom the British engaged in a number of joint ventures with the Iranian judiciary to tackle this issue.¹⁰¹⁷ British efforts to depoliticize the judiciary were matched by Iranian NGOs working to train and educate professionals in the legal fields, which contributed greatly to the general understanding of human rights for both state officials and civil society.¹⁰¹⁸ In 2004, the Special Prosecutor of the Clergies Court, Jaafar Ghadyani reflected on a trip to the UN Human Rights Commission by stating that "human rights organizations pursue

¹⁰¹⁴ Interview with Hossein Mehropur, President of the Supervisory Committee for the Implementation of the Constitution (Iranian Parliament), (Tehran 3 September, 2005)

¹⁰¹⁵ Prior to this, in most courtrooms judge and prosecutor were the same person. In some instances jury, defence and counsel as well. Report of the Special Representative of the Commission on Human Rights on the Situation of Human Rights in the Islamic Republic of Iran, [UN Doc.A/56/278](#), paragraphs 20-21

¹⁰¹⁶ *ibid*, paragraph 26; It should be noted, however, that 2005, the General Assembly passed a resolution condemning Iran for the "absence of due process of law, the refusal to provide fair and public hearings, the denial of the right to counsel and access to counsel by those detained, the use of national security laws to deny human rights, the harassment, intimidation and persecution of defense lawyers and legal defenders." UN General Assembly Resolution, [UN Doc. A/C.3/60/L.45](#), p. 2 November, 2005; The EU, however, welcomed the decision to separate civil and criminal courts. *see Bulletin of the European Union*, 3-2003, paragraph 1.2.4

¹⁰¹⁷ Organised by FCO official Harriet Austin an Iranian judiciary delegation met with the British judiciary in London in 2003. Interview with Drewery Dyke

¹⁰¹⁸ The most important NGO in this field is the Organisation for the Defence of Victims of Violence (ODVV), which organises workshops for law students, judges and other judiciary officials. The training course lasts three months and ends with a visit to UNOG. The first phase is designed to improve the knowledge of HR. Judges have legal knowledge but often lack the expertise on HR Law. The second phase (i.e. the visit to UNOG), particularly, deals with the misperception that human rights are a western construct and alien to Iran and Islam. The workshop as well as the exposure to the UN system shows that international human rights standards are not Western and are compatible with Islamic law and values. Effectively, the main aspect and effect of this phase is to depoliticize HR issues for members of the judiciary. Interview with ODVV Public Relations Officer Pouria Askary, (Tehran, 25, August, 25, 2005)

truth and justice rather than follow imperialist agendas”.¹⁰¹⁹ Fifty-seven years after the declaration of universal human rights, such conclusions are hardly spectacular and also too late for many victims. Also, any such rhetoric is only as good as its translation into policies and changes of legislation. It does, however, indicate the significance of Europe’s multi-track approach of depoliticising human rights by emphasising their universal legal value.

Overall, the roundtable confirmed that the significance of the rule of law did encourage likeminded groups in the Iranian system to advance this cause. Again it proved a valuable forum to point to existing statutes in the Iranian Constitution supporting human rights and allowed activists to criticize the judiciary’s actions from within an Islamic discourse. As shown following the roundtable, legislation was passed by parliament with the intention of supervising the judiciary.

Overall, Khatami’s presidency was significant in that it attempted to change the rules of the game in Iranian politics. By emphasizing accountability and rule of law, proposed and written into legislation by the *Majlis*, the President bound the executive, the legislative as well as the judiciary to the concept of legality (*qanoun-mandi*) and partly succeeded in reducing the arbitrary use of power by political leaders and unelected state-institutions. Ironically, however, to a considerable extent, the reformists became victims of their own commitment to this concept. By focusing on the form of law, without looking at its context, it helped foster a culture of obedience to power. By abstaining from questioning the very foundations and structures of the Islamic Republic, the reformist project ultimately failed to change, what one could call power based law, into rights based law.

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¹⁰¹⁹ The Organization for Defending Victims of Violence, *Defenders*, Special Issue, (Spring, 2005), p.35 given to the author by ODVV

¹⁰²⁰ For criticism from Iranian scholars on interplay of modern law and Iranian politics, see Democracy Activity Brief, 6-8 February, 2006, FRIDE-IWA Workshop, “The Relationship between *shari’a* and the Rule of Law in Iran”, February 6-8, 2006, available on www.fride.org

5. Roundtable on the Right to Freedom of Expression

As noted before Khatami's election in 1997, criticism from within and outside religious circles was quietly voiced and found certain niches in liberal publications, such as "*Kiyan*". After 1997, such critics, as well as intellectuals and critics gained enough momentum to in fact form part of the reform discourse. Dissent ranged from high ranking religious authorities, such as Montazeri, who argued that the Supreme Leader should be elected directly by the people, that his mandate is by no means God given and rather a social-contract, to *Hojjatoleslam*, Mohsen Kadivar, who openly contradicted the prevailing view that the *velayat-e faqih* is one of the irrefutable principles of *Shi'a* Islam to journalists such as, Akbar Ganji, who wrote on the disregard for the rule of law and advocated regime change. Under Khatami, the right to freedom of expression and speech also became the most crucial contention between reformists and hardliners. Whilst the propagation and the free exercise of it served as catalyst of the former, the latter did their utmost to put a stop to it. Ironically, under Khatami, freedom of expression was the political right, which was exercised extensively by members of the public as well as state officials, yet granted the least. As such, Iran was described by "Reporters without Borders" as the world's largest prison for journalists and writers.¹⁰²¹

Before assessing the impact of the 3rd roundtable it should be noted that British - Iranian relations had been placed under particular strain by two incidents. In February 2002, the Iranian Government rejected Britain's nominee as Ambassador in Tehran, David Reddaway, who was accused in the hardliner press as "a Jew who is an MI6 agent". It took eight months until September when the Iranian government eventually accepted the nomination of Richard Dalton as Ambassador.¹⁰²² The second incident referred to the detention in the UK of former Iranian Ambassador Hade Soleimanpour under a warrant for extradition served by the authorities in Argentina. The former Ambassador was suspected of involvement in the bombing of a Jewish community centre in Buenos Aires in 1994. Despite British insistence that it could not interfere in a judicial process, the

¹⁰²¹ Katajun Amirpur, "The Future of Iran's Reform Movement", in Walter Posch (ed) Chaillot Paper No. 89, Iranian Challenges, (Institute for Security Studies / EU, Paris, May 2006) p. 33

¹⁰²² House of Commons, Foreign Affairs Committee, Iran – Third Report of Session 2003-2004, pp.9-10

Iranians saw the arrest as politically motivated. The diplomatic row eventually resulted in an attack on the British embassy in Tehran by motorised gunmen. Though the British government assessed that this would be unlikely to occur without the consent of the Iranian authorities as well as noted undeclared sanctions against British companies in the country ¹⁰²³ the FCO decided to respond with a mixture of “firmness and tact” to both affairs. ¹⁰²⁴ The Foreign Affairs Committee recommended that despite such short-term setbacks, it is more important that the British government “act as a good friend to Iran in that journey [towards freedom], criticising when necessary, but supporting where it can.”
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The roundtable on the Right to Freedom of Expression and the Right to Development ¹⁰²⁶ was again preceded by financing of operations designed to “support the creation of adequate conditions for concrete improvements in human rights in Iran” with a modest amount of 222 678 €. ¹⁰²⁷ Negotiations focused on legal as well as political impediments to the exercise of freedom of speech in Iran and covered Iran’s obligations under the ICCPR, the parliamentary dimension, notably the right of politicians to express their views, as well as on the freedom of the press. ¹⁰²⁸ Again, Europe’s multi-track approach proved valuable for the Iranians to express their views on problems and deficiencies concerning free speech. Particularly, La’ya Joneydi, Associate Professor at Tehran University and Attorney at Law, condemned the way the Law of the Press (1986) limits Art. 24 of the Constitution ¹⁰²⁹ and stated that the “regime foreseen by the Constitution

¹⁰²³ *ibid*, p.10

¹⁰²⁴ *ibid*, p.3; Soleimanpour was eventually released on bail.

¹⁰²⁵ *ibid*, p.63

¹⁰²⁶ Since the focus is on the right to freedom of expression, an assessment on the right to development will not be discussed.

¹⁰²⁷ Bulletin of the European Union, 7/8-2003, paragraph 1.28

¹⁰²⁸ Alledandro Fallavollita, Human Rights Department, Italian Ministry of Foreign Affairs, in Danish Institute for Human Rights, Collected Papers From the Third Roundtable Under the EU-Iran Human Rights Dialogue, Brussels, 8-7 October 2003 “The Right to Freedom of Expression And The Right to Development”, (Copenhagen, Danish Institute for Human Rights, 2004), p. x

¹⁰²⁹ On Art. 24 see Chapter III; His argument was that the Press Law provided an odd interpretation of the general rule. The law inferred that “its” – the possessive adjective referring to the “exception” mentioned in the latter part of Art. 24 – was a reference to the general rule on “freedom of the press” in the first part of the Article and not a reference to the exceptions that could be taken to the rule. in Danish Institute for Human Rights, Collected Papers From the Third Roundtable Under the EU-Iran Human Rights Dialogue, Brussels, 8-7 October 2003, p. 29

has been transformed into a preventive one.”¹⁰³⁰ Joneydi concluded that the new amendment of the Press Law (2000) bears considerable discrepancies with the Constitution (Art.24, 9,12, 13, 14 and 25) and given the supremacy of the Constitution over the statute, judges, he demanded should interpret the Law of the Press in conformity with the Constitution “so that all the [...] restrictions be in turn restrictively interpreted.”¹⁰³¹ The Special Rapporteur on the right to freedom of opinion and expression, who was welcomed back by the Iranian Government following the roundtable¹⁰³², also regarded the Press law passed by the 5th *Majlis* as a grave restriction to freedom of speech. Article 12 of the new law requires the Press Supervisory Board to ban a publication that violates Articles 6, 24 to 29 and 32 of the Law, which deal with issues such as “publishing atheist articles or issues which are prejudicial to Islamic codes” or which promote “subjects which might damage the foundation of the Islamic Republic”, national security, dignity and interests, insulting Islam or offending the Leader and religious authorities, publishing libel against officials or institutions or insulting legal or real persons who are “lawfully respected” publishing writings “containing apostasy and matters against Islamic standards” and quoting articles from the “deviant press, parties and groups which oppose Islam.”¹⁰³³ The Rapporteur also questioned the competence of the Revolutionary Courts in dealing with press or opinion or press-related offences. Emphasising that these courts only have jurisdiction over serious security related cases, that is, against internal and external national security, espionage, sabotage and terrorism¹⁰³⁴, he condemned the political use of such and other courts. He also pointed out that many press offences relating to the peaceful expression of an opinion listed in the Penal Code are punishable by prison terms and/or flogging.¹⁰³⁵ Picking up on the Rapporteur’s findings, the British government regretted the “deterioration in [...] freedom of association” in the country. The Foreign Secretary further condemned the closure of several newspapers and the

¹⁰³⁰ *ibid*

¹⁰³¹ *ibid*, p.30

¹⁰³² *see Bulletin of the European Union*, EU 10-2003, paragraph 1.2.11; During his visit in Iran the Special Rapporteur met with judiciary officials including hardliner Tehran Chief Prosecutor Abbasali Alizdeh and openly criticized its role in the restriction of freedom of speech. *see Iran Focus*,) Vol. 16, No. 10, November 2003, (Aban-Azar 1382), p. 13

¹⁰³³ Report by the Special Rapporteur on the right to freedom of opinion and expression, Mission to the Islamic Republic of Iran, *UN Doc. E/CN.4/2004/Add.2*, 12 January, 2004, paragraph 26

¹⁰³⁴ *ibid*, paragraph 27

¹⁰³⁵ *ibid*, paragraph 33

increased restrictions on Internet access and the fact that the media had been subject to heavier, official censorship. Furthermore, journalists and intellectuals had been arrested and intimidated, and lawyers had been prosecuted for speaking out on behalf of their client.¹⁰³⁶ Overall, the roundtable was dominated by EU demands to conform to Iran's obligations under Article 19 of the ICCPR to welcome the Special Rapporteur back into the country, and to let the current *Majlis* introduce the progressive amendments to the Press Law.¹⁰³⁷

6. The Right to Freedom of Expression: Agents of Change

In order to get a complete picture of the situation of the right to freedom of expression in Iran between the years 2000-2004, one has to look at the bigger picture rather than at the immediate impact of the EU roundtable. Just as intellectuals, public figures and the media acted as catalysts during the Constitutional Revolution (1906) and the Islamic Revolution (1979) so have writers, intellectuals, members of the *ulema* and new technology, such as the Internet also spearheaded the process of reform since 1997. As in any other politically mature society, the intelligentsia in Iran was vital in formulating, interpreting and conveying the reformist project to the public. They were / are what Ahmad Sadri called "public intelligentsia since they straddle the fence between intellectual production and political agitation."¹⁰³⁸

6.1 The Clergy and Intelligentsia

A powerful example of the reformist discourse and the hardliner response proved to be the Berlin Conference in 2000 as well as the trial of Hashem Aghajari. Following the parliamentary victory of the reformists (*6th Majlis*), a German think tank linked to the then ruling Green Party invited leading intellectuals and writers to openly discuss the

¹⁰³⁶ Third Report from the Foreign Affairs Committee, Session 2003-2004, Iran, Response of the Secretary of State for Foreign and Commonwealth Affairs, House of Commons, Cm 6198, May 2004, p.7

¹⁰³⁷ see Bulletin of the European Union, EU 10-2003, paragraph 1.2.11; UN Doc. E/CN.4/2004/Add.2, paragraph 95. The Special Rapporteur was invited back to Iran in 2003.

¹⁰³⁸ cited in Ramin Jahanbegloo, Iran – Between Tradition and Modernity (Oxford, Lexington Books, 2004), p. 117

future of the reform movement and that of the country.¹⁰³⁹ *Hojjatoleslam* Eshkevari's reflection on the reform process was undoubtedly the most significant contribution at the Berlin Conference. He outlined social and political conditions needed in Iran for democracy to flourish, warned of hardliner plots and their lack of commitment to democracy and human rights and condemned the large-scale repression of some members of the *ulema* since the revolution.¹⁰⁴⁰ On a question from the audience on the relationship between religion and state, Eshkevari answered that he opposed the rule of the jurist consult, as it is equal to rule by one individual. He concluded that "government is a human matter; it is human [not divine]; therefore government must have a democratic base."¹⁰⁴¹ His second speech at the conference "Reformist Islam and Modern Society" characterised the reformist mindset as well as portraying the theoretical-religious foundation on which many Iranian human rights NGOs would base their advocacy work. Modernist Muslims, he argued "while welcoming developments in the modern world, neither see the old Islamic tradition and knowledge as entirely worthy of following, nor do they surrender absolutely to modernity. In fact they challenge and criticize the legacy of both and desire the progress and evolution of the positive and renewable aspects of each." ¹⁰⁴² Following a *Mu'tazili* and *Shi'a* line of thought, Eshkevari emphasised the notion of rationality. A modern Islam advocates reform and seeks the reconstruction of social and religious institution and through the assimilation and adoption of positive elements of modernity, reformists are able to design what he referred to as "indigenous modernity (Oriental-Islamic)".¹⁰⁴³ That way, reformist Muslims will excavate Islam from the dust of time, superstition, and non-religious and irrational thoughts and custom. By reviving and reconstructing it, he claimed, with scientific knowledge and the experience of today's advanced humanity, they will eventually contribute to help humankind and Muslims in particular to improve their personal, ethical and social lives. He concluded that the slogans "Return to Islam" and "Return to the *Qu'ran*" have no other meaning that

¹⁰³⁹ FAZ, 20 April 2000

¹⁰⁴⁰ For his full speech see, Ziba Mir-Hosseini and Richard Tapper, Islam and Democracy in Iran – Eshkevari and the Quest for Reform, (London, I.B. Tauris, 2006), pp.150- 152

¹⁰⁴¹ *ibid*, p. 154

¹⁰⁴² *ibid*, p. 157

¹⁰⁴³ *ibid*, pp.157-158

this.¹⁰⁴⁴ Though he acknowledged that there is no single spokesperson for Muslim reformists he summarized the major points of agreement amongst them:

1. A belief in “Islamic Protestantism” and the realization of an Islamic renaissance consisting of the renewal and reconstruction of religious thought.
2. A distinction between fundamental religious knowledge and religious principles implying that no understanding can ever be judged as complete or correct.
3. An emphasis on *ijtihad*; advocating a renewal and reconstruction of religious thought and dogma through progressive reasoning.
4. Denial of an intermediary between God and people, and denial of an official, custodial religious establishment.
5. Planning of a kind of Islamic humanism, which implied a firm conviction in human “discernment”, and discovering in human elements such as will-power, creativity, free choice, freedom and the right to choose.
6. A belief that all humans have natural, inalienable and unconditional rights.
7. A belief in democracy, the realization of rule by the people and popular sovereignty in civil affairs.
8. Opposition to state religion, and consequently [a belief in the] total and unconditional freedom of every religion and every ideology, freedom of speech and being within the framework of the democratic laws and regulations of society.
9. A belief in the mutability of the social laws of Islam implying that social rulings (such as penal, economic or governmental laws) are in essence mutable and inevitably change with the change in subject matter.
10. Relations with the West based on “difference” and “mutual understanding” (*tafvot va tafhom*).¹⁰⁴⁵

Much of what Eshkevari said at the Berlin Conference reflected both the reformists’ mindset and eagerness for change in Iran. By the same token, most of the charges subsequently brought against him mirrored a common pattern of silencing such influential intellectuals or clerics. On his return to Iran, a Special Clergy Court tried him in secret and found him guilty of a long list of crimes, some carrying an automatic death sentence: these were being a heretic (*ertedaad*), acting as a corrupter on Earth (*mofsed-e fel arz*) and engaging in act of war against God and his Prophet (*mahaareb*).¹⁰⁴⁶

¹⁰⁴⁴ *ibid*, p.160

¹⁰⁴⁵ *ibid*, pp.160-162

¹⁰⁴⁶ *Iran Focus*, Vol. 13 No. 9, October 2000, (Mehr–Aban 1379), p. 13

Following his trial, he lodged an appeal, which eventually revoked his death sentence and reduced it and sentenced him in 2002 to four years in prison for insulting the sanctities and one year for taking part in the conference and propaganda against the state.

¹⁰⁴⁷

The trial against Hashem Aghajari was another high profile case revealing the dichotomy between legal constraints on the right to free speech and the reformist agenda. Aghajeri, a history professor at Tarbiat Modares University, and member of the “*Mojahedin* of the Islamic Revolution”, was arrested on 8 August 2002 after he gave a speech in Hamadam entitled “Islamic Protestantism.”¹⁰⁴⁸ His discourse largely centred on his charge that the ruling clergy has not only monopolised God and religion but also secular power. Unlike during Shariati’s time, when Iran witnessed a traditionally orientated form of Islam, he claimed that Islam had now become fundamentalist and occupied the realm of political power, which allows those who rule to violate the individual’s rights. Given this reality, they arbitrarily torture critics, force public recantations, or have dissidents killed. “Islamic Protestantism”, Aghajari asserted, would not only openly challenge ancient Islamic hermeneutics, but also serve as a normative basis for the protection of human rights and human dignity.¹⁰⁴⁹ He was eventually sentenced to 74 lashes, five years imprisonment, given seven years suspension from teaching, five years deprivation of his civil rights and the death penalty, for insult against Islam and religious leaders, apostasy and heresy.¹⁰⁵⁰ What followed were large-scale protests by students¹⁰⁵¹,

¹⁰⁴⁷ Eshkevari’s trial and sentence resulted in large-scale protests and public support amongst politicians, intellectuals, fellow members of the clergy and students, Iran Report, Heinrich Böll Stiftung, Nr.09/2002, p.7 ; On the 2nd anniversary of the Berlin Conference, Iranian journalist Alireza Alavitabar reflected on the summary arrests and convictions against participants of the Berlin Conference and published an article in “*Bonjan*” which read: “The system of political decisions in Iran is constructed in such a way as to miss out on the best opportunities and to achieve the worst results.” According to him, the Berlin Conference was such a case when Iran could have shown to the world that the country now permitted a plurality of opinions in which critics have the opportunity to voice their opinion. The conference could have silenced those critics of Iran and could have resulted in a gradual acceptance of Iran. However, the reactions by the political establishment only reinforced propaganda pursued against the country and in fact played into the hands of those, which the religious elite is so eager to oppose. Iran Report, Heinrich Böll Stiftung, Nr. 03/2002, pp.7-8

¹⁰⁴⁸ UN Doc. E/CN.4/2004/62/Add.2, paragraph 50

¹⁰⁴⁹ Iran Report, Heinrich Böll Stiftung, Nr.9-2002, pp.6-7; Iran Report, Nr.4/ 2003, Heinrich Böll Stiftung, pp. 6-7

¹⁰⁵⁰ UN Doc. E/CN.4/2004/62/Add.2, paragraph 50

parliamentarians, condemnation voiced by Khatami himself as well as the British government.¹⁰⁵² The British based “Index on Censorship” awarded him the International Award for Freedom of Expression.¹⁰⁵³ It was only when Khameni himself intervened that the Supreme Court lifted the death sentence.¹⁰⁵⁴ This disproportionate sentence against an intellectual and leading reformist politician, exemplified what aspirations Sharoudi had of further developing the judicial authority into an even greater lever of power in the country’s maze of power centres.

Notwithstanding the establishment’s master plan of stifling dissent, the reformist movement enjoyed the backing of religious heavyweights, most notably such as *Ayatollah* Hossein Montazeri, *Ayatollah* Jaleleddin Taheri, *Ayatollah* Taromi and *Ayatollah* Boujnourdi. Forming an authoritative religious backbone for Khatami’s discourse of democracy, they actively defended the dissidents’ right to freedom of expression by openly challenging the elite’s legitimacy, particularly that of the Supreme Leader. Undoubtedly, Montazeri constituted the most significant of such religious dissidents. Whilst he upheld the principle of clerical supervision to ensure that legislation and government policy remain in accordance to Islamic principles, he openly questioned Khomeini’s authority and demanded that the Supreme Leader should submit himself to popular elections, curtail his power, and be accountable and open to public criticism.¹⁰⁵⁵ With reference to Khatami’s lack of power, he demanded a change in the Constitution - of which he was a leading drafter- in such a way to accord the President to control over the military and security forces.¹⁰⁵⁶ Montazeri’s *Shi’a* hermeneutics on human rights and democracy provided an authoritative blueprint for the reformist movement.

¹⁰⁵¹ Student demonstrations eventually resulted with the resignation of the judiciary’s spokesperson Mir-Mohammad Sadeghi’s, who stated that “the ruling had damaged Iran.”

http://news.bbc.co.uk/1/hi/world/middle_east/2562845.stm, accessed on 14, December, 2003

¹⁰⁵² Following the verdict, Straw met with his Iranian counterpart. House of Commons, Hansard, 23

February 2003, Column 122; A resolution by the European Parliament demanded to immediately suspend the death sentence against Aghajeri or to commute the appeal in line with the ICPCR. It also reminded the Council and Commission that the TCA was conditional on the improvement of human rights in Iran, see Bulletin of the European Union, 11-2002, paragraph 1.2.2

¹⁰⁵³ Iran Report, Nr.4/ 2003, Heinrich Böll Stiftung, p. 6

¹⁰⁵⁴ Iran Focus, Vol. 15, No 3, (Esfand 1381-Farvardin 1382), p.9

¹⁰⁵⁵ http://news.bbc.co.uk/1/hi/world/middle_east/2699541.stm, website accessed 30 October, 2003

¹⁰⁵⁶ *ibid*

6.2 The Press, Students, NGOs and the Blogger Community

In 2004, the Special Rapporteur noted the dramatic increase in the number of requests for the registration of publications and according to the Ministry of Islamic and Cultural Guidance an average of 99 % were granted.¹⁰⁵⁷ Another welcoming development for the Rapporteur was the increase of numbers of books published in the country, which amounted to 35,000 titles in 2002, compared to 1,700 in 1979.¹⁰⁵⁸ Whilst acknowledging that there is no prior censorship in the media (with the exception of IRNA, which is subject to rigorous monitoring by the state), the restrictive Press Law as well as the 1960 Preventive Restraint Act, both of which carry severe punishments, “effectively repress any expression in the press criticizing the establishment, in particular religious authorities, calling for reform, or in any way deemed unlawful”.¹⁰⁵⁹ Given these ramifications, carried out in an environment where courts largely seem to follow political objectives, journalists and writers in Iran became increasingly subject to self-censorship. The Rapporteur further noted that the great majority of cases of prosecution of press offences brought to his attention have resulted in the ban (temporary or definitive) of the publications concerned and the sentencing of journalists concerned to prison terms. Not surprisingly, this development was a direct result of the significance of the written press, which turned out to be one of the main pillars of the reform movement. To put it simply, with reference to the reformist movement and the advancement of human rights the press acted on several levels:

1. They actively contributed to the reformist discourse to such an extent that it gained enough momentum in cultural, socio-political and religious terms, to be recognized by the public as a genuine movement for change as well as to be perceived as a direct threat to the establishment. Particularly, prominent writers such as Ganji helped to shape the reform movement’s culture of critical discourse

¹⁰⁵⁷ UN Doc. E/CN.4/2004/62 Add.2, paragraph 35

¹⁰⁵⁸ *ibid.*, paragraph 36

¹⁰⁵⁹ According to statistics of the Office of the Prosecutor General for Tehran indicated that 81 publications were closed down – 59 after judicial decision and 22 after decision by the Press Supervisory Board. Unofficial statistics indicate that 98 publications were closed since 1999 – 59 after court decision and 39 after a decision of the Press Supervisory Board or after a temporary ban under the Preventive Restraint Act. *ibid.*, paragraphs 39-42; 45;

- by contributing to the “reform speak”. By coining phrases like “follower of a different life style” (*degar-andish*) writers challenged the cultural hegemony of the *ulema* and the stratum of the pious believers and thus helped legitimize pluralism by foregrounding the second-class status of those citizens who want to think and live by standards not sanctioned by the state.¹⁰⁶⁰
2. A vehicle of information and investigation: Naming and shaming of unlawful practices and tactics of state authorities and parallel institutions had some impact on the notion of accountability and rule of law.¹⁰⁶¹
 3. State run-media outlets were increasingly being challenged by genuine political publications criticizing both establishment as well as reformists. Despite the restrictions faced or maybe especially for this very reason, this intellectual and political emancipation constituted, undoubtedly, the most advanced expression of Khatami’s vision of civil society in Iran.¹⁰⁶²
 4. The press served as a source of ideas, critique, reflection and encouragement to the reform movement.
 5. It was the most outspoken force against the restrictions on free speech. Writers and journalists themselves became the most fervent advocates of the right to freedom of expression.

Following a renewed wave of crackdowns against journalists, *Majlis* Deputy Rajab-Ali Mazrouei, Head of Iran’s Press Guild Association, charged Khatami and his Ministry of

¹⁰⁶⁰ Ramin Jahanbegloo (ed.), *Iran-Between Tradition and Modernity*, pp.122-123

¹⁰⁶¹ Amongst, investigative journalists, Ganji, was again the most outspoken and influential. Before his imprisonment for his participation at the Berlin Conference, he wrote extensively as a journalist in a series of reformist newspapers, many of which were shut down by the Judiciary. Collections of his articles appeared in books, notably, "The Dungeon of Ghosts" and "The Red Eminence, The Grey Eminences" focusing on the involvement of Rafsanjani and Ali Fallahian in the Mykonos murders. Before his release in 2006, he continued to write his critiques in prison which were smuggled out and widely distributed, especially on the web. Most notably he wrote a Republican Manifesto in six chapters in March 2002 laying out the basis of his proposal for a fully-fledged democratic republic for Iran. *FAZ*, 17 July, 2001; *The New York Times*, 12 July, 2006

¹⁰⁶² Most editors started printing under a new name and license after their paper had been shut down. Amongst the most important pro-reform newspapers in Iran were *Bahar* (Spring), formerly *Entekhabat-e Majlis-e Panjom* (Elections of the 5th Majlis) *Nowsazi* (Reconstruction), *Sobh-e Karun* (Karun Daily), *Iraniaan* (Iranians) *Hayat-e No* (New Life), *Fatth* which was followed by *Ray-e Mardom* (People’s Vote) after it was banned, *Towseh* (Development), *Naghsh-e Jahan* (name of a famous square in Esfahan), *Akabar* (News) and *Mellat* (People), *Iran Focus*, Vol. 13, No.5, May 2000, (Ordibehesht-Khordad 1379), p. 11

Culture for “failing to defend journalists who are paying the price for democratic reforms in Iran.”¹⁰⁶³ What Mazrouei referred to was the systematic purging of liberal media outlets as well as the arrest and prosecution of reform minded journalists. Under Sharoudi the judiciary developed into a formidable machinery of not only restricting the right to freedom of speech through arbitrary charges and blatant politically motivated trials, but also became an effective instrument with the ambitious aim of ridding the country’s political landscape of reform minded intellectuals and activists. Together with radical vigilantes, who continued to remain unaccountable for their anti-reformist grass-roots pogroms, the judiciary created an environment of arbitrary prosecution and persecution, which actively contributed to the hardliners’ successful usurpation campaign of removing the reformists from the political landscape. Essentially it was a systematic campaign to silence the country’s attempt at political emancipation through the press. Most fundamentally, *Ayatollah* Sharoudi directly challenged any critical accounts of political realities as they would essentially “constitute treason against the Islamic Republic and serve only foreign enemies at undermining the achievements of the Islamic Revolution.”¹⁰⁶⁴ Said Mortazavi, who as a judge had become infamous for his arbitrary verdicts against liberal newspapers and publishers, was appointed Prosecutor for Tehran in June 2003.¹⁰⁶⁵ In him, Sharoudi found a willing executioner to systematically crack down on the press.¹⁰⁶⁶ The most crucial element in the judiciary’s campaign was that under Sharoudi the judicial authorities founded their own intelligence service, which provided respective information on dissidents and journalists. Mohssen Mirdamadi, Chairman for the *Majlis* Committee for National Security and Foreign Policy as well as Khatami himself described this tactic as “illegal, which had the sole aim of ridding Iran’s opposition.”¹⁰⁶⁷ The fact that one of the most prominent newspapers *Hayat-No* was ordered to shut by the Special Court for the Clergy on grounds of defamation, reflected both the arbitrariness and level of power the judiciary enjoyed. *Hayat-No* was closed

¹⁰⁶³ *Iran Focus*, Vol. 16, No.3, (Esfand 1381 – Farvardin 1382), p.12

¹⁰⁶⁴ *Iran Report*, Nr.9 / 2003, Heinrich Böll Stiftung, pp.3-4

¹⁰⁶⁵ *Iran Report*, Nr.6 / 2003, Heinrich Böll Stiftung, pp. 6-7

¹⁰⁶⁶ In fact it was under Mortazavi that Iranian-Canadian photo journalist, Zahra Kazemi died in custody after she had been arrested for taking pictures of families protesting outside Evin Prison. Article 90 Commission of the *Majlis* concluded in its report that Mortazavi and other members of the prosecutor’s office were directly involved in Kazemi’s death. *UN Doc. E/CN.4/2004/Add.2*, paragraph 71-78

¹⁰⁶⁷ *Iran Report*, Nr.2/2003, Heinrich Böll Stiftung, p. 7

down for publishing a cartoon from 1937 depicting former U.S. President Franklin D. Roosevelt pressing his thumb to the head of a former U.S. Supreme Court Justice. The court ruled that the image of the judge - who is elderly, bearded and wearing a black robe – bore a resemblance to the late Ayatollah Khomeini.¹⁰⁶⁸

Increased censorship coupled with continuous and systematic intimidation and persecution eventually expressed itself in a phenomenon, which is increasingly becoming synonymous with Iran's struggle for freedom of speech: Iran's blogging community. According to a 2004 NITLE Blog Census, there are more than 64,000 blogs written in Persian (more than there are Spanish, German, Italian, Chinese or Russian blogs). By avoiding the risks associated with the printed press, blogs provided a safer place for Iranians to express their views ranging from the most frivolous topics and online diaries to serious domestic and international socio-political and economic issues. For NGOs, activists and students they provided a forum to coordinate activities and to report on political developments. For journalists they became an outlet to say and write what they could not in the press.¹⁰⁶⁹ The most famous of Iran's blogger was Mohammad Ali Abtahi, Vice President for Legal and Parliamentary Affairs under Khatami. Despite being of a slightly narcissistic nature, his blog regularly commented (still does)¹⁰⁷⁰ on the factional struggle for and against reforms and openly portrays and criticises the ruling Iranian *ulema* for not holding elected positions, for failing to move the country forward and for failing to interact with Iranian society and in particular the youth.¹⁰⁷¹ With such web logs becoming a popular forum for dissent, the government eventually responded by cracking down on this virtual community.¹⁰⁷² According to the OpenNet Initiative, Iran moved on to adopt "one of the world's most substantial Internet censorship regimes [...] using the most sophisticated state-mandated filtering systems in the world." The judiciary

¹⁰⁶⁸ *ibid*, p. 7

¹⁰⁶⁹ For a compilation of the most influential blogs see Nasrin Alavi, *We are Iran – The Persian Blogs* (Brooklyn, Soft Skull Press, 2005)

¹⁰⁷⁰ see <http://www.webneveshteha.com> last accessed 23 September, 2006

¹⁰⁷¹ see "Iran reform politician goes online" BBC News, website: <http://news.bbc.co.uk/go/pr/fr/-/1/hi/technology/4315455.stm>, accessed on 4 March 2006

¹⁰⁷² The first wave of arrests of bloggers started in 2000 and continued throughout Europe's human rights dialogue with Iran, see "The price paid for blogging Iran: BBC News, website <http://news.bbc.co.uk/go/pr/fr/-/hi/technology/4283231.stm>, accessed on 4 March, 2006

itself acknowledged that it is using the commercial filtering package Smart Filter – made by the US-based company Secure Computing – as the primary technical engine of its filtering system. Backed by the existing restrictive Press Law, the judiciary and intelligence services demand that all Internet Service Providers (ISPs) install filtering mechanisms that cover both websites and e-mail and, if in breach of the law, disclose the “offender’s” personal details to the authorities.¹⁰⁷³ Faced with the scale of bloggers in the country, the crackdown against the Internet dissidents witnessed the re-emergence of a pattern, which had reached its peak during the revolutionary 1980s: the practice of forced public recantation, which served the function of humiliation and deterrence. According to Abtahi the bloggers’ testimonies “had made committee members weep.”¹⁰⁷⁴ [Referring to the Supervisory Committee for the Implementation of the Constitution] An example of such forced recantation is the statement that Roozbeh Mirebrahimi had signed and, which was published in “*Etemaad*”. It read in part:

I, Roozbeh Mirebrahimi, have been one of the accused in connection with the file of Internet sites [...] During the past few years, I and others like me had fallen into the hands of those [...] who made use of people like me in order to implement their evil projects [...]. Unfortunately, whatever I wrote during that period [...] undermined the reputation of the Islamic Republic of Iran [...] I strongly attacked various pillars of the system, especially the judiciary, by making various allegations against them, and I have portrayed them as being against human rights [...] During the past few years, there existed [...] a frightful network, one end of which was inside the country and the other end outside its borders [...] Due to my weakness, I also joined that network [...] I was the source of reports and interviews with foreign and counter-revolutionary radio stations [...] The involvement of some organizations and individuals from outside the country or supporting individuals such as me is shameful, because people like me have trampled upon the laws of this country [...] The claim that I was in solitary confinement is not true. I experienced nothing but kindness and respect from those who were dealing with us. Here, I wish to express my gratitude for the kindness of individuals for their success and well-being.¹⁰⁷⁵

¹⁰⁷³ For in-depth research on internet filtering see OpenNet Initiative, Country Study “Internet Filtering in Iran, 2004-2005” available on www.opennetinitiative.net/iran

¹⁰⁷⁴ Foreign and Commonwealth Office, Human Rights – Annual Report 2005, House of Commons, CM 6606, p. 58

¹⁰⁷⁵ Reprinted in The New Yorker, 21 November, 2005

The claim that he had been held in solitary confinement and tortured was, however, true and reflected a wider pattern of Prosecutor Mortazavi's "internet campaign". By November 2004, PEN reported 25 cases of Internet activists who had been taken into custody. Mirebarahimi, former political editor of *Etemad* was amongst that group of webloggers and was accused of "spreading propaganda against the regime, threatening national security, incitement to rebellion and insulting leading figures in the regime." Following their release after they had been held incommunicado and in an effort to clear their names, they testified before the committee about their mistreatment during detention and testified that "secret squads" operating on behalf of the judiciary had indeed tortured them.¹⁰⁷⁶ These allegations eventually prompted the Supervisory Committee for the Implementation of the Constitution to investigate.¹⁰⁷⁷ When the Committee stated that torture had indeed taken place, Khatami himself approached Sharoudi to intervene. The British government too reminded the Iranian government that online publishing had been in complete accordance with their right to freedom of expression and condemned the judiciary's treatment of the webloggers.¹⁰⁷⁸ Faced with such pressure, Sharoudi eventually appointed a committee of three judges to review the bloggers' files, which cleared seven, but kept the files of the other four open.¹⁰⁷⁹

If one could refer to the press and blogger community as the most advanced expression of Iran's nascent civil society with regards to its political and intellectual impact, so was the emergence of the student movement with the rise of Khatami the most dynamic socio-political force in the country. Often referred to as the "Children of the Revolution", the student movement gradually transformed itself from Khatami's most loyal social base to a group, which by 2000, became increasingly critical of the failure of the reformist movement to implement its policies. In particular with regards the active advocacy for the protection of human rights in the country students unions were the most zealous rights campaigners. Truly expressing the society's discontent with the status quo, the unions

¹⁰⁷⁶ Written Statement submitted by International PEN, UN Doc. E/CN.4/2005/NGO/117, 14 February 2005, p.3

¹⁰⁷⁷ *ibid*

¹⁰⁷⁸ Interview with FCO Official "D"

¹⁰⁷⁹ The New Yorker, 21 November, 2005

broke the political taboo, which manifested itself in numerous demonstrations, open letters to the establishment and political mobilization going so far as to call for the resignation of Khameni as well as Khatami. They also openly demanded amendments to the constitution in order to bring an end to the Guardian Council's political role and to allow sustainable political reforms to be implemented.¹⁰⁸⁰ In view of such confrontational rhetoric, the state authority's reaction was generally disproportionately forceful against students. During the most large-scale demonstrations held in 1999 and 2003, students were attacked by *Basiji* and *Ansar Hezbollah*, both of which are directly dependent on the authority of the Revolutionary Guards and Khomeini respectively. Like journalists, students arrested at such demonstrations are charged after long periods of incommunicado detention with "threats against national security", "confusing people's minds", and / or "propaganda against the state."¹⁰⁸¹

Here the difference between British / EU and U.S. diplomacy is particularly notable. Whitehall saw these demonstrations in the context of exercising the freedom of expression and not necessarily as catalysts for revolution. Many in the U.S. administration and Congress, however, demanded an Iran policy, which would openly advocate regime change. This manifested itself in the increasing pressure put on the EU to achieve a resolution to the Iranian nuclear issue as well as in the vocal support for dissidents and regime critics both in the Diaspora and in Iran. A good example of this mindset was the "Iran Democracy Act" presented to Congress in June 2003, which openly advocated regime change.¹⁰⁸² Rather than actually helping civil society in the country, this neo-conservative constructed emphasis on regime change only made it easier for the judiciary to charge activists with "espionage and advancing U.S. propaganda". Although by that time, Washington had immensely influenced Britain in its

¹⁰⁸⁰ Iran Report, Heinrich Böll Stiftung, Nr.7/ 2003, pp. 6-7; Iran Report, Heinrich Böll Stiftung, Nr.12 / 2003, pp.3-4

¹⁰⁸¹ UN Doc. E/CN.4/2004/Add.2, paragraph 35, *see also* UN Doc. A/53/363, 8 September, 2000

¹⁰⁸² The bill demanded for an "internationally-monitored referendum in Iran by which the Iranian people can peacefully change the system of government". For this purpose Radio Farda and any other radio or TV stations were to be provided with financial assistance to "after consulting (A) Iranian-Americans and other Iranian exiles who (i) support a referendum [...] (ii) oppose the current Government of Iran [...]" *see* "Iran Freedom and Democracy Support Act"; 08th Congress, 1st Session, H.R. 2466 To encourage democratic reform in Iran and to strengthen United States policy toward the current Government of Iran. In the House of Representatives June 12, 2003, p.3; p.4-5

Middle East policy –most notably reflected in Blair’s decision to support the U.S. led invasion of Iraq in 2003 – Whitehall’s Iran policy strongly opposed regime change. Even if the FCO increasingly focused on the non-proliferation issue, human rights in Iran were best supported, as Lord Phillips of Sudbury, First Secretary of the British-Iranian Parliamentary Group, put it, “through the help the government is giving in terms of Iran’s judiciary and legal profession”. Although he acknowledged that the human rights situation and impediments to reform was frustrating, to place Iran in an axis of evil was “a historic error, and the sooner that the Americans can withdraw from that, just as they have withdrawn from the ludicrous notion of effecting regime change, the better”¹⁰⁸³

However, unlike the students, who were by and large not actively incorporated in the EU’s multi-track approach, NGOs benefited from their participation. Even if Britain was cautious in engaging in open capacity-building ventures with Iranian NGOs, and their participation at these roundtables may have not granted genuine immunity, it did provide them with more leeway for advocacy efforts. It should also be noted that EU member state embassies, particularly the British, approached Iranian NGOs with caution, as it was not always exactly clear whether the “N” stood for “Near” or “Non”.¹⁰⁸⁴ One of the NGOs, which participated at the roundtables, was the Islamic Human Rights Commission (IHRC)¹⁰⁸⁵. Like many other activists and non-governmental groups, the IHRC has to

¹⁰⁸³ House of Lords, Hansard, 13 November: Column 1717 - Column 1718; Within the context of neo-conservative’s influence on U.S. Iran policy, Lord Wallace of Saltaire called John Bolton “as an actively destructive force in international diplomacy.” House of Lords, Hansard, 13 November: Column 1719; Following the massive students demonstrations in June 2003, the Council of the EU demanded ‘the swift release of those detained for having exercised their right to freedom of expression.’ Bulletin of the European Union 7/8-2003, paragraph 1.6.109

¹⁰⁸⁴ Having to work in Iran’s complex political environment NGOs faced many problems and constraints which usually include legal barriers, too much government control exercised through multiple and uncoordinated decision-making centres, and the proliferation of quasi NGOs which do not pursue a civil-society agenda as serving as buffer between state and the civic arena. *see* M. Baquer Namazi, Non-governmental Organizations in the Islamic Republic of Iran: A Situation Analysis, UNDP Technical Papers, (Tehran, UNDP, 2000); Interview with, FCO Official “D”; The FCO provided the IHRC with various capacity building ventures, *see* House of Commons, Hansard, 5March, 2003, Column 317 WH

¹⁰⁸⁵ The structure of the IHRC consists of the domestic monitoring committee and the appeals office, which receives respective victim’s reports and then tries to follow up the case. The IHRC follows a basic strategy of naming and shaming through the media. In addition, communications are being submitted to the judiciary and demand to investigate certain cases, which had been reported to the IHRC. Whilst the judiciary has, as such, no obligation to justify decisions and procedures to a third non-governmental party, they do respond and often follow up respective cases. This is due to the fact that IRHC sends two communications of complaint: one to the individual judge and another to a higher official in government,

work within the framework of the Islamic Republic. This means having the judiciary as a constant “control agent” and the clergy acting as ideological monitors. Yet, like other such organizations, the clergy was increasingly being used as a facilitator for change. The tradition of *ijtihad*, an intellectual progressive interpretation and innovation practiced by *Shi’a* jurists and clerics over the centuries, is effectively being used by the IHRC to lobby likeminded *Ayatollahs* to reinterpret *Qu’ranic* sources in a way as to be compatible with international human rights standards (as proposed by Eshkevari). Whilst the IHRC extended human rights training to the public and human rights defenders, such lobbying efforts proved particularly valuable when they won over religious heavyweights, such as *Ayatollah* Bojnourdi, as influential human rights advocates.¹⁰⁸⁶ Overall, NGOs, such as the IHRC and more significantly, high profile activists, such as Shireen Ebadi actively support victims of human rights violations, challenge the judiciary, lobby legislators as well as religious authorities and undoubtedly, have contributed to moving the country towards a “rights-based” society. As one British diplomat in Tehran observed it:

Human rights activists here are working to improve the Islamic Republic and to uphold the Islamic Republic - not change but improve; this is stated in order to avoid harassment and to show that they do not constitute a threat. In the end, the elite also realizes that suppression of human rights eventually threatens the survival of the regime.¹⁰⁸⁷

6.3 The 6th *Majlis*

The legislative assembly was regarded as crucial for the British to achieve the demanded changes in legislation to ensure the protection of human rights. With Deputies, such as Abtahi, the reformist dominated 6th *Majlis* saw the right to freedom of expression, quite

who can then refer the matter to a disciplinary committee, which deals with misconduct committed by judges. Whilst judges enjoy a powerful political and social position in Iran, bureaucratic hierarchy does have an impact on individual behavior and legal accountability. For the time being, this loophole used by the IHRC, seems to some extent be a viable mechanism at scrutinizing proper administration of justice. Information based on Interview with the President of the Islamic Human Rights Committee, (Tehran, 15 September, 2005); Interview with Mahya Saffarinia, International Affairs and Communications Department, Islamic Human Rights Commission, (Tehran, 28 August, 2004)

¹⁰⁸⁶ Information based on Interview with the President of the Islamic Human Rights Committee

¹⁰⁸⁷ Interview with FCO Official “D”

literally, at the very core of their legislative duties. Given the political significance of freedom of speech, it is, therefore, also not surprising that those political institutions controlled by hardliners did their utmost to contain the 6th *Majlis*. Tactics of jeopardizing reformist policies manifested itself on two levels: a. The Council of Guardian's rejection of bills directly corresponding to the right of freedom of speech, b. Intimidation and prosecution of deputies by the judiciary for speeches and contributions they made in the legislature. With regards to legislation, the following bills were proposed to be implemented into law:

1. Meeting specific EU demands for changes in legislation, the *Majlis* adopted a law banning the use of the Preventive Restraint Act against newspapers. This amendment would have made the banning of newspapers more difficult and demanded a public court hearing for anyone accused of press offences. The Guardian Council rejected the law on the grounds that the interpretation of the Act in this law excluding the press from its implementation was "discriminatory."¹⁰⁸⁸
2. An alternative amendment to the Press Law was then suggested by the *Majlis* in October 2003, which contained the provision to temporarily limit any banning of media outlets, as well as demanded a public hearing before a jury. This initiative directly corresponded to the judiciary's modus operandi of "temporarily" closing down newspapers until a final verdict, which usually took a number of years and was then done through secret trials. Khameni eventually intervened personally and prohibited the *Majlis* from even discussing the new legislation.¹⁰⁸⁹
3. Other efforts by the legislature included to a bill, which intended to define certain offences more precisely. This law defining insult and defamation would have made it more difficult for judges to charge writers with these offences, which carry corporal punishments. Again the Guardian Council rejected the law.¹⁰⁹⁰

¹⁰⁸⁸ [UN Doc. E/CN.4/2004/Add.2](#), paragraph 43 ; The 5th *Majlis* proposed new progressive amendments to the Press Law as early as August 2000, yet had to withdraw the bill following direct intervention by Khameni and extrajudicial demonstrators which intimidated *Majlis* deputies. *see* [UN Doc. A/53/363](#), paragraph 14-15

¹⁰⁸⁹ [Iran Report](#), Heinrich Böll Stiftung, Nr. 10/2003, p.5,

¹⁰⁹⁰ [UN Doc. E/CN.4/2004/Add.2](#), paragraph 43

4. Another bill rejected by the Guardian Council, intended to grant more liberties was a bill forbidding eavesdropping and tapping telephone calls or other means of communication.¹⁰⁹¹
5. If the right to freedom of expression was seen as a direct challenge to the political status quo, so was the right to information from outside Iran seen as bearing just as much “counterrevolutionary” potential. In fact, the concern for the potential of Western media was based on the appreciation that the Islamic Revolution could not have been possible without the BBC. As such, the state had made continuous efforts since 1979 to ban and jam TV and radio services from abroad. However, since the *Majlis* had passed the law in 1995 banning the use of all satellite dishes, over three million dishes had been sold in Iran. Given the bill’s evident ineffectiveness, the 6th *Majlis* revoked it in January 2003 and permitted the use of all such devices.¹⁰⁹²

The 6th *Majlis*, undoubtedly, proved to be the most influential forum for voicing dissent with the status quo, undertook reform through legislation and, for the first time since the Iranian Revolution, provided for genuine political debate with a plurality of opinion and criticism. A dramatic symbol of both the parliament’s commitment to human rights, as well as its powerlessness at protecting them through the rule of law, was the decision in October 2003 of 109 *Majlis* Deputies to go on hunger strike in protest against the violations of the basic rights of political prisoners.¹⁰⁹³ Essentially, what presented itself to Britain was the imbalance of power in the Iranian political system. More than ever before, the *Majlis* had become a battle ground between Iran’s democratic elements and the Guardian Council as well as the judiciary. The latter institutions, backed by the

¹⁰⁹¹ *Iran Focus*, Vol.16, No. 8, September, 2003, (Shahrivar-Mehr 1382), p.11

¹⁰⁹² *Iran Report*, Heinrich Böll Stiftung, Nr.1/ 2003, p.3

¹⁰⁹³ The main target of their protest was the plight of pro-reform figure Abbas Abdi, who had been detained for publishing an opinion poll suggesting that the Iranian people favored better relations with the US. *Iran Focus*, Vol. 16 No. 9, October, 2003, (Mehr–Aban 1382), p .12; At the height of factional debate in parliament (between 2001 leading to May 2003 when Khatami’s Twin Bills were rejected) a number of Deputies were even summoned by the judiciary because of speeches they made during plenary sessions. The *Majlis* presiding board eventually decided to ignore such judicial actions and decided not to pass on the summonses to deputies as they “enjoy parliamentary immunity.” *Iran Focus*, Vol. 16, No. 5, May, 2003, (Ordibehesht-Khordad 1382), p.14

Supreme Leader and the Iranian Revolutionary Guard Corps ¹⁰⁹⁴ presented, however, a formidable force obstructing the protection of human rights in general and that of Article 19 in particular. As Ghanea stated: “Increasingly the evidence has shown that Iran has a Constitutional system that has the veneer of democracy and balance of powers, but that in reality its framework makes the very notion of the independence of the judiciary [...] impossible.” ¹⁰⁹⁵ Concerning this stalemate, Lord Sudbury at the House of Lords commented that the “checks and balances [in Iran] have led to immobilism and deep frustration” and whilst existing British efforts at depoliticising the judiciary proved crucial what was fundamental for Britain was to assist “the Iranians to evolve their own constitution in a peaceable way [...]” ¹⁰⁹⁶

7. The EU’s Priority Shift: From Human Rights Concerns to Strategic Interests

Given this constitutional deadlock and the principal role of a reformist dominated parliament in the advancement of human rights, EU and British human rights diplomacy should have been led by the principle of supporting this very linchpin of democracy in Iran. Nonetheless, in the run up to the 2004 parliamentary elections, it became obvious that the EU had shifted to the U.S. stance on pressuring Iran to comply with the NPT and to fully expose its nuclear facilities to the IAEA. ¹⁰⁹⁷ Moreover, in the aftermath of the Iraq invasion by the U.S. and Britain, Iran’s strategic role in a post-Saddam Iraq and Persian Gulf became another priority for Britain. ¹⁰⁹⁸ This diplomatic paradigm effectively shifted attention away from concerns over human rights. What had been a fundamental support for the reformist cause, played now directly into the hands of the

¹⁰⁹⁴ It should be noted that Ayatollah Mowaheddi Kermani, Deputy Chairman for the IRGC “reminded” *Majlis* Deputies that it was the IRGC’s role in monitoring their loyalty to the *velayat-e faqih* and Islamic principles. Given the level of power as well as the impunity the IRGC enjoys in the Iranian political system, their role in intimidating the Deputies proved considerable. For Kermani’s speech see [Iran-Report](#), Nr.6 / 2003, pp.5-6

¹⁰⁹⁵ Written evidence submitted by Nazila Ghanea in House of Commons, Foreign Affairs Committee, [Human Rights – Annual Report 2005-06](#). HC 574, Ev 133

¹⁰⁹⁶ [House of Commons, Hansard](#), 13 November; Column 1718; Notable projects by the British government included: technical assistance relating to the rule of law and administration of law, specialised training for judges working with juveniles through UNICEF, human rights training for young adults and a familiarisation visit by 5 Iranian judges to the UK in March 2002. see [House of Commons, Hansard](#), Column 317 WH

¹⁰⁹⁷ see [Bulletin of the European Union](#), 10/2003, paragraph 1.29.66

¹⁰⁹⁸ for Foreign Secretary Jack Straw’s visit to Iran to secure Iranian commitment to play a positive role in Iraq. see [IRNA](#), 10 June, 2003

hardliner establishment and actively undermined the reformists' position. In fact, the British government noted the deterioration of human rights months prior to the elections¹⁰⁹⁹ as did the General Affairs Council of the EU: “ On the eve of the parliamentary elections scheduled for the beginning of 2004, it remained troubled by the situation with regard to freedom of opinion and expression and the resultant arbitrary detention. [...] and urged the government to speed up reform of the system of administration of justice [...]”¹¹⁰⁰

7.1 Roundtable on Administration of Justice

The roundtable held in June 2004 dealt with exactly these issues and raised concerns brought up by the UN Working Group on Arbitrary detention, which stated in its findings that prisoners of conscience are punished twice over as they have not only been denied their right of freedom of expression but also the right to fair trial. It also noted that situations of arbitrary detention were essentially related to infringements of freedom of expression and opinion.¹¹⁰¹ Hence, the EU delegation pushed for reforms concerning the due process of law, abuse of “solitary confinement”, the continuous role of revolutionary courts in convicting prisoners of conscience and the failure to appreciate the principle of proportionality in passing sentence.¹¹⁰²

7.2 Disempowering the Reformists

Europeans fully appreciated that the political environment before and during the roundtable on administration of justice had drastically changed. Following the

¹⁰⁹⁹ House of Commons, Hansard, 19 October, Column: 177WH- 190WH

¹¹⁰⁰ Bulletin of the European Union, 10-2003, paragraph 1.2.11

¹¹⁰¹ UN Doc. E/CN.4/2004/3/Add.7, 27 June 2003, p.20

¹¹⁰² see Danish Institute for Human Rights, Collected Papers From the Fourth Roundtable Under the EU-Iran Human Rights Dialogue, Tehran, 14-15 December 2004 “Administration of Justice and Promotion of International Cooperation and Solidarity in the Field of Human Rights”, (Copenhagen, Danish Institute for Human Rights, Copenhagen, 2004); It should be noted that the British FCO launched several projects for joint ventures with the Iranian and British Judiciary and Iranian and British Bar Association. together with Penal Reform International, launched several projects in 2001 and 2002 in order to improve the administration of justice. A Juvenile Detention Centre in Tehran became the pilot project. Stated improvements included the overcrowding and alternative punishments for prison detention of people, such as drug addicts, petty offenders and economic crimes. IRNA, 13 April, 2003

“parliamentary coup d’état” in the election of the 7th *Majlis* in February 2004, the EU had not only lost a reformist majority in the Iranian legislative, but in many ways had lost credibility. Because it put all its diplomatic weight on the NPT issue, thus only staying committed to human rights in rhetoric, the EU and especially Britain had in fact contributed to the revival of hardliners in mainstream Iranian politics. By solely dealing with Hassan Rohani, specially appointed by Khomeini to negotiate with the nuclear issue, Khatami’s cabinet was being completely undermined and increasingly marginalized. When the EU-3 (Britain, Germany, France) proposed a package of inducements to Iran in December 2003, including new trade talks for the TCA, an EU commitment to supply Tehran with enriched uranium and the prospect of WTO membership,¹¹⁰³ the elite in Iran eventually conceded. Though the inducement excluded any real security arrangements, thus evidently lacking a vital element for sustainability and trust on part of Iran, the Iranian delegation did concede and signed the Additional Protocol to the Nuclear Non-Proliferation Treaty, thus committing itself to all cessation of uranium enrichment and subject itself to IAEA inspections.¹¹⁰⁴ For Straw, Fischer and de Villepin, this proved critics in the US wrong and as Ansari put it “was a showpiece event, intended to prove to the world that diplomacy and the methods of Old Europe could yield results.”¹¹⁰⁵ For the Iranian establishment the support of the protocol reflected more a wider strategy for regime survival rather than genuine commitment to concession on the nuclear dossier. The intention was to show to the EU and the USA that the conservative establishment is capable of moderation, that only they possess the necessary power to do business and, most importantly, was a move intended to avoid a possible US-reformist pact.

First indications of a hardliner resurgence came with the May 2003 municipal elections, when reformists lost their majority in local councils. Even if the factor in this defeat was

¹¹⁰³ Initial inducements offered Iran to attain “Most Favoured Nations Status” as a dry run for WTO membership. Interview with FCO Official “B”, Full fledged WTO membership was offered to Iran in 2004; House of Commons, Hansard, 10 January, 2005, Column: 37W; Interview. M. Lamek, French Embassy in Tehran, (Tehran, 2, September, 2004)

¹¹⁰⁴ *see* “Iran Commission welcomes Iran’s signature of the Additional Protocol to the Nuclear Non-Proliferation Treaty, EU Press Service No. IP/03/1782, Brussels, 18 December, 2003

¹¹⁰⁵ Ali M. Ansari, Confronting Iran – The Failure of American Foreign Policy and the Roots of Mistrust (London, Hurdst& C., 2006), p. 205

not increased popularity for the conservatives rather than low turnout¹¹⁰⁶ the reformists' legitimacy had now become undermined both internationally as well as among its own constituents. As Khatami said: "Results of the recent elections increase concerns about the future of the Revolution." He added that "People become disillusioned when they get the impression that the policies of the leaders do not correspond with their expectations and they end up turning their backs on the whole system."¹¹⁰⁷ The most devastating blow to the embattled president and his reformist camp came with the February 2004 elections for the 7th *Majlis* which in quite a literal sense constituted an earthquake on Iran's political scene. Following the signing of the Additional Protocol in November 2003, the IAEA established Iran's failure to "make a full disclosure of its nuclear activities" and concluded that Iran had been developing more sophisticated uranium enrichment centrifuges than it had previously admitted.¹¹⁰⁸ Whilst this was information the Europeans and the British had known all along, the EU conveyed to Tehran that faced with the clandestine programme, now officially acknowledged by the UN, the promised rewards for nuclear cooperation, could not be granted. When the National Security Adviser, Rohani, on Khomeini's order, withdrew from the Comprehensive Dialogue, Europeans decided to manoeuvre cautiously in order not to jeopardize what they considered crucial international security concerns.¹¹⁰⁹ It is against this background of deadlock that one has to understand European reactions in the face of the "parliamentary coup d'état" in February 2004. Further tilting the balance in favour of hardliner factions, the Guardian Council decided to debar over 2000 reformist candidates for the elections of the 7th *Majlis* thus securing a hardliner majority.¹¹¹⁰ After four years of "hard struggle" the hardliners thus finally managed to regain control over the *Majlis* through what Tehran

¹¹⁰⁶ Only 12% of Tehran dwellers went to the polls, compared with a turnout of only 25% in other big cities. This was far lower than any previous elections. Another reason for the reformists' failure as four of the 18 reformist groups were competing for seats on the Tehran council.

Iran Focus, Vol.16, No. 3, May 2003, (Esfand 1381–Farvardin 1382), p. 10

¹¹⁰⁷ *ibid*, p.4

¹¹⁰⁸ *see* "Implementation of the NPT Safeguards Agreement in the Islamic Republic of Iran Resolution adopted by the Board on 13 March 2004" IAEA - Board of Governors [Un Doc. GOV/2004/21](#) 13 March 2004

¹¹⁰⁹ Interview with Commission of the European Union, Director for External Relations with the Mediterranean and the Middle East, (Chief Negotiator for the TCA with Iran) St Andrews, 5 March, 2005

¹¹¹⁰ *Asian Affairs*, Vol.8, No.89, March 2004, pp.10-14

Deputy, Mohsen Mirdamadi called “ a non-military coup d’état.”¹¹¹¹ Such frustration was equally voiced by Deputy Mussavi-Khoeniha who said:

According to the constitution, after electing the supreme leader, the Assembly of Experts should also control his actions. ... Was there any control over the organs under the supreme leader for the elections to satisfy justice, sincerity or fairness? [...] Why spend so much money to organize such elections? It would have been better value not to have them at all and just put the government in the hands of a minority.¹¹¹²

The two most important reformist organisations - the Islamic Iran Participation Front and the Association of Combatant Clerics (*Majma'e Rohaniyoun-e Mobarez*) - were amongst the most severely hit parties affected by the disqualification. Before these groupings together with ultra-reformist groups, such as the Organisation of *Mojahedin* of the Islamic Revolution, lost almost all of their seats in the *Majlis* they staged sit-ins, resigned in protest and voiced their outrage in the reformist newspaper, two of which were shut down days before the election. Essentially, the disqualification of reformist candidates constituted the end of a reform orientated dominated parliament, which had proven so important and cooperative with European demands for improving human rights standards. What the reformist needed at that time was unconditional commitment by the EU to support their cause. With regards to the stated objectives in the Human Rights Dialogue, a strong and united EU position against the election fraud would have been needed to save the reformist cause from hardliner usurpation. However, what the EU response reflected was a commitment to what they considered international security and strategic concerns rather than to human security. In an effort not to further alienate the hardliners and keep them in negotiations over the nuclear issue, the Europeans responded with acquiescence rather than strong condemnation.¹¹¹³ What was more significant than this lack of genuine diplomatic protest on behalf of the EU, in particular with regards to British – Iranian relations, was Britain’s humanitarian reaction to the earthquake in Bam.

¹¹¹¹ *Iran Focus*, Vol. 17, No. 3, March 2004, (Esfand–Farvardin 1382), p.9

¹¹¹² *ibid*, pp. 8-9

¹¹¹³ The General Affairs Council mildly “regretted that many candidates, including sitting members of the *Majlis* were prevented from standing in the February elections, thus making democratic choice impossible, *Bulletin of the European Union*, 1/2 2004, paragraph 1.6.122; Information on the EU tactic to get hardliners back to the negotiation table is based on Interview with EU Commission Official

¹¹¹⁴ Iranian politicians and their constituents were outraged to discover that far from condemning the electoral fraud, the British government had decided that this was an appropriate opportunity to send Prince Charles on a humanitarian visit to the shattered city of Bam. What was the first royal visit since 1975 was seen by many as a blessing conferred on the coup. ¹¹¹⁵ Concerning the right to freedom of expression, the 7th *Majlis* moved quickly to propose a bill, which included provisions for prison sentences of one to three years for publishing “information that poses a threat to the country’s internal or external security”, and five to fifteen years if the information is passed to “foreign States or foreign organizations”. Moreover, the dissemination of “false information” about the Supreme Leader or other state officials would be punishable by six months in prison and 10 million Rial fine. The bill also gave the police the right to search Internet users’ homes without a judge’s authorization and the right to confiscate any computer equipment and files of any persons involved in Internet activities. ¹¹¹⁶ Legislation of this kind was just a taste for the EU of what was to come with a conservative dominated *Majlis*. If human rights had really been Europe’s priority, member states, particularly the EU-3, should have empowered the reformists rather than contributed to their marginalization.

8. Conclusion: Defending the Right to Freedom of Speech in Iran: A Question of Power

Findings on Europe’s “Comprehensive Dialogue” with Iran between 2000-2004 indicated strengths and limits of a policy of constructive engagement. By and large, success and weakness of this policy directly reflected fluctuating power asymmetries between sender and target state as well as imbalances of power within the complex political system of the latter.

Europe’s TCA negotiation with Iran proved an effective political and economic carrot. Given socio-economic realities in Iran, this economic incentive exerted considerable

¹¹¹⁴ For EU humanitarian efforts responding to the earthquake see Bulletin of the European Union, 1/2-2004, paragraph 1.6.95

¹¹¹⁵ *The Times*, 9 February, 2004

¹¹¹⁶ Summary of cases transmitted to Governments and replies received. Commission on Human Rights, UN Doc E/CN.4/2005/64/Add.1, 29 March 2005, paragraph 468

influence over Tehran. The fact that various economic bills had been passed by the *Majlis* and approved by the Guardian Council in an effort to meet EU demands supports this argument. By the same token, however, reformists, as represented in government and legislative, were unable to match these initiatives of economic liberalisation in the political realm. The Guardian Council and the judiciary, backed by the Supreme Leader, armed forces as well as parallel institutions proved to be a formidable impediment against progressive legislation being implemented into legal statutes. This was particularly the case for bills concerning the protection of human rights. As has been shown, the 6th *Majlis* passed vital legislation in order to ratify various international human rights regimes; all of which had been vetoed by the Guardian Council.

The reformists, as represented in the executive and legislature as well as civil society proved to be Europe's primary facilitator for change concerning both respect and protection of human rights. Under Khatami, the government provided mechanisms and inspection procedures dealing with human rights violations. Efforts to protect the right to freedom of expression ranked particularly high on the reformists' agenda as reform-minded activists, politicians and lawmakers themselves became subject to restriction on exercising Article 19 of the ICPCR. Such unconstitutional constraints, as well as coercion tactics on behalf of the judiciary and vigilante groups coupled with Khatami's commitment to constitutionalism inherently stemmed the political momentum of the reformist movement.

Since the reformists' only real power asset had been legitimacy, Europe's multi-track approach of giving members of Iran's activist community, intelligentsia and members of the reformist government an active stake in the dialogue, proved an effective strategy of empowerment. This is particularly true for members of civil society, which following their participation at these roundtables enjoyed a certain level of immunity in their advocacy work. EU as well as bilateral British initiatives at depoliticising human rights and emphasising their legal value proved equally vital. Most significantly, the roundtables provided a forum for Iranian civil society to approach the human rights discourse from within *Sh'ia* discourse and to point to existing constitutional provisions

for the protection of human rights, thus uncovering the very secular realities of human rights violations in the Islamic Republic.

Whilst reformists had been locked in a constitutional deadlock, which was maintained by hardliner elements, enjoying considerable levers of power in Iran, so was the “Comprehensive Dialogue” subject to changed asymmetries of political and economic interdependence between Europe and Iran.¹¹¹⁷ Europe’s priority shift from concerns over human rights to the nuclear issue largely reflected these power fluctuations. These realities were essentially a product of Britain’s decision to invade Iraq and had ultimately jeopardized the EU’s policy of constructive engagement with Iran. For all its wider domestic and international implications, the invasion of Iraq, which was not only contrary to the UN Charter but also witnessed a series of war crimes committed by the occupying forces, had seriously damaged Britain’s credibility at promoting human rights. More significantly, however, it left Iran in an unrivalled position in the Middle East and as the Foreign Affairs Select Committee put it possessed “the potential to be a destabilising factor in Iraq.”¹¹¹⁸ Britain was quite literally in Iran’s backyard and increasingly felt its vulnerability towards Iran’s influence over Iraq’s *Shi’a* majority. The extent of this strategic vulnerability became evident when an Iranian Revolutionary Guard patrol boat intercepted two British vessels in the Shatt al-Arab waterway, captured the eight sailors and threatened Whitehall with their prosecution.¹¹¹⁹ Whilst Britain managed to solve this diplomatic crisis¹¹²⁰, there was little doubt left that Iranian military and political capabilities could directly threaten Western interests in the region. The seemingly increasing strategic threat that Iran was posing coupled with its alleged nuclear ambitions proved unacceptable to Europe. Essentially, concerted efforts to sway Iran to give up these ambitions reflected the West’s fear of allowing Iran to attain regional hegemonic status as well as nuclear capabilities. Ironically, Iran’s security perceptions on which such

¹¹¹⁷ Following the invasion of Iraq, crude oil prices grew steadily and reached \$ 38 by 2004, which was almost \$ 10 above the 2003 level, *see BP Statistical Review of World Energy*, June 2005

¹¹¹⁸ House of Commons, Foreign Affairs Committee, Iran – Third Report of Session 2003-04, 9 March 2004, HC80, p.14

¹¹¹⁹ *see* The Guardian, 23 June, 2004

¹¹²⁰ For the Conservatives’ criticism of Straw’s timid efforts to have the servicemen released *see House of Commons, Hansard*, 13 July 2004: Column 1250

ambitions were based, directly corresponded to the West's decision to, yet again, change the political map of the Middle East.

Constructive Engagement: Hypotheses and Variables
CHAPTER EIGHT

Hypothesis	Independent Variable	Dependent Variable
A. The “Comprehensive Dialogue” (CD) adopted by the EU was an effective policy for promoting human rights in Iran.	EU economic and political power used its economic and political might in order to engage in a human rights dialogue with Iran.	Both parties followed a strategy of TFT. The EU offered a Trade and Cooperation Agreement (TCA) for improvements in human rights. The Iranian government reciprocated and passed respective pieces of legislation, but was impeded by C. and D.
B. Economic and political asymmetries in EU-Iran relations, allowed the European Union to dictate the terms of the dialogue and demand political and economic changes.	Iran’s <i>vulnerability</i> to the EU being capable of making changes in their relationship, made the EU for <u>most</u> of the CD more powerful than Iran. This allowed the EU to initiate “cooperative moves”, which influenced Iran’s decisions.	The Iranian government and parliament reciprocated these “cooperative moves” ⇒ TFT followed. In anticipation of economic rewards, the Iranian executive and legislative met EU demands in political and economic terms. (i.e. new economic and HR legislation, creation of institutions to protect HR, genuine commitment on part of the government to implement the rule of law and promote and protect HR in the country) Efforts were jeopardized by C. and D.
C. Strategic shifts in EU-Iran relations affected the EU’s ability to sway Iran concerning HR.	The EU’s perceived <i>sensitivity</i> to strategic changes taken place in the Gulf (i.e. alleged Iranian nuclear ambitions and the occupation of Iraq) led the EU to shift its priority from human rights to security concerns.	The EU, in an effort to keep Iranians at the negotiation table on the nuclear dossier, acquiesced when conservative forces staged a major “election coup d’état » in the February 2004 parliamentary elections. This had severe ramifications for the protection of HR in Iran.
D. Level I negotiations were subject to Iranian domestic constituents. Level I negotiations were caught in domestic power struggles.	a) Level II (domestic) “win-sets” were supported by “internationalist forces” (i.e reformists), but were constrained by the “isolationist” (conservatives and their political allies in unelected state institutions)	Whilst the Iranian government and parliament met EU demands and introduced new HR legislations and procedures to protect HR, conservatives and their various allies and cronies worked against most of

	camp.	these efforts and thus prevented most changes in HR legislation and protection of HR to be implemented.
	b) NA	NA

CONCLUSION

The aim of this thesis was to prove that a strategy of constructive engagement is best suited at promoting human rights in foreign policy. The case of British-Iranian relations and Britain's policy of "Critical Dialogue" and "Comprehensive Dialogue" towards that country was used to test this thesis.

On theoretical grounds, the aim was to elaborate on the idea behind a strategy of constructive engagement. Drawing essentially on liberal-institutional, game-theoretical findings on inter-state cooperation and diplomatic practices, the model of constructive engagement helped to conceptualize British efforts at exercising influence on Iran. Overall, the premise was that soft-power and non-coercive "hard power" resources, such as positive sanctions, are sustainable means in promoting and protecting human rights as well as resolving conflict. It was argued that the EU-CFSP is mainly based on its transformative power and was identified as a foreign policy strategy of constructive engagement based on soft power and non-coercive hard-power assets.

Given the fact that the main contention between Britain and Iran was the Rushdie affair, which was treated as the right to freedom of expression, the focus throughout the thesis was, therefore, Article 19 of UDHR and the ICCPR. The methodology used throughout was to identify extents of power and diplomatic leverages in order to explain negotiation behaviour and negotiation outcome. Reports by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression and by the (former) Special Representative on the situation of human rights in the Islamic Republic of Iran, were used to identify developments in that area of human rights.

Empirically, the thesis was thus divided into two parts:

1. British implementation of the European Union's "Critical Dialogue" seeking to resolve the Rushdie issue

2. British human rights diplomacy towards Iran within the European Union framework of the “Comprehensive Dialogue”

The Fatwa

Khomeini's *fatwa* against British citizen Salman Rushdie resulted in the break of relations between both countries and was followed by numerous attempts to kill the author and persons associated with the *Satanic Verses*. Essentially, British diplomacy towards Iran in the aftermath of the *fatwa* attempted to resolve an issue, which was unique in international relations history. When Rushdie was brought to court in Britain on charges including offences against the sacred, the respective court rulings which dismissed the cases against him, established that what was at stake was freedom of speech. By the same token, however, these verdicts also further sharpened the controversy concerning the scope of blasphemy laws in England and Wales. Faced with what they considered blatant hypocrisy on behalf of the state, the Muslim Community in Britain felt alienated and frustrated. As such it was argued that the Thatcher government failed to appreciate the changed multicultural character of British society and failed to positively engage with that community. Given the fact that the motivation for Khomeini to issue the death sentence against Rushdie should be seen more in the light of Iran's domestic political scene rather than solely from a religious perspective, a more sensitive approach by the Home Office - whilst holding on to the principle of Article 19 - could have diffused outrage felt by believers in Britain and abroad. Britain's commitment to Rushdie's right to freedom of speech initially failed to convince the Iranians of the unintentional non-political, non-blasphemous character of the novel. In fact, the government in Tehran under Khomeini's leadership had become alienated by the fact that, what religious and political elements considered to be an offence against the sacred, was so vehemently defended as a human right by Britain.

The immediate period following the *fatwa* also demonstrated to what extent economic and political interdependences between both countries influenced British statecraft and the capability to sway Tehran. It has been shown that several political and economic factors, which referred to the fate of the hostages in Lebanon and British prisoners in

Iran, as well as the possible impact upon trading prospects, proved fundamental in crafting a strategy towards Iran. At the same time, though it was evident that what was at stake for both countries were fundamental belief and values systems. It was apparent during that period that the respective export and defence of either of such belief systems, was subject to power leverages caused by asymmetries of interdependence. In fact, the fate of the hostages as well as Iran's crucial strategic position in the Gulf following the defeat of Iraq in 1991, left Britain no choice but to seek re-establishment to the *Chargé d'Affaires* level.

The years 1992 – 1994 witnessed a change in British diplomacy towards Iran, which in the face of severe violations of human rights within and outside Iran and the attacks on persons related to Rushdie, had no chance other than to adopt a firm stance towards Tehran. As demonstrated, a Tit For Tat approach with Iran, as an active intermediary, was successful at bringing the British hostages in Lebanon back. This was particularly important as their fate had also been linked to the Rushdie issue. For this reason, this period presented a window of opportunity for Europe to engage in genuine conditional diplomacy as pragmatist-technocrats under new President Rafsanjani were genuinely seeking *détente* with the West. Given the level of human rights violations inside and outside the country, which were all directed against dissidents and actively sought and perpetrated by the Iranian government, it was evident that Rafsanjani was more interested in developing Iran's political economy than in political reform. The technocrat's tactic was to create an economic stake for the West in Iran, rather than follow an agenda for political reform, which could have positively impacted the situation of human rights in Iran.

Most importantly, against Whitehall's new firm stance, stood the German government, which followed its own agenda. Perceived asymmetries in German-Iranian interdependencies dictated German diplomacy and considerably jeopardized the policy of Critical Dialogue, which it had advocated so vehemently. On paper, the Critical Dialogue constituted a policy of constructive engagement. Germany, however, a key player in the EU with regards to Iran, followed more a policy of unconditional diplomacy towards

Iran. Rather than demanding meaningful changes on the human rights situation and on the Rushdie front, good bilateral relations became an end in itself rather than an incentive, as originally stated at the Edinburgh Summit in 1992. It is evident, that asymmetries in interdependence between both countries were in favour of Iran.

Findings indicated that Britain was serious about bringing about change in Iran. In fact, the initiative of launching the Critical Dialogue with Iran owes much to Downing Street's commitment to achieving a diplomatic solution to the Rushdie affair. Domestically, however, it has also been revealed that the government's pledge to defend Rushdie's right owes a lot to lobbying efforts by human rights groups, most notably "Article 19". Nonetheless, the British government was instrumental at keeping the Critical Dialogue going and gave that particular Common Foreign and Security Policy an urgent and tangible objective.

By 1995, EU member states eventually aligned themselves with the British position and adopted a unified approach. This manifested itself in the Juppé initiative, which in line with the theory outlined, consisted of problem-solving roundtables designed to depoliticize the matter for the Iranians. Ironically, Germany's resolute stance following the developments of the "Mykonos Trial", presented Iran with the loss of its most important European political ally and further aggravated various power centres in Iran. In addition to the Two-Level game Iranian diplomats had to play, Britain demanded genuine commitments from the Iranians for Rushdie's safety. When Iranian behaviour failed to convince the British of their sincerity, negotiations eventually reached a stalemate.

This diplomatic deadlock proved, however, the vital element on which the FCO could build a renewed initiative for a final resolution. By then, the Rushdie affair had become ripe for resolution. Pre-negotiations and confidence building measures, which had been taking place under Foreign Minister Velayatti, but which failed to reflect a genuine sustainable political commitment from all political players in Iran, paved the way for Khatami to settle the dispute. With the arrival of Khatami on Iran's political scene, the British dealt with a new Iranian government, which genuinely sought détente abroad and

political and economic reform at home. Given the momentum Khatami enjoyed in the country, he was able to manoeuvre diplomatically to that extent, which allowed him to meet British demands for a sincere commitment to guarantee Rushdie's safety without losing face in Iran. Whilst EU member states were largely subject to fluctuating asymmetries in European-Iranian interdependence, Britain enjoyed relative independence towards Iran. This allowed the British government a margin for diplomatic manoeuvring and for offering economic incentives to the Iranian government to finally close the Rushdie affair.

In conclusion, Britain managed to resolve an international crisis through a diplomatic strategy of constructive engagement. Essentially, Whitehall successfully ended an affair, which had directly threatened the life of a British subject and his associates and in fact, had killed two persons related to his work. More than that, the fact that an author was sentenced to death for writing a novel caused a worldwide intellectual and political debate about the role and impact of religion in politics, law and international relations. With Huntington's book three years later, many commentators went so far as to label the "Satanic Verses" as an example of the coming clash of civilizations. On a less portentous level, it also added the concept of *fatwa* to the practise and discipline of international relations. Because, of these fundamental implications, the Rushdie affair affected more than just bilateral relations and Whitehall's decision to engage with rather than contain Iran was crucial to find a sustainable solution. Ultimately, the Rushdie affair would not have been possible to solve without a policy of constructive engagement.

Impact on the Right to Freedom of Expression in Iran

Unlike US diplomacy towards Iran since 1979, the critical and comprehensive dialogue was implemented based upon the appreciation that Iranian politics could evolve towards an emergent Islamic democracy managed by the Iranian polity rather than imposed by exogenous forces. Europe's constructive engagement acknowledged the fact that Iran, as a civilizational entity, had a sophisticated philosophical occupation with the notion of human rights and continued to be one of the most politically mature countries in the

Middle East. For Europe's diplomatic approach, this meant the need to support liberal tendencies within Iran, allowing them to influence the conservative and undemocratic elements and essentially supporting them in their endeavour to institutionalise rule of law and respect for human rights.

As has been concluded, during the early years of the Critical Dialogue, the stated EU efforts of promoting and protecting human rights were considerably jeopardized by the lack of coordination and commitment amongst member states as well as perceived power asymmetries in favour of Iran. Because of the Rushdie affair, the British government had been the most critical EU member state (together with the Nordic countries) towards the Iranian government. Human rights diplomacy during the phase of the Critical Dialogue mainly consisted of EU efforts at the UN Human Rights Commission to table and pass resolutions condemning Iran for violations. As such, the Critical Dialogue was by and large a policy of naming and shaming through the UN mechanisms. Such international criticism did affect the ruling elite and efforts were being made to diffuse such condemnation rather than to actually deal with these concerns expressed by the international community. Therefore, concerning the situation of freedom of speech in the country, Iran witnessed the paradox of pragmatists engaging with the West and of radical elements, mainly associated with the Ministry of Intelligence, continuing to crack down on dissidents at home and abroad. Ironically, what was lacking during the Critical Dialogue were effective mechanisms to constructively engage with Iran and find solutions to what Europe and the UN considered to be violations of human rights. In conclusion, with the exception of the British government, EU member states largely followed a policy of diffuse linkage, failing to clearly make relations conditional upon tangible human rights improvements.

This changed with the launch of the Comprehensive Dialogue. The framework of this dialogue contained political and economic incentives for Iran in exchange for the realization of European demands for change. In addition to conventional Track I condemnation of human rights violations, EU diplomacy intended to promote a rights culture in which rights make sense through a multi-track approach involving international

and Iranian NGOs and activists. This proved particularly effective and was based on the appreciation that rights are best seen as a by-product of a functioning ethical community, and not as a phenomenon that can be taken out of context and promoted as a universal solution to the political ills of Iran. It provided a valuable forum for members of Iran's emerging society in their efforts to build such an ethical community based both on the rule of law as well as on Islamic principles. The fact that the 2003 Nobel Peace Prize was awarded to an Iranian human rights activist sustains this notion that Iranian civil society needed support and an international platform and that reform can come from within an Islamic discourse. Overall, the assessment of the human rights dialogue has produced the following findings:

1. Conditional diplomacy towards Iran was effective in the sense that reformists represented in government, parliament and the Foreign Ministry positively responded to incentives and offers by the EU. Looking solely at these groups, the policy of constructive engagement was effective in that it succeeded in dialogue and the extraction of political concessions. However, the research findings also showed to what extent ideologically driven elements in Iran's political system, managed to jeopardize these efforts by what one could call rationally guided groups.
2. The multi-track approach adopted by Europe actively incorporated Iran's civil society at a time when it needed support in terms of capacity-building and a forum to voice dissent as well as to elaborate on the reformist agenda in a human rights discourse. The dialogue certainly helped reformists to gain political momentum.
3. Concerning the right to freedom of expression, the outcome has been twofold:
 - a. Under Khatami's presidency, the right to freedom of expression was a political right granted to Iranians the least, yet exercised the most. The administration attempted to encourage open political debate and an independent media. Before the judiciary's backlash against media outlets, in the early years under Khatami, Iranians enjoyed and exercised their right to freedom of expression. To a considerable extent, the Iranian parliament (6th

Majlis) had been instrumental in the right of freedom of speech being upheld, for it constituted a genuine plenum of a plurality of opinions and passed legislation intended to guarantee freedom of speech. Thus, the executive and legislative advocated the right to freedom of expression without fully being capable of providing legal protection for this right.

- b. The political implications of the right to freedom of speech were such that the judiciary, acting on behalf of the unelected establishment, actively undermined any efforts by the legislature and executive to protect this right. The organised crackdown against Iranians voicing their opinion still carries serious consequences for persons, all of which are contrary to Article 19 and other clauses in the ICPCR to which Iran is a state party.
4. EU demands for the ratification of international human rights regimes were met by the Iranian parliament, which passed several bills and the judiciary passed moratoria (even though controlled by the conservatives), which corresponded to respective thematic roundtables.
 5. EU demands for the proper implementation of the International Covenant for Political and Civil Rights and the International Covenant for Economic, Social and Cultural Rights into Iran's legal statutes were not met. Corresponding to the concerns raised at the roundtable, the Iranian government failed to implement and adapt legislation in such a way as to meet the benchmarks set by the EU and by these universal human rights regimes in general.

Over a decade of European engagement with Iran has shown both achievements and limits for a policy of constructive engagement to promote and protect human rights in that country. An advocate for the continuation of such a strategy with Iran would point to the fact that there is no real alternative to engagement.

Although this thesis did not base its findings on a comparative analysis with U.S. foreign policy towards Tehran, containment on its own clearly failed to achieve any tangible improvements of human rights in Iran. Whilst, it is true that, to a certain extent, the EU and the U.S. played a “good cop bad cop” game, engagement rather than containment is the only option for the West in its dealings with Iran. It must, however, be backed by the political will to take human rights seriously. Whilst the EU has so far not entered into a Trade and Cooperation Agreement due to the failure to considerably improve the situation of human rights, the EU’s priority shift towards security concerns over Iran’s nuclear programme clearly reflected changed asymmetries in political and economic interdependence. Europe’s acquiescence to the “parliamentary coup d’état” in February 2004, which by and large contributed to the gradual marginalisation of reformists, attested to this paradigm change. Nonetheless, these new security perceptions felt by Europe as well as Iran are closely intertwined and are directly related to the invasion of Iraq - an event over which Iran had no influence. For all its wider political implications in the Middle East, the Iraq invasion had two immediate consequences on the EU-Iran human rights dialogue. Firstly, Iranians rightly pointed to the blatant disregard for the UN Charter and subsequent war crimes committed by the occupying forces in Iraq. Ultimately, Britain’s decision to take part in the invasion of Iraq deprived the Europeans of some considerable legitimacy to condemn human rights violations in Iran. Secondly, the political and military implications inherent in an occupied post-Saddam Iraq left Iran in an unrivalled strategic position in the Middle East. It is from this perspective that one should see Europe’s policy shift from focusing on Iranian commitments under ratified international human rights regimes to demands to live up to its obligations under the non-proliferation regime. Thus, it is somewhat ironic that the perceived military danger Iran is posing to Western interests largely reflected the West’s decision to, yet again, change the political map in the Middle East. After all, the experience from engagement with Iran should have shown EU policymakers that Iran’s young and educated society as well as reformist movement constituted a genuine and sustainable future guarantor for the respect of human rights. Rather than dealing with an unelected elite for the sake of alleviating concerns over Iran’s nuclear programme, one should appreciate the fact that a truly democratic government in Iran, backed by a great majority of Iranians, is the only true

safeguard for human security in Iran and could well be the only one for international security outside Iran.

Recommendations

1. Since the assessment of the Comprehensive Dialogue with Iran indicated both structural strengths as well as weaknesses of that policy, the most important premise is for the EU to get it right. During the period of the Critical Dialogue, member states largely relied on a tactic of naming and shaming through the UN mechanisms and “outsourced” much of their self given responsibility to promote and protect human rights in third countries (especially after 1995) to procedures and mechanisms within the UN system. When the European Union eventually initiated a genuine form of conditional diplomacy towards Iran, policy-makers tended to give Iran the benefit of the doubt and abstained from tabling resolutions at the UN Human Rights Commission. Such premise, i.e. a peaceful dialogue among states, carries the risk that friendly relations will become an end in itself. Therefore, the primary rationale for the EU’s engagement with Iran should be to demand meaningful changes in the field of human rights, which involves own initiatives as well as to continue to work through and with the UN system. A starting point for such work would be the re-appointment of a Special Representative on Human Rights for Iran.
2. It is true that the irregularity in EU-Iranian interdependence dictated diplomacy on both sides. It has, however, also been shown that through concerted efforts on the part of the EU, the CFSP towards Iran does enjoy considerable leverage and that the use of positive sanctions can be effective. Thus, economic and political incentives must continue to be used as a precursor for entering an international regime with Iran, which can serve as short-term problem-solving mechanism and long-term mechanism to exert implicit influence over that country. In the long run, the European Union’s soft power strategy does have the potential to accomplish respective political and legal reforms in Iran. This, however, needs a revised approach.

3. A revised approach for the EU-Iran Human Rights Dialogue would need to treat the issue of human rights on the same level as security concerns. The parliamentary coup d'état in February 2004, and more significantly, the election of Ahmadinejad in 2005, which witnessed the rise of the conservative-right in mainstream politics -which carried the inherent repercussion on the deterioration of human rights in the country- are facts that support such argument. Europe is unlikely to find a sustainable solution to the nuclear issue: a) without giving Iran genuine security commitments; b) if it fails to involve Iran directly into efforts to stabilize post-war Iraq; c) and most significantly, if it turns a blind eye towards ongoing human rights violations in exchange for Iranian assurances on the issue of non-proliferation. What is needed is the political will to build on existing efforts to protect human rights in the country rather than an underlying readiness to sacrifice them for the sake of security. Democracy and the rule of law are the most fundamental safeguards for a stable Iran, which, as a result, could become a genuine ally to the West
4. Improvements of the multi-track aspect of the Human Rights Dialogue are fundamental for Europe to implement successful human rights diplomacy. Iranian NGOs and human rights activists must be recognized not only as equal stakeholders but also as effective agents for change. Whilst the EU incorporated some of these groups into their initiatives - which gave them some degree of immunity- there is still reluctance to accept the fact that groups and individuals in civil society do advocate human rights rather than follow the government's agenda. Capacity-building joint ventures with domestic NGOs either through western human rights groups, through the EU or member states are essential and must be seen as a primary objective. It is through initiatives, which strengthen civil society that a human rights culture can emerge in which people are aware of their rights and in which rights make sense.
5. A very important component of the human rights dialogue was that it succeeded in depoliticising human rights. Exchanges on various thematic aspects of

universal human rights between practitioners and experts stressed the legal value of human rights as well as highlighted the notion of justice; a concept which is in fact fundamental to *Shi'a* doctrine. Hence, instilling a human rights culture must also apply to Track I. As shown, the British government already invited a delegation of the judiciary for technical cooperation. But the key is consistency and commitment on both sides. The FCO together with the British judiciary must continue these exchanges on a regular basis and with more emphasis on education and legal training. It may be true that judges, prosecutors and lawyers in Iran practice law in a framework, which leaves too many loopholes for political manipulation and which fails to provide sufficient safeguards for the protection of human rights. One should, however, also bear in mind that human rights education of practitioners has an effect as it raises awareness and understanding of how human rights ought to be implemented into domestic legal statutes. In 2006, *Shahid Beheshti* University in Tehran is the only institute of higher education, which offers a Masters degree in human rights law. Thus, on a purely educational level, Iran lacks the capacity concerning human rights training. Clearly, the promotion and protection of human rights by member states of the EU, must translate into technical cooperation as well as education. The FCO should launch several programmes in the UK designed for Iranian judges, prosecutors and lawyers respectively to study human rights law in order to consolidate proper administration of justice, the rule of law and judicial reform.

6. By and large, the course of the right to freedom of expression in Iran reflects the evolution of the post-revolutionary reformist and pro-democracy movement in the country. Thus, more than any other human right, Article 19 of the ICCPR and the UDHR seemed to carry significant political significance with apparent potential to jeopardize the very political foundations of the Islamic Republic. As Jürgen Habermas put it after visiting Iran in 2002: “Do these heads contain a powder keg that the regime of the Ayatollahs has to fear more than anything else?”¹¹²¹ In this light, reform of domestic legal statutes allowing for the genuine exercise of

¹¹²¹ FAZ, 14 June 2002

freedom of expression will inherently generate a dynamic environment in which political and intellectual discourse can flourish and in which ultimately a sustainable form of democracy is able to emerge. The following steps must be implemented by the Iranian government to ensure the right to free expression:

- (a) Amendments to the existing Press Laws must be passed in order to impede the suspension or prohibition of newspapers and publications and the arrest of journalists, writers, intellectuals, and artists on the basis of offences against national security. The Press Law carries too much ambiguity, allowing for the use of laws relating to national security as pretext to deny or restrict genuine freedom of expression, opinion and thought. As such, the limitations set out in the Press Law and Penal Code fail to conform to the permissible restrictions set out in Article 19, paragraph 3 of the ICCPR. As the Special Rapporteur on the right to freedom of expression noted: “ In most cases the grounds for these limitations “disturbing the security of the country”; “insult against Islam”; “criticism”; “propaganda” against the State; “issues prejudicial to Islamic codes”; “matters against Islamic standards”; “deviant parties, parties and groups”; “anti-revolutionary forces”; “anti-establishment activities” lack any objective criteria and clear definition, and are therefore open to subjective and arbitrary interpretation by judges implementing them.”¹¹²² In this regard the Commission on Human Rights Resolution 2003/42 also stressed the “need to ensure that unjustified invocation of national security [...] to restrict the right to freedom of expression and information does not take place.”¹¹²³ The role of EU member states and the EU itself is vital in this context and specific demands should be made to the government of Iran to implement these changes.
- (b) Whilst under Khatami the Ministry of Culture and Islamic Guidance virtually approved all license applications for publications, it is contrary to universal human rights for a political body to exercise censorship. Moreover, the role of the

¹¹²² UN Doc.E/CN.4/2004/62/Add.2, paragraph 95

¹¹²³ *ibid*

Ministry contributed to the practice of self-censorship on the part of writers and journalists in fear of reprisals. Legal amendments must, therefore, be passed which would abandon this prerogative given to the Ministry of Culture and Islamic Guidance or any other political body. In addition to 6 (a), restrictions, which are imposed on the basis of Islamic principles or values, need to be clearly defined. The current practice of monitoring and restricting publications or opinions in the public realm with reference to morality and values owes more to crude political decisions and fails to provide clear distinctions between offences, such as defamation and incitement to hatred, and opinions or publications which are merely considered “offensive” to the majority of society. Since there is no consent amongst clerics themselves what constitutes permissible critical religious discourse and what are considered offences against Islamic Principles, clear definitions of such offences have to be written into law. In line with the ICCPR, any such amendments have to protect and promote the right to freedom of speech whilst maintaining respect for religion and public morals.

- (c) A revised system of restriction of freedom of expression should be created which is in accordance with Article 19 of the ICCPR and which essentially should follow a clearly defined and legitimate aim, be transparent and accountable as well as subject to independent review. Restrictions must only be imposed after any given work has been made public. The criteria for review should be clearly stipulated in law and be in accordance with Article 19 of the ICCPR. All restrictions must be publicly explained and based on decisions by judicial bodies in accordance with human rights standards. Also any restrictions should be subject to an independent body to ensure conformity with the law.¹¹²⁴

- (d) A reformed legal framework concerning the right to a free trial, the right to counsel and the field of administration of justice must be proposed and implemented by the Iranian government in order to enable prisoners of conscience

¹¹²⁴ see Article 19, Unveiled: Art and Censorship in Iran (London, Article 19 MENA Programme, 2006), pp.49-50

to effectively make use of legal procedures, which fulfil international human rights standards. As the Working Group on Arbitrary Detention noted in 2004: “These prisoners are punished twice over. Many of them have, on the one hand, simply peacefully exercised their fundamental right to freedom of opinion and expression and, on the other, have been unable to benefit in most cases from the guarantees which are essential to the right of fair trial [...]”¹¹²⁵ The continued use of Revolutionary Courts, initially set up to deal with collaborators of the previous regime, has, according to the Special Rapporteur “a negative impact on the exercise of the right to freedom of opinion and expression.” The jurisprudence given to these courts is particularly restrictive of the right to freedom of expression as well as due process and the right to a fair trial.¹¹²⁶ Any such reforms would again benefit from EU initiatives and technical cooperation between member states and the Iranian judiciary as well as the office of the prosecutor. Such efforts must also carry continuous pressure on Iran to release prisoners of conscience and grant them due process of law and the right to fair trial as well as public support for individual prisoners of conscience on the part of Council resolutions and démarches.

- (e) Human rights initiatives towards Iran must also include effective measures to remind Iran of its legal obligation under international human rights law to abandon the practice of using non-state actors to intimidate persons wishing to exercise the right to freedom of speech. As has been shown, violence by such parallel institutions is tolerated by the state and carries no legal retribution. EU efforts should include clear demands to bring any such perpetrators to justice as well as demanding denunciation on the part of the government followed by appropriate legislation indiscriminately banning the use of violence by non-state actors.

¹¹²⁵ [UN Doc.CN.4/3004/3/Add.2](#), paragraph 65 (3)

¹¹²⁶ [UN Doc.E/CN.4/2004/62/Add.2](#), paragraph 100

(f) The data indicated that reforms aimed at granting genuine respect and protection of human rights were obstructed by political factions, who successfully exploited a political system, which ultimately lacks democratic checks and balances as well as legal-political structures of accountability and the rule of law. It is evident that EU support of domestic endeavours aimed at making respective constitutional changes through peaceful means, such as public referenda, should have highest priority in any human rights dialogue with Iran. Since free intellectual and political debate is a cornerstone in the process of democratisation, the EU can, in fact, proactively support Iranians wishing to exercise their right to freedom of expression. Unlike other political rights, international support for Article 19 can actually express itself on a practical level. Currently, the U.S. government, through its federally chartered International Broadcasting Bureau in conjunction with the software “Anonymizer” is assisting Iranian Internet users to bypass content filtering and surveillance on the part of the state.¹¹²⁷ Given the BBC’s historical role in the course of the Iranian revolution, it seems only appropriate for the FCO through the BBC/ BBC World Service and the application of circumvention technology software to promote freedom of Internet access and publications on the web. This would provide a service allowing Iranian Internet users to visit the web as well as enable them to post weblogs without disclosing any potential information, which could identify them. By acting as proxy, circumvention technology is able to circumvent filtering mechanisms as well as prevents Internet Service Providers in Iran to identify and disclose the user’s information to the authorities. As data indicated, the use of the Internet has become a crucial rallying point for political debate and dissent in Iran. Therefore, technological support on part of the EU and member states enabling Iranians to express their right to freedom of speech on the web is likely to carry fundamental political ramifications for the future of the Islamic Republic.¹¹²⁸

¹¹²⁷ *see* <http://opennetinitiative.net/advisories/001/#ibb> website accessed 19 November 2006

¹¹²⁸ The European Initiative for Democracy and Human Rights already runs a range of projects aimed at supporting media and free speech. Any initiatives on Internet censorship by EU member states will ultimately benefit from initiatives on the EU level. *see* European Commission, “Report on the Implementation of the European Initiative for Democracy and Human Rights in 2000”, SEC (2001) 801, Brussels, 22 May 2001, paragraph 1.2.1

Theoretical Implications for Future Research

The data on the Rushdie affair (1989-1999) indicated that constructive engagement is a viable strategy at resolving conflict between states. Equally, findings on the Comprehensive Dialogue with Iran (2000-2004) implied that human rights could successfully be promoted through such a strategy. Overall, it has been shown that reformists represented in the executive and legislative branch responded rationally to demands by the Europeans and positively reciprocated respective incentives. Given the fact that Iran is one of the most ostracised states in international relations, which is largely based on the perception of it being an ideologically driven “rogue state”, these findings underline the potential of constructive engagement in general. Thus, it seems sensible to conclude that if constructive engagement has (limited) effect on Iran, it is likely to have even more far-reaching impact on other states. Theoretically, this proves the validity of neo-liberal approaches to inter-state cooperation and the significance of negotiation to achieve win-win outcomes in international relations. As such, the findings highlighted the relative effectiveness of constructive engagement and its associated neo-liberal means of statecraft, such as the use of positive sanctions and non-coercive conditional diplomacy with its inherent mechanism of positive reciprocity.

Ultimately, the CFSP of the European Union presents a wealth of empirical data for future research on the effectiveness of constructive engagement to promote human rights. The Lomé Convention in 1995 demanded concrete action in the promotion of human rights and for institutional reform, in the context of democratisation and the rule of law. The relations between the EU and the ACP states were thus largely based on institutional and administrative reforms concerning the rule of law and democratisation, including constitutional reforms, judicial reform, assistance for legislative reform and the parliamentary system as well as support for regional systems to protect and monitor human rights.¹¹²⁹ Moreover, the Cotonou Agreement

¹¹²⁹ Commission of the European Communities, Report from the Commission on the Implementation of the Measures Intended to Promote Observance of Human Rights and Democratic Principles in External Relations For 1996-1999, Brussels, 14.11.2000, Com (2000) 726 Final, paragraph 2.1

between the EU and the ACP states signed in 2000 made the respect for human rights an essential element and thus contains a “consultation procedure” as well as a suspension clause in the event of violations of human rights.¹¹³⁰ This political and economic partnership, which was concluded with 77 African and Caribbean States, provides a wealth of empirical data in order to assess the effectiveness of conditionality as a strategy to promote human rights in international relations. More significantly, however, is the EU’s Strategic Partnership with the Mediterranean and the Middle East. Though much current and future scholarly analysis is dedicated to the situation of post-war Iraq, research on the EU’s approach to the Middle East at supporting human rights and democracy will, undoubtedly, provide valuable insights at the merits of Europe’s transformative power and, therefore, bear long-term implications for the ambitious state building exercise in Iraq. Research on the Barcelona Process and on the more recent Strategic Partnership will produce findings on the effectiveness of supporting the “rule of law and good governance, with emphasis on legal reform and human rights with a constructive involvement by national authorities.”¹¹³¹ It is evident, that the European Union fully embraces a policy of constructive engagement of entering political dialogue and economic partnership with third countries. Ultimately, research on this soft power approach will potentially produce vital answers of how to sustainably solve the social, political and economic challenges with states in the Middle East rather than against them.

¹¹³⁰ see Article 9 and 96 in European Commission, ACP-EU Partnership Agreement signed in Cotonou on 23 June 2000 (Brussels, Directorate General for Development, 2003), p.8, pp. 53-54

¹¹³¹ European Commission, Final Report (approved by the European Council in June 2004), “EU Strategic Partnership with the Mediterranean and the Middle East” on <http://ue.eu.int/uedocs/cmsUpload/Partnership%20Mediterranean%20and%20Middle%20East.pdf> website accessed on 20 November, 2006, p. 8

APPENDICES

APPENDIX A

British Iranian Relations: Historical Background

I am of opinion, that provided our policy be bold and decisive, we have the power of always possessing a decided influence in the Persian Empire; and in the event of the Court of Teheraun being inclined to favour our enemies, we might raise such a commotion in the state as to render it incapable of affording them any material assistance.

John MacDonald Kinneir: Journey 534

1. Britain's historical legacy in Iran

Any contemporary study on British diplomacy towards Iran has to reflect on Britain's imperial legacy in that country. Undoubtedly, it was British strategies and plots in Iran which shaped perceptions and misperceptions on both sides, and which ultimately have to be taken into account if one wants to understand the wider historical context of the impact which the "Satanic Verses" had on British Iranian relations. If one thinks of Iranian nationalism and Islamism as crucial determinants of post-1979 Iranian foreign policy, revolutionary anti-imperialism has certainly to be depicted as a third of such core components. In fact, the impact of anti-imperialism not only on Iranian foreign policy but also on Iranian identity as a whole can be directly linked to Britain's legacy in that country. Iranian resentment to foreign influence and the rejection of superpower hegemony largely derives from this experience and have, as Abrahamian observes, led to a conspiratorial mindset among all periods and factions of Iranian politics.¹¹³² As the British Foreign Affairs Select Committee itself conceded in its 2003 Report on Iran: "Given this history, it is hardly surprising that Iranians are said to see the hand of the United Kingdom behind every suspicious development in their country [...]"¹¹³³ Following historical milestones in British-Iranian relations undeniably serve as a prerequisite to understanding Iranian perceptions towards Britain: the Definitive Treaty with Britain in 1814, which made Persia a pawn in the Great Game, the Reuter

¹¹³² Shilbey Telhami and Michael Barnett, *Identity and Foreign Policy in the Middle East* (Ithaca, Cornell University Press, 2002), p.101

¹¹³³ House of Commons Foreign Affairs Committee, *Iran – Third Report of Session 2003-2004*, HC 80, published 19 March 2004, p. 7

Concession of 1872, the tobacco concession awarded to Britain in 1902, Britain's ambivalent role in the Constitutional Revolution between 1905 and 1911, Britain's role in the rise of Reza Shah from 1921-1941, the Allied invasion of 1941 and above all the ousting of Prime Minister Mossadegh by the British-American instigated coup d'état in 1953.

2. A Pawn in the Great Game

Britain's primary rationale for its relations with Persia at the beginning of the 19th century¹¹³⁴ was a direct derivative of the European balance of power theory and thus reflected British strategic interests in its dealings with France and Russia. Thus, following Napoleon's invasion of Russia, St Petersburg again proved itself a valuable ally for Britain in Europe. In order to end hostilities between Russia and Persia¹¹³⁵ and free Russian troops for the war with France, British diplomats were instructed to negotiate a peace between Iran and Russia.¹¹³⁶ The outcome favoured British interests, as Persia was compelled to accept substantial territorial cessions, including Georgia, and had to grant rights to Russia on the Caspian.¹¹³⁷ Eventually, Persia's inferior military and political position towards the Russians provided Britain with a good bargaining position to convince the Shah to sign a protectorate agreement with His Majesty's government. The Definitive Treaty, negotiated by British special agent Henry Ellis in 1814 then formed the basis of British relations with Iran until 1838. With this document Persia declared all alliances contracted with European powers, (which were in hostility with Britain) null and void and undertook to oppose the passage of any European army into Persia or India. British obligations foresaw that in case of aggression against Iran by a European power,

¹¹³⁴ For earlier contacts between Britain and Iran *see*; Ekbal Kamran, Der Briefwechsel Abbas Mirzas mit dem britischem Gesandten MacDonald Kinneir im Zeichen des zweiten russischen-persischen Krieges (1825-1828) (Freiburg, Klaus Schwarz Verlag, 1977), pp.15-16;

¹¹³⁵ Following Russia's invasion of the Persian province of Georgia, Fath Ali Shah had in fact initially turned to Britain to meet its obligations under its bilateral treaty from 1800, a pledge which Britain refused. *see* M.E. Yapp, Strategies of British India – Britain, Iran and Afghanistan 1798-1850 (Oxford, Clarendon Press, 1980), pp. 36

¹¹³⁶ *ibid*, pp.82-83

¹¹³⁷ Rose Greaves, "Iranian Relations with Great Britain and British India, 1798-1921" in Peter Avery (ed.) The Cambridge History of Iran, Volume 7, From Nadir Shah to the Islamic Republic (Cambridge, Cambridge University Press, 1999), p. 385

Britain would either send a military force to Persia or pay an annual subsidy. Article 6 undertook, in the event of war, between Persia and any European power, which was at peace with Britain, to offer mediation, or if that failed, to pay the subsidy for the duration of the war.¹¹³⁸ The signing of the Definitive Treaty made Persia a pawn in the Great Game. The Shah genuinely hoped that Britain would help defend Iran against Russia and use British military assistance to rebuild his army. However, Britain had agreed to do so as a quid pro quo at a time when her hostile relations with Russia made it possible for her to give such help. But now that the older harmony between the two European powers had seemingly been restored, it was obvious that Britain would not come to Persia's aid anymore. Whilst there were differences in strategies and perceptions about the Persian question between British India and the British government, it was always regarded as a buffer state. Britain wanted an independent Persia, stable and strong enough to withstand a Russian attack but not strong enough to constitute a threat to India itself.¹¹³⁹ In 1826, the Persians launched an offensive into the Caucasus in order to regain the territories they had lost in 1813. The new frontier of Gullistan had never been defined on the ground and the Iranians had accused the Russians of illegally occupying the district of Gokcheh. As attempts to persuade the troops to withdraw failed, and under strong pressure from religious group, the Shah eventually commanded an attack on the Russian troops.¹¹⁴⁰ The British envoy MacDonald was immediately confronted with a demand for British assistance as provided under the Treaty. Whilst the British diplomat knew that Art. 4 of the 1814 Treaty gave the Persians a claim to the subsidy, Britain was allied to the Russia against the Ottomans in the War of Greek Independence. As any provision of assistance to Persia would have been regarded as outright hostility by Russia, Britain refused to pay the subsidy or to mediate between the warring parties.¹¹⁴¹ Ironically, one could argue that it was Persian reliance on their ally Britain to meet its obligations under the Definitive Treaty, which led to the military enterprise in the first place. Without British aid, however, Persian forces soon were systematically demolished and by 1828 the Shah was

¹¹³⁸ Alvin Cottrell, "Iran's Armed Forces under the Pahlavi Dynasty", in George Lenczowski (ed.) Iran under the Pahlavis (Stanford, Hoover Institution Press, 1978) p. 389, ¹¹³⁸ M.E. Yapp, Strategies of British India – Britain, Iran and Afghanistan 1798-1850 pp.88-89

¹¹³⁹ William E. Griffith, "Iran's foreign policy in the Pahlavi Era", in George Lenczowski, (ed.) Iran under the Pahlavis, p. 366

¹¹⁴⁰ M.E. Yapp, Strategies of British India – Britain, Iran and Afghanistan 1798-1850, p. 103

¹¹⁴¹ *ibid*, p. 104

forced to sign the humiliating Treaty of Turkmanchai, which confirmed all Persian territorial losses and moreover granted economic concession and extraterritorial privileges to Russian citizens.¹¹⁴² Clearly, this was a huge political and economic burden for Persia, but, more importantly, it showed that they were not perceived as an equal ally to a European power rather than perceived as a buffer zone to Britain and weak rival to Russian expansionism.

3. The Reuter Concession of 1872

Following the British-Persian war of 1856-57, which succeeded in driving Persian forces out of Herat and thus secured to keep Afghanistan as a buffer for possible aggression against India, British policy towards Persia changed. Military expenditures were to be cut and “masterly inactivity” was advocated to be the best strategy to keep Persia and Britain out Afghanistan, and Britain in Persia in order to keep an eye on Russian activities.¹¹⁴³ Domestically, the Persian state increasingly felt the impact of foreign powers as well as the consequences of the costly wars the rulers had fought. Ecological problems, such as desertification and economic challenges, most notably changing trade patterns, the growth of European manufacturing (which produced better goods more cheaply than traditional Iranian craftsmen) and the persistent problems of communications across Iran’s vast territory contributed to decrease economic development and social standards and ultimately weakened the central authorities in Tehran.¹¹⁴⁴ Ultimately, the military defeats, which had led to diplomatic concessions, produced commercial capitulations; commercial capitulations then paved the way for increased economic penetrations by European powers. The Qajars responded to these challenges in ways which did not improve the predicament of the Persian, nation rather than increased dependence on foreign powers. During the first half of the century the Qajar bureaucracy tried to initiate two large scale programmes for rapid, defensive and nationwide modernization. But having failed, they settled upon reform projects on a smaller scale. These reform

¹¹⁴²Kenneth M. Pollack, The Persian Puzzle – The Conflict between Iran and America, (New York, Random House, 2004) p.14-15

¹¹⁴³ Rose Greaves, “Iranian Relations with Great Britain and British India, 1798-1921”, pp.396-397

¹¹⁴⁴ Kenneth M. Pollack, The Persian Puzzle – The Conflict between Iran and America, p. 15

initiatives eventually translated into collaboration with rather than challenging the West and introduced ¹¹⁴⁵ what Abrahamian refers to as, “ piecemeal, court-based rather than wholesale state-wide changes.” ¹¹⁴⁶ Yet, the drive for modernization, initiated by Mirza Muhammad Taqi, also known as Amir Kabir, saw the revival of the standing army, the establishment of fifteen factories to supply this army and the cut of foreign imports, which was partly substituted with the domestic production of cannons, light arms, woollens, cloths, paper, cast iron, lead, copper and sugar. ¹¹⁴⁷ Unfortunately, forces from within the government and outside the country blocked this genuine effort for Persian political and economic emancipation. To finance this large scale initiative at modernization, Amir Kabir reduced court expenses, increased import tariffs and introduced a new tax on fief holders that no longer contributed men to the armed forces. Not surprisingly, British and Russian envoys protested vehemently against the new import duties and, together with the elite at the court, managed to lobby the Shah, who eventually dismissed the modernizer and banished him to the provinces in 1851, where he was executed soon after. The new reforms that followed Amir Kabir’s efforts did little to achieve economic and social development. By refusing to curb the spending of the state, the ruling elite increased foreign borrowing. When debts continued to mount, they started selling concessions and the meagre manufacturing capability that they had to foreigners, in order to pay off their debt, which eventually reduced revenue and on the contrary, made them ever more dependent on the Europeans. ¹¹⁴⁸ Because the concessions virtually deprived the state of imposing revenues on foreign goods, the state instead imposed internal taxes, which further undermined domestic manufacturing and industrial production. ¹¹⁴⁹ The time when British and Russian investors were searching for ventures abroad coincided with Naser al Din Shah ‘s fateful initiative to attract foreign investments. The most detrimental of these concessions for Iran was when Baron Julius Reuter, a German who had become a naturalized British subject, obtained his Persian concession in 1872. For the purchase prize of £ 40,000 and 60 per cent of the profits, for

¹¹⁴⁵ Ervand Abrahamian, Iran between Two Revolutions (Princeton, Princeton University Press, 1982), p.52

¹¹⁴⁶ *ibid*, p. 52

¹¹⁴⁷ *ibid*, pp.54-55

¹¹⁴⁸ Kenneth M. Pollack, The Persian Puzzle – The Conflict between Iran and America, p.15

¹¹⁴⁹ Said Arjomand, The Turban for the Crown: The Islamic Revolution in Iran (New York, Oxford University Press, 1988) pp.31-33

a period of seventy years Reuter received exclusive rights to the railway (from the Caspian Sea to the Persia Gulf), for tramways throughout the country, mining, irrigation, water works and exploitation of the states forests and all minerals (except gold and silver). Moreover, he was given a twenty-year monopoly over the Persian Customs and the first option on any concession for public utilities, roads, postal services, manufacturing plants and banks. In return the Persian government would receive only 20 per cent of the railway's profits and 15 per cent of profits of other activities undertaken by Reuter.¹¹⁵⁰ The Reuter concession was what Curzon called the 'complete surrender of the entire resources of a kingdom into foreign hands that has ever been dreamed of, much less accomplished, in history.'¹¹⁵¹ Whilst the Reuter concession was withdrawn eventually, due to much opposition in Iran and Russia, he retained the mining and banking privileges. Iran's economic development was important to Britain for two reasons. Economic interest in Iran was great and British investors were keen to exploit the potential the country had to offer. Nevertheless, railway and telegraph construction, which began as early as 1863, also mirrored the strategic stake Britain had in Iran. Mindful that the key to Iranian independence from Russia was a genuine community of interest with Great Britain, economic prosperity, it was believed, would in the long run provide the means for training and equipping an efficient Iranian army. This in turn could lead to political stability and would render the country a more effective bulwark against Russian expansion.¹¹⁵² To some extent the maintenance of the Persian buffer depended on the willingness to provide finance to the Persian government. After 1890, due to the ever-increasing economic demise, the Shah was desperate for money and found in Britain and Russia willing creditors. Much to the resentment of the middle class and the *bazaaris*, he borrowed £ 500,000 from British financiers in 1892 and managed to negotiate a massive Russian loan of £ 2.400,00 in 1900.¹¹⁵³ Realizing that their government was becoming more and more dependent on these two foreign powers and aware of the growth of their influence on Iranian politics and the Persian market, the

¹¹⁵⁰ see Firuz Kazemzadeh, Russia and Britain in Persia 1864-194 – a study in Imperialism, (New Haven. Yale University Press, 1986)

¹¹⁵¹ Ervand Abrahamian, Iran between Two Revolutions (Princeton, Princeton University Press, 1982), p.55

¹¹⁵² David McLean, Britain and Her Buffer State – The collapse of the Persian Empire, 1890-1914, (London, Royal Historical Society, 1979), p. 26

¹¹⁵³ *ibid*, p. 35

dissent came to a boil in 1891 when a Briton, Major Gerald F. Talbot secured a fifty-year monopoly of the production, sale, and export of Persian tobacco. Whilst the Shah was assured that this deal would benefit the share holders in Britain as much as the downtrodden Persian cultivators, it was soon evident that the company's profit had to be found somewhere between the cost of production and the price paid by the Persian consumer. Protests started when the agents of the new Imperial Tobacco Corporation arrived in the Shiraz and the *ulema* used this occasion to pass a judgment of the Shah's policy of welcoming foreign investors. After this *fatwa* prohibiting the use of tobacco the protests soon translated into a nationwide rebellion, and when the safety of the European expatriate community was at stake, the Shah revoked the concession outright.¹¹⁵⁴ This protest demonstrated that various social and political forces were able to unite to express their dismay at the Shah's policies. Whilst the tobacco revolt did not change the direction of the country, it should have been an indication to the ruling elite of what was to come.

4. The Constitutional Revolution of 1906

The Tobacco concession ended, but the movement which was responsible for the cancellation of the concession, spread among society and eventually lead to the assassination of Nasirud Din Shah on May 1, 1896. Nevertheless, his son Muzaffar al-Din Shah continued his father's policies and continued to secure loans from Russia and Britain.¹¹⁵⁵ Britain tried to stay ahead in the game of giving out loans to Persia in order to maintain the court's dependence on the Treasury in Whitehall. Under-secretary at the Foreign Office, Charles Hardinge, went so far as to order two British agents to Iran in 1903 in order to improve British contact with the Persian *ulema*. "The more openly the British worked with Persia's spiritual leaders", he asserted "the greater would be Britain's prestige at Tehran and the more the Shah would fear Britain's capacity to have him excommunicated or even dethroned as a result of public agitation." The *ulema* was

¹¹⁵⁴ Thomas P. Brockway, Britain and the Persian Bubble, 1888-1992, The Journal of Modern History, Vol.13, No.1 (March, 1941), pp.43-44; Roy Mottahedeh, The Mantle of the Prophet: Religion and Politics in Iran (New York, Pantheon, 1985), pp.215-218; Mansoor Moaddel, "Shi'i Political Discourse and Class Mobilization in the Tobacco Movement of 1890-1892" in Sociological Forum Vol. 7, No. 3 (Sep., 1992), pp. 447-468

¹¹⁵⁵ Ishtiaq Ahmad, Anglo-Iranian Relations, 1905-1919 (New York, Asia Publishing House, 1974), pp.54-55

thus regarded as the last resort for preventing the Persian monarch from virtually selling his country to Russia.¹¹⁵⁶ Nonetheless, in 1900-1902, the Persians secured three large loans from St Petersburg to pay off their existing debt and finance the court. In return, the Iranians agreed to further lower the customs duties on Russian imports and pay all of their debts to Great Britain and not take out new loans from London with Russia's consent.¹¹⁵⁷ By securing loans with dangerous economic and political conditions, the Shah had become a Russian pawn and by 1900, northern Persia seemed firmly in Russian hands. In an attempt to not fully alienate the British, the Shah had granted a British subject, William Knox D'Arcy, a concession in 1901 giving extensive rights over petroleum. At the time this concession did not seem to amount to very much, but it was to have disastrous ramifications for British Persian relations during the second half of the century. By 1906, Persia owed £ 800,000 to Britain and £ 3.250,000 to Russia.¹¹⁵⁸ When in 1905 a Belgian official was put in charge at Bushir to enforce the tariffs on exports to Belgium with greater severity, Iranian merchants eventually resented and refused to clear their goods.¹¹⁵⁹ These grievances with the governing elite ultimately expressed themselves in organized popular dissent. Persia witnessed the establishment of the country's first state-wide stock company in order to preserve the country's economic independence by fostering modern industries. In the political spectrum, political parties were formed, such as the Social Democratic Party, which was mainly influenced by the revolutionary socialism of Russian Marxism and demanded worker's rights, the right to strike and pensions, distribution of land among those who tilled it, freedom of speech and press and toleration of all religions.¹¹⁶⁰ The Secret Society, which drew its members predominantly from the traditional middle class, met in February 1905 for the first time and formulated demands such as a national code of justice, a House of Justice, a just tax structure, encouragement of internal trade and an investigation into government salaries. Together these parties and secret societies were rapidly moving towards a constitutional

¹¹⁵⁶ *ibid*, p.58

¹¹⁵⁷ Kenneth M. Pollack, *The Persian Puzzle – The Conflict between Iran and America*, p. 19

¹¹⁵⁸ Said Arjomand, *The Turban for the Crown: The Islamic Revolution in Iran*, p.33

¹¹⁵⁹ In 1898, M. Naus, a Belgian official was originally put in charge of the customhouses of Kermanshah and Tabriz. Later on, all customhouses, with the exception of Mohemerah, were placed under his control. He was able to show an increment of 50 per cent in the custom receipt of Iran. *see* Ishtiaq Ahmad, *Anglo-Iranian Relations, 1905-1919*, p.55-56

¹¹⁶⁰ Ervand Abrahamian, *Iran between Two Revolutions*, pp. 76-77

revolution.¹¹⁶¹ When Russia was unable to provide any more loans, as it had just been defeated in a costly war with Japan, the government in Tehran responded by raising additional internal custom duties. The raising of more tariffs on native merchants eventually triggered three public protests and culminated in the revolution of August 1906.¹¹⁶² Having formulated programmes and demands, the Secret Society established contact with two influential ayatollahs in Tehran, Sayyid Abdullah Behbehani and Sayyid Muhammad Tabatabai, which helped to appeal the constitutional cause to the masses. When in December the governor of Tehran ordered two prominent *bazaaris* publicly bastinadoed for failing to comply with an order to lower the price of sugar, Behbehani and Tabatabai led two thousand people to take *basti*¹¹⁶³ at a shrine in Tehran to protest the governor's order and to provoke a dispute with the ruling elite.¹¹⁶⁴ More demonstrations and protests followed and when soldiers opened fire on the masses, the *bastis* approached the British Legation and asked the Chargé d'Affaires for permission to take refuge. In the view of the acknowledged traditions in Persia, the Charge d'Affaires granted refuge, and in the end allowed sixteen thousand *bastis* to camp in the garden of the British Legation.¹¹⁶⁵ Acting first as intermediaries, the British arranged a meeting between the government and the popular leaders. When the Shah refused to sign the Regulations for the National Assembly, the British and Russian representatives intervened and compelled him to ratify and enact the Court of Justice as well as the National Assembly.¹¹⁶⁶ The Russian cooperation with the British on this matter was not surprising as negotiations were being held at that time for an entente between both countries. These talks eventually resulted in the Anglo-Russian Convention of 1907. The agreement recognized and defined respective British and Russian spheres of influence, designating the northern part to Russia, the south to Britain and the middle part

¹¹⁶¹ *ibid*, p. 79-80

¹¹⁶² *ibid*, p. 81

¹¹⁶³ The right of sanctuary, which in Persian is referred to as *bast*, at certain places such as mosques and holy shrines was an old Persian tradition. As Wright records "From time to time the oppressed and persecuted religious minorities – Zoroastrians, Jews, Nestorians, Armenians and Baha'is – would seek the protection of the British Legation of Consulates. Sometimes the British, who in those days were inclined to regard themselves as the keepers of the world's conscience, would take up the cudgels, embarrassing though it was to intervene on behalf of Persian subjects. "Denis Wright, The English amongst the Persians – Imperial Lives in Nineteenth – Century Iran, (London, I.B. Tauris, 2001), pp.44-46

¹¹⁶⁴ Kenneth M. Pollack, The Persian Puzzle – The Conflict between Iran and America, p. 21

¹¹⁶⁵ Ishtiaq Ahmad, Anglo-Iranian Relations, 1905-1919, p. 59

¹¹⁶⁶ *ibid*, p. 60

generously to Persia. The contracting parties assigned themselves “not to seek for themselves and not to support in favour of the subjects of third powers any concessions of a political or economic nature – such as concession for railways, banks, telegraphs, roads [...]” The provision also read that St Petersburg had to recognize that Afghanistan is outside of Russian influence and that Great Britain shall not change the political situation in Persia.¹¹⁶⁷ The latter soon turned out to be rather difficult to commit to, when in 1908 the new Shah Mohammad ‘Ali, who was not interested in a constitutional monarchy, joined forces with the Cossack Brigade and, in a coup d’état, restored royal authority in Tehran. From the outset the British had sympathy for the reform movement in Iran - especially if it worked to their advantage.¹¹⁶⁸ Yet, bound to the agreement and fearful of German activities in Persia and of increasing German military power in Europe, Britain needed Russia as an ally and as a potential eastern front in case of war. Thus, Britain was horrified but accepted when Russia claimed its right to police the territory adjacent to its frontier. In 1909, when the siege of the nationalist stronghold at Tabriz endangered Russian lives, troops were sent to occupy Kazvin, which eventually helped to break the Shah’s siege.¹¹⁶⁹ Whilst Russia favoured a gunboat diplomacy and the use of force to restore order in Persia, Britain’s help for the reform movement eventually expressed itself in the field of finance. Convinced that if a constitution was granted to the Persian people, peace and order would be restored in the entire country, the British convinced the Russians to send a joint communication to the Shah, which urged the monarch to rid himself of his reactionary advisers, to re-establish the constitution, grant amnesty for all those who had taken arms up against the Shah and to announce dates for the parliamentary elections.¹¹⁷⁰ Aware of the Shah’s finances, Britain offered an incentive, yet made it clear that a loan would only be given after the reestablishment of the constitutional regime and the transaction being approved by an elected Assembly.¹¹⁷¹

¹¹⁶⁷ The Recent Anglo-Russian Convention, The American Journal of International Law, Vo.1, No.4 (Oct., 1907), p. 979

¹¹⁶⁸ For Iranian Constitutionalists in British exile *see* Mansour Bonakadrian, “Iranian Constitutional Exiles and British Foreign-Policy Dissenters 1908-09”, International Journal of Middle East Studies, Vo. 27, No.2 (May, 1995), pp. 175-191

¹¹⁶⁹ David McLean, Britain and Her Buffer State – The collapse of the Persian Empire, 1890-1914, pp. 78-82

¹¹⁷⁰ Ishtiaq Ahmad, Anglo-Iranian Relations, 1905-1919, pp.97-98

¹¹⁷¹ *ibid*, p. 99

When British backed Bakhtiari tribesmen, along with constitutionalists from Azerbaijan marched on Tehran, the Shah quickly issued a decree to reinstate the old constitution. However, by July 1909, the constitutionalists, aware of the treacherous and revengeful nature of their monarch were in the political and military position to depose the Shah and replace him with his young son Ahmad Mirza.¹¹⁷² Back in power, the constitutionalists attempted to implement the reforms that they demanded at the beginning of their movement and which the Shah's counter offensive had so far prevented. During the next few months the new government succeeded in negotiating the withdrawal of all the Russian troops in the north and obtained another loan from the Imperial Bank in order to rebuild the administrative structure. Appreciating that central government authority and dealing with foreign debts was their greatest challenge, but refusing to give Britain and Russia any more of a role in their country, the formation of the Persian gendarmerie was to be commanded by Swedish officers and the task of reorganizing the state finances was to be dealt with by an American financial adviser.¹¹⁷³ Whilst internal divisions in the *Majlis* weakened the reform process and constitutional movement as a whole, they were soon faced with British and Russian demands, who were afraid of losing their influence in Iranian affairs and trade. In 1911, British forces occupied the city of Shiraz claiming that fighting between clans terrorised the merchant community of that city and thus necessitated the immediate presence of troops. Russia, who objected that an American was put in charge of finances eventually occupied Enzeli and Rasht in November 1911 and managed to convince Britain that their division and control of Iran was at stake. The joint Anglo-Russian threat, which followed the occupation of the North and South, demanded the dismissal of financier Morgan Shuster and the promise not to hire any foreign advisers without the consent of Britain and Russia.¹¹⁷⁴ In Tehran, the government and the security forces, lead by Colonel Reza Khan, who had risen through the ranks to head the Cossack Brigade in Qazvin all pressed the *Majlis* to comply with the demands. When the *Majlis*, reflecting popular outrage at British and Russian interference, refused to comply, the assembly was forcibly disbanded in December 1911. Iran's genuine

¹¹⁷² *ibid*, pp. 126-129

¹¹⁷³ Ervand Abrahamian, *Iran between Two Revolutions*, p. 102 ; David McLean, *Britain and Her Buffer State – The collapse of the Persian Empire, 1890-1914*, pp. 83-84; pp.108-109;

¹¹⁷⁴ Ervand Abrahamian, *Iran between Two Revolutions*, p.109

attempt at democracy was thus successfully strangled by Britain and Russia. Though the Constitutional Revolution ended in defeat, it was a catalyst event, heralding the modern era in Persia. This period in Persian/Iranian history witnessed a period of unprecedented political debate in a burgeoning press. New institutions, new forms of expression and political thoughts and a new social and political form eventually replaced the *ancien regime*, which the Qajar Dynasty had struggled for so long to sustain.¹¹⁷⁵ Nonetheless, in the light of contemporary British human rights diplomacy towards Iran, it seems ironic that Britain was instrumental in initially supporting the Constitutionalists and leading them to victory, but then acquiesced when the newly established *Majlis* was increasingly marginalised by authoritarian forces and eventually turned into a rubber stamp to the monarch. A fact, which would not only have fundamental consequence for the course of 20th century Iranian politics but was yet another factor, which contributed to deep resentment and mistrust towards the British government.

5. Britain and the Rise of Reza Khan

After the outbreak of World War I, the Third *Majlis* refused to declare war against Germany and the Ottoman Empire and formed a Committee for National Resistance, which resided first in Qom and when Russian troops invaded their sanctuary moved to Kermanshah. When the committee established contacts with pro-German Swedish gendarmerie and formed an alliance with Qashqayi and Baluchi tribesmen, who were receiving German arms, the British formed a police force known as the South Persian Rifles.¹¹⁷⁶ The British diplomat Percy Sykes was charged with the mission “to create a force for the restoration of law and order in south Iran and to this end was to raise, with or without the cooperation of the Iranian government a force of 11,000 men to take the place of the unreliable Gendarmerie.”¹¹⁷⁷ In 1917, Sykes installed governors in Shiraz,

¹¹⁷⁵ see John Foran, “The Strength and Weakness of Iran’s Populist Alliance: A Class Analysis of the Constitutional Revolution, 1905-1911 in *Theory and Society* Vol.20, No. 6 (December, 1991), pp. 817-818

¹¹⁷⁶ *ibid*, p.111

¹¹⁷⁷ Denis Wright, “Sir Percy Sykes and Iran“, in Sarah Searight (ed.) *Britain and Iran 1790-1980 – Collected Essays of Sir Denis Wright*, (London, The Iran Society, 2003). It was also during this period that the British persuaded the Shah to appoint Prince ‘Abd ul-Husayn Mirza Farman –Farma as Prime Minister, who was promised and awarded personal subsidies by Russia and Britain in return for support at the court.

heavily subsidised by the British in order to restore order or rather British control. Events in Europe also accelerated Britain's influence in Iran. The Russian Revolution and the defeat of Germany and the Ottoman Empire left Britain as the predominant power in Persia. The Foreign Secretary, Lord Curzon, in particular, was eager to increase Britain's military and economic hold over that country, which would have effectively reduced Iran to a protectorate. This new agreement put forward by Curzon, stated that Persian military and financial affairs would be placed under British control and in return Britain would lend £ 2 Million to Persia. In an attempt to push ahead with the implementation of the agreement, Curzon ignored parliamentary ratification by the *Majlis* altogether and bribed the Prime Minister to accept the document. Nevertheless, due to increasing pressure from the *Majlis* the Prime Minister eventually resigned and the new government suspended the agreement in 1920.¹¹⁷⁸ It was against this background of disunity and strife that eventually Reza Khan, the commander of the Cossack Brigade entered the stage. His coup d'état was a gradual consolidation of power and it wasn't until 1925 that the *Majlis* deposed of the Qajars and installed Reza Khan as Shah. The rise of Reza Shah as the new monarch of Persia was closely connected with the rise of a modern standing army, the creation of a Persian navy and air force. This military base increasingly strengthened his political power, which ultimately provided him with the control he needed to pursue his reform and modernization policies. Having gained full control of his country, the monarch used Iran's oil revenues effectively to create and develop much of the modern Iranian state.¹¹⁷⁹ Paradoxically, just as a modern state and bureaucracy was being created so was the Iranian rentier state, which was to haunt Iranian political economy for decades to come. For Reza Shah, the greatness of Iran was in the future as well as in the past and his large-scale economic development and social, legal and educational reform projects combined this push for modernization with, what Ansari calls, "invention of tradition."¹¹⁸⁰ Nevertheless, much more depended on financing these initiatives with oil revenues. This proved to be the first instance of contention between Reza Shah and the

see Denis Wright "Prince Abd ul-Husyan Mirza Farman-Farma: Notes from British Sources" in Britain and Iran 1790-1980 – Collected Essays of Sir Denis Wright, pp.67-77

¹¹⁷⁸ Ali M. Ansari, Modern Iran since 1921 – The Pahlavis and After, pp.23-24

¹¹⁷⁹ Said Arjomand, The Turban for the Crown: The Islamic Revolution in Iran, pp.62-63; Ali M. Ansari, Modern Iran since 1921 – The Pahlavis and After, p. 41

¹¹⁸⁰ M.E. Yapp, The Near East since the First World War – A History to 1995 (Harlow, Longman, 1996), p. 176; Ali M. Ansari, Modern Iran since 1921 – The Pahlavis and After, p.41

British. Arguing that the concession with the Anglo-Persian Oil Company had been obtained through misrepresentation and under duress by a regime now deposed and irrelevant, the Shah pressed for fundamental changes in the terms of the oil concession. A study, which the Shah had commissioned, showed that APOC was not only underreporting its profits to the Persian governments but moreover was:

[...] charging £ 10,000 a year for maintenance of the pipeline and then charging exorbitant amounts supposedly to repair it, deducting interests paid on bonds by its subsidiaries but excluding these from profits, paying 3 percent to Britain's tribal proxies in the country and then deducting this from the money paid to the Persian government, and selling oil to the British government at cut-rate prices.¹¹⁸¹

The company's board was aware of the disaffection within in Iran, as BP's historian notes: "The Company had become a double scapegoat. On ideological grounds it was caricatured as an imperialist bogey, a capitalist bloodsucker. In religious circles it was characterized as being a partner in an unholy alliance with the government in overturning traditional values and introducing alien principles."¹¹⁸² When in 1931 the company informed the Shah that the government's royalties would be down by 76 per cent from the previous year (from £ 1,288,000 to £ 306,872) Reza Shah unilaterally cancelled the concession. The Agreement of 1933, which followed the termination of the concession reflected the extent of British Iranian economic interdependence, as neither side was able to exert any real leverage. This new agreement provided some modest improvements for Iran in terms of revenues per ton and guaranteed a minimum annual payment to the government. APOC promised not to interfere in internal Iranian affairs and reduced the concession area to 100,00 square miles. In return it was exempt from all taxes other than those provided in the original concession and had managed to extend the concession for another 60 years – to 1993.¹¹⁸³ Having squeezed the APOC for all he thought he could obtain, Reza Shah relied on internal resources to finance the country's economic development plans. Indirect taxes, such as monopolies on tea and sugar ensured that the cost of modernization would fall most heavily on the poorest section of society and especially on rural Iran.¹¹⁸⁴ Overall, Reza Shah inaugurated an impressive range of

¹¹⁸¹ Kenneth M. Pollack, The Persian Puzzle – The Conflict between Iran and America, p. 30

¹¹⁸² James A. Bill, The Eagle and the Lion – The Tragedy of American-Iranian Relations (New Haven, Yale University Press, 1988), p. 58

¹¹⁸³ *ibid.*, p. 60

¹¹⁸⁴ M.E. Yapp, The Near East since the First World War – A History to 1995, pp.177-178

modernization, industrialization and reform projects. This new political and military infrastructure served the centralization of power and strengthened his patrimonial rule over Iran. In the end, his reign would, like many of his predecessors, come to an end as a result of external events and interferences. After the German invasion of Russia in 1941, Iran's neutrality was inevitable, as it could not afford to alienate Germany, Britain or the Soviet Union. However, the supplies of civil and military goods, on which Iran's development programme depended on dried up, oil revenues fell and foreign currency reserves were frozen. It was not until the Anglo-Russian alliance, which followed the German invasion, that Iran once again became a pawn to these two powers.¹¹⁸⁵ In Britain, the government soon considered the desirability of joint military action with the Russians in order to expel the German community present in Tehran and, most importantly, to secure the oil fields in southern Persia.¹¹⁸⁶ In view of the recalcitrance of the Persian government to comply with their demands, British and Russian forces prepared to first occupy the oil fields and then march towards Tehran. When the joint-Anglo note of August 17 met with the expected Iranian refusal British, American and Russian troops invaded southern and northern Iran respectively. Iranian resistance collapsed almost immediately and after the abdication of Reza Shah in favour of his son Mohammed Reza Shah, the Iranian government agreed to the conditions imposed by the two powers. These were the cessation of all resistance, the ejection of Germans, neutrality in the war and the Allied use of Iranian communication for the transits of war supplies to Russia.¹¹⁸⁷ Whilst the occupation of Iran during the Second World War provided Russia with essential supplies and secured Allied access to oil, it also prematurely ended the reign of Reza Shah and had a significant impact on Iran's endeavour at economic development, emancipation and independence.

¹¹⁸⁵ *ibid*, p. 178

¹¹⁸⁶ Winston Churchill, The Second World War, Vol. III, The Grand Alliance (Boston, Houghton Mifflin Company, 1950), p. 423

¹¹⁸⁷ *ibid*, pp. 424-432

6. Britain, Mosaddeq and the Nationalization of Iranian Oil

The end of the war also witnessed the rise of American interest and influence in Iran, which at first was a genuine advocate of an independent Iran free from foreign meddling. In fact, it was an American initiative in 1942, which led to the Tripartite Pact, in which the three allies guaranteed Iran's territorial sovereignty and independence and pledged to withdraw their troops from Iran no later than six months after the end of the war.¹¹⁸⁸ After the war this assurance was soon to be challenged by Stalin, who not only demanded an oil concession in the northern provinces but also used Soviet presence to capitalize on the chronic discontent of the northern tribes, particularly the Kurds and Azerbaijanis. Efforts at stirring up these separatist sentiments and at mobilizing and actively supporting the newly formed Marxist Tudeh Party eventually paid off when in December 1945 the Azeris proclaimed the Azerbaijan People's Republic and the Kurds declared their autonomy in January 1946.¹¹⁸⁹ Unable to regain control over the provinces, the Iranian government turned to the United States and the United Nations to resolve what had become the first crisis of the Cold War. Despite Russia's protest the Security Council discussed the case during its very first meeting and after a few months of public diplomacy and President Truman's threat that US combat divisions in Austria will be deployed to Iran, Moscow eventually agreed to pull out of Iran. The Security Council retained its cognizance of the issue by putting and keeping Iran's complaint on the agenda. However, the agreement the two parties reached did not only provide the complete withdrawal of Soviet troops from Iranian territory. It also affirmed Azerbaijan as an internal Iranian affair and, most importantly, established a joint Iranian-Soviet oil company, with a majority Soviet holding.¹¹⁹⁰ On balance, Iran had ultimately struck a deal, which traded in economic concessions in return for the withdrawal of foreign troops, which had illicitly occupied its own territory. Thus, the Azerbaijan crisis was a diplomatic triumph for the United States, an economic gain for the Soviet Union and proved, yet again, to be a humiliation for Iran. Whilst the British used this opportunity to

¹¹⁸⁸ Kenneth M. Pollack, *The Persian Puzzle – The Conflict between Iran and America*, p. 41

¹¹⁸⁹ Alan W. Ford, *The Anglo – Iranian Oil Dispute of 1951-1952: A Study of the role of law in the relations of states*, (Berkeley, University of California Press), p. 43

¹¹⁹⁰ Gary R. Hess, "The Iranian Crisis of 1934-46 and the Cold War" in *Political Science Quarterly*, Vol. 89, No.1 (March, 1974) pp.135-144

reinforce anti-Soviet feelings and their own position in Iran, Muhammad Reza Shah exerted his leadership for the first time as constitutional Commander-in-Chief of the Iranian armed forces and successfully led operations against the secessionists in Azerbaijan and Kurdistan.¹¹⁹¹ Although the new young Shah lacked his father's base immediately after the occupation at the end of 1947, Mohammad Reza was on the verge of rebuilding Pahlavi power. Through strategic clientalist manoeuvring, he managed to regain control of the army, the government and bureaucracy and recovered the lost Pahlavi estates. Having completed the destruction of the left and having strengthened his position against the Majlis by establishing a second chamber under his control and giving himself the prerogative to dissolve parliament, the Shah now needed capital to relaunch Iran's modernization programme.¹¹⁹² Aware of the fact that in Saudi Arabia a 50:50 agreement had been signed between Aramco (Arabian American Oil Company) and the Saudi ruling family, a re-negotiation with the Anglo Iranian Oil Company, as it was now called, seemed, a convenient solution to cover the substantial funds required. This new agreement should have dealt with demands, such as the amount of revenues accruing to the government of Iran, the supplying of the British Navy and Air Force with Iranian oil at advantageous process, the need to have access to the accounts of the company, the improvement of the status of the Iranian employees of the company and the revision of the length of the concession. The result nonetheless, reflected AIOIC's interests rather than the changes Iran had demanded. The Supplemental Agreement of 1948 provided only a modest increase in revenues to Iran by raising the royalty from 22 cents to 33 cent per barrel.¹¹⁹³ This and other factors, most notably the disregard of the working conditions for Iranians, led the 16th Majlis to decline the ratification of the agreement. This perceived plunder of Iranian resources to foreign powers as well as the corruption of traditional Iranian values both coincided with and encouraged the growth of a popular and distinctive national consciousness.¹¹⁹⁴ Three groups supported the liberal nationalist idea, which increasingly gained popular momentum in and outside parliament. The group with the widest support base, was the non-religious intelligentsia, for which liberal

¹¹⁹¹ Rose Greaves, "Iranian Foreign Policy, 1921-1979" in Peter Avery (ed.) The Cambridge History of Iran, Volume 7, From Nadir Shah to the Islamic Republic, p. 439

¹¹⁹² M.E. Yapp, The Near East since the First World War – A History to 1995 p.183

¹¹⁹³ James A. Bill, The Eagle and the Lion – The Tragedy of American-Iranian Relations, pp.62-63

¹¹⁹⁴ see Ali M. Ansari, Modern Iran since 1921 – The Pahlavis and After, p.99

democracy constituted an end rather than instrumental political values. The second group was made of the *bazaaris* or commercial middle class, which required a government that thought and acted in national terms and that looked with sympathy on the commercial needs of trade. The third support base for the nationalist cause and political change was the clergy, which regarded an alliance with the intelligentsia as a means to gain the strength to break the hold of Christian imperialist powers, which was considered a prerequisite for Islamic revival.¹¹⁹⁵ Dr Mohammed Mosaddeq emerged out of the first group as the most vocal and popular opponent of not only the agreement, but of what the nationalists regarded as the plunder of Iran. Mosaddeq, whose political career began as deputy of Tehran, became a leading spokesman for the newly formed *Jbha-yi Milli* (National Front). The National Front, which was a loose grouping of the various political, mercantile and religious elements of Iranian nationalism, provided him with the platform he needed to be associated with the political battle for Iran's national independence and dignity.¹¹⁹⁶ After appointing a series of pliant Prime ministers, the Shah, who was himself unable to either harness or curtail the public mood was compelled to appoint Mosaddeq, who was now increasingly regarded as the only autonomous politician willing and capable to stand up against the Shah as well as the British. Binding himself to the principle of nationalisation, the prime minister insisted that his acceptance be predicated on the ratification of the nationalisation law, which the assembly dutifully approved on 28 April 1951, followed by the Senate and the Shah.¹¹⁹⁷ Promising that compensation and providing for the continuation of employment of British staff and expertise, he founded the National Iranian Oil Company (NIOC) to exploit Iranian oil, on the basis of full Iranian ownership and control.¹¹⁹⁸ This move, which previously had not been taken seriously, proved unacceptable to the company as well as to the British government. After initial threats and warnings over the impact on bilateral relations, Prime Minister Clement Attlee announced in the House of Commons that "although his government could not allow Iran unilaterally to cancel the AIOC's contract, it was prepared to accept some of nationalization, provided [...] it were satisfactory in other respects" This

¹¹⁹⁵ James, A. Bill and W.M. Roger Louis (ed) Musaddiq, Iranian nationalism, and Oil (London, I.B. Tauris & Co Ltd, 1988), p. 25

¹¹⁹⁶ Rose Greaves, "Iranian Foreign Policy, 1921-1979" p.440

¹¹⁹⁷ Ali M. Ansari, Modern Iran since 1921 – The Pahlavis and After, p. 113

¹¹⁹⁸ Rose Greaves, "Iranian Foreign Policy, 1921-1979" pp.440-441

presumably meant the payment of adequate compensation to the company and for it to regain control of Iranian oil. It was obvious that the British government would accept the term nationalization because it would allow the Iranians to save face, but the concept of nationalization, that the British had in mind would not have allowed the Iranians to gain control of their oil industry.¹¹⁹⁹ Whilst the British maintained channels of negotiation with Tehran, they soon started to find ways to destabilize the government through economic pressures, such as the oil blockade, by giving encouragement, financial and moral to Mosaddeq's opponents as well as by using the International Court of Justice and United Nations as respective fora to get decisions in their favour.¹²⁰⁰ Unfortunately for Britain, the International Court of Justice ruled that it had no jurisdiction in this case and the Security Council stated that the issue of nationalization of Iranian oil did not constitute a threat to international peace and security.¹²⁰¹ Whilst at first the United States offered good offices to Iran and Britain and made some genuine attempts to arbitrate between both parties, they were soon persuaded by Prime Minister Eden's proposal of creating an international oil consortium in Iran, that would take over the AIOC's operation. American participation, it was believed, would dilute the power of the AIOC and thus assuage Iranian fears of British domination.¹²⁰² In the view of the deadlock, Britain and Washington eventually concluded that the best solution to the crisis was a coup d'état, which would remove the Mosaddeq government with a more compliant prime minister, headed by the Shah. The Shah's role seemed feasible since after his initial support for nationalization, he was subsequently unwilling to approve either the Mosaddeq's methods or his attempts to limit the powers of the monarchy; attempts which eventually forced the Shah to leave Iran temporarily in mid-August 1953.¹²⁰³

¹¹⁹⁹ Mary Ann Heiss, Empire and Nationhood – The United States, Great Britain, and Iranian Oil, 1950-154 (New York, Columbia University Press, 1997), p.70

¹²⁰⁰ The AIOC threatened the six major Western oil companies with a law suit should they purchase any Iranian oil. This resulted in a complete boycott of oil tankers at Iranian ports and had profound economic consequences for that country. *see* Mary Ann Heiss, Empire and Nationhood – The United States, Great Britain, and Iranian Oil, 1950-154, p. 78; Ali M. Ansari, Modern Iran since 1921 – The Pahlavis and After, p. 117

¹²⁰¹ *see* "Security Council". International Organization, Vol.6, No.1 (February, 1952), pp.76-88; "Anglo-Iranian Oil Co. Case (Jurisdiction), United Kingdom v. Iran", The American Journal of International Law, Vol. 46, No.4 (Oct.,1952), pp.737-751

¹²⁰² Mary Ann Heiss, Empire and Nationhood – The United States, Great Britain, and Iranian Oil, 1950-154, p. 104

¹²⁰³ Rose Greaves, "Iranian Foreign Policy, 1921-1979", p. 441

Domestically, the situation for Mosaddeq worsened. As Britain continued to export oil from other countries in the Middle East, the British lead economic blockade proved more harmful to Iran than for the AIOC and its buyers. Iran's oil production decreased to 10% of its pre-nationalization capacity resulting in a dramatic drop in oil revenues.¹²⁰⁴ The more Iran had to suffer economic hardship since the nationalization of oil, the more discontent increased in opposition to Mosaddeq. In the end, two developments prompted the Eisenhower administration to actively assist in the overthrow of Iran's prime minister. Whilst the Tudeh Part was never wholeheartedly behind Mosaddeq and the National Front, they did constitute the backbone of the nationalist movement and matured increasingly as a political party and ideological movement under his premiership. The second reason, which convinced the US administration to take their global strategy against communism to Iran was the fact that the military was by and large anti-Mosaddeq and pro-royalist and thus formed a powerful collaborator in a coup d'état. Although Mosaddeq appeared politically dominant with a powerful appeal, by late 1953 the foundation of this power, in the absence of key social, military, and religious groups was never weaker and he had essentially become the "demagogue" that the British had always portrayed him.¹²⁰⁵ In the end, "Operation Ajax", a covert operation, coordinated by CIA and MI6 succeeded, as it facilitated royalist forces to overthrow Mosaddeq's government in favour of the Shah.¹²⁰⁶ The international oil consortium, which was then created after the coup, was a far cry from the nationalization that Mosaddeq had envisioned. To maintain the façade of nationalization, the Iranian government, through the National Iranian Oil Company, would retain formal title to the nation's oil. But because Iran lacked the technical expertise of exploitation and marketing, actual control was vested with the companies owned by the consortium. While these companies would be registered in Iran they were subject to Dutch law. Iran was to receive 50 per cent of the industry's net profits from production but nothing from its marketing or distribution operations. Iran also signed an agreement, in which it agreed to pay the AIOC a net sum

¹²⁰⁴ *ibid*, p. 443

¹²⁰⁵ Ali M. Ansari, *Modern Iran since 1921 – The Pahlavis and After*, pp. 121-122

¹²⁰⁶ *see* Stephen Kinzer, *All the Shah's Men-An American Coup and the Roots of Middle East Terror*, (New Jersey, John Wiley & Sons, 2003), pp. 167-192

of £ 25 million.¹²⁰⁷ The legacy of the British Iranian oil dispute and the overthrow of Muhammad Mosaddeq are ever-prevalent events in the collective memory of many Iranians. Whilst it may be true that Mosaddeq had alienated important segments of the Iranian elite through his own policies and attitudes – principally his categorical refusal to compromise with the British and the concentration of power to the office of the prime minister - the British as well as Americans did help to exacerbate discontent against Mosaddeq and certainly contributed to intensify trends and movements against the government. The significance of this chapter in British-Iranian relations is that the Mosaddeq phenomenon represented a critical moment in a period of exceptionally rapid change in Iran in which there was some real potential for the institutionalisation of liberal democratic, secular and nationalist norms. When Britain and the USA entered into a conspiracy to eliminate what they considered a demagogic agitator, who was leading his immature public in a policy direction that could only enhance the Soviet subversive potential in Iran, they calculated that it would send a signal to the Soviets that America was serious about containing them in their own lair.¹²⁰⁸ However, the real legacy of this period was that Mosaddeq’s political agenda took on everlasting legitimacy and has ever since profoundly shaped Iran’s foreign policy after 1979.

7. British-Iranian Relations: Perceptions and Misperceptions

With the rise of Reza Shah, the times when Whitehall dictated the terms in Iran were finally over as Washington now acted as a “Patron Power”, preserving the monarchy and influencing the direction and agenda of its policies in line with western regional and international interests. In return for Iran’s dependence on the US and alliance with the West, the monarch expected the consolidation of his rule. Undoubtedly, extensive U.S. support, which helped the Shah to transform the country from an inefficient autocracy into a neo-patrimonial state, initially enabled him to manipulate the nation in favour of his regime but eventually resulted in the Islamic Revolution of 1979. Nonetheless, it was

¹²⁰⁷ Mary Ann Heiss, Empire and Nationhood – The United States, Great Britain, and Iranian Oil, 1950-1954, p. 214

¹²⁰⁸ James, A. Bill and WM Roger Louis (ed) Musaddiq, Iranian nationalism, and Oil , p.24.p.37

the fundamental role of the British government, which had sown seeds of anti-imperialism, and Khomeini's agenda against "foreign oppressors". More than that, Britain's continuous conditional and coercive diplomacy towards Iran shaped an entire mindset of Iranian politicians as well as intelligentsia, which essentially reflects deep suspicion of Western, particularly British policy towards Iran. Ironically, however, this negative undercurrent also carries an admiration for British statecraft in the sense that whilst Iranians resent the British the most, they also perceive Britain as a powerful player in international relations.¹²⁰⁹ Ultimately, Khomeini's *fatwa* against Rushdie can only be fully appreciated if one takes this historical context and reciprocal cycle of interference and mistrust into account.

¹²⁰⁹ Interview with Italian Ambassador to Iran Roberto Tuscano, (Tehran, 2 September, 2004)

APPENDIX B

The Satanic Verses

Walking in the footsteps of Orientalists, such as Maxime Rodinson¹²¹⁰, Rushdie questions the authenticity of Mohammad's divine revelation. He was particularly fascinated with the contested incident of the "Satanic Verses", which he came across when he was studying early Islamic history at Cambridge. This incident, which made such an impression on Rushdie, concerned a revelation to Muhammad, which he later denounced as false - as a Satanic rather than a divine one. Although at the time Rushdie did not know what to do with it, he told himself that it "would make a good story".¹²¹¹ Thus, Rushdie did not invent the satanic verses, for they form part of the historical record in the writings of exegetes and biographers. The most reliable, yet contested source of this alleged incident is al Tabari's account. Much of the prosperity and political power of

¹²¹⁰ French sociologist Maxime Rodinson provides in his account "Mohammed" a highly contested account about the life of the founder of Islam. Whilst Rodinson rejects Wellenhausen's theory that the "evolution from polytheism to monotheism was linked with the development of a common Arab culture transcending tribal, social and political groupings" (G.R. Hawting, The Idea of Idolatry and the Emergence of Islam, (Cambridge, Cambridge University Press, 1999), p.2), and clearly states that Mohammed was the key figure in the rise of this new religion, it was his narrative on how his revelation is to be explained and how many suras of the Koran were written, which earned much criticism. Rejecting Christian accusations of fraudulence, Rodinson used psychological explanations for Mohammed's revelations. He argues that like other mystics the proclamation of his ideology derived from images produced by the unconscious rather than of divine origin. Throughout his life as Prophet, Mohammed genuinely believed that the visions and spoken messages, which he received were of divine origin. His *wahi* or *Quranic* trances seemed to make a far deeper impression on his mind than any other ordinary human experience could, and consequently considered them as supremely real. In some incidents later on in his life, however, Rodinson found reason to cast doubt on the genuineness of instances of *Quranic* trance. There are cases where the divine messages received during the *wahi* were just too convenient not to look like Mohammed's self-serving fabrications. The best-known instance, according to the writer, is when Mohammed received permission from God to marry Zeynab, the repudiated wife of his adopted son Zayd. Under Arab customary law, this union would have been forbidden, but in a timely revelation (*Quran* 33:37, 33:50), Mohammed was exempted from this law. Unlike Christian polemics, Rodinson does not regard the Zeynab episode as proof of Mohammed's insatiable lust nor is it an indication of the self-serving manipulation of the *wahi* by Mohammed. For Rodinson, he was not guilty of falsification by deliberately attributing to God his own thoughts and instructions rather than was victim of his unconscious. From this very Freudian angle, Rodinson concedes that some disturbing characteristics did appear and that the narrative in the *Quran* did not retain the same lyrical style in Medina. Mohammed had to take day-to-day decisions, decisions of a political, practical and legislative nature, which could not wait for some random revelation. It is this argument by Rodinson, which has earned him much criticism amongst Muslim scholars. *see* Maxime Rodinson, Mohammed, (London, Penguin Press, 1971) other contested accounts on the life of Mohammed include John Wansbrough, Quranic Studies (Oxford, Oxford University Press, 1977); Patricia Crone and Michael Cook, Hagarism: The Making of the Islamic World (Cambridge, Cambridge University Press, 1977)

¹²¹¹ Pradyumna S. Chauhan, Salman Rushdie Interviews – A Sourcebook of his ideas (London, Greenwood Press, 2001), p.93

pre-Islamic Mecca and its ruling elite, the *Quryash* depended on the fact that Mecca constituted a religious centre hosting an abundance of shrines with idols. Evidently, Mohammad's monotheistic message posed a direct threat to the polytheistic ruling *Quraysh* tribe in Mecca. Thus, members of this tribe approached Mohammad and suggested that he take a more flexible attitude to their idols and, in return, they would be more conciliatory to his preaching. "If you make some mention of our goddesses, we would sit beside you for the nobles of the Arabs come to you, and when they see that those who sit beside you are the nobles of your tribe, they will have more liking for you."¹²¹² According to Tabari, Mohammad experienced an inner struggle as he wished to bring him and his people together and thus "Satan cast on his [Mohammad's] tongue, because of his inner debates and what he desired to bring to his people, the words: These are the high flying cranes, verily their intercession is accepted with approval."¹²¹³ Allegedly making reference to the most prominent Meccan goddesses, Mohammad recited the following verses in the *Qur'an*:

Have you considered El-Lat and El-'Uzza
and Manat the third, the other?
(Qur'an 53: 19)

According to Tabari's records the incident occurred while Mohammad was reciting the above *Shurah* (*Shurah* An-Najam) in the mosque. At the end of the *Shurah* the Prophet and all of his followers prostrated themselves. Likewise, the polytheists of the *Quraysh* and others who were in the mosque prostrated themselves because of the reference to their gods, which they heard.¹²¹⁴ Tabari further recounts that Muslims, who had fled from Mecca to Abyssinia heard about this incident and returned to their home city. Eventually, Gabriel appeared before Mohammad and told him that he recited words that had not been brought by God, which upset the Prophet. Through another revelation which states:

¹²¹² Al-Tabari cited in Daniel Pipes, *The Rushdie Affair – the Novel, the Ayatollah and the West*, (New York, Birch Lane Press, 1990), p. 57

¹²¹³ Ziauddin Sardar and Meryll Wyn Davies, *Distorted Imagination – Lessons from the Rushdie Affair* (London, Grey Seal, 1990), p. 149

¹²¹⁴ *ibid*, p. 147

We sent not ever any Messenger
Or Prophet before thee, but that Satan
Cast on this fancy, when he was fancying;
But God annuls what Satan cases, then
God confirms His signs – surely God is
All-knowing, All wise –
(Qur'an, 22:52)

the sorrow, which Mohammad felt was removed and God eventually revealed the following Surah:

Have you considered El-Lat and El-'Uzza
and Manat the third, the other?
What, have you males, and He females?
That were indeed an unjust division.
They are naught but names yourselves
Have named, and your fathers; God has
Sent down no authority touching them.
They follow only surmise, and what the
Souls desire; and yet guidance has
Come to them from their Lord.
Or shall man have whatever he fancies?
And to God belongs the First and the Last.
(Qur'an 53:19-25)

When Mohammed brought this revelation to the people, the *Quraysh* declared that he had altered the words he had previously uttered. Members of the *Quraysh* tribe were all aware of the verses which confirmed the divinity of their goddesses and their abrogation subsequently led them to become ill disposed and more violent to the Muslims. At this point followers of Mohammad returning from Abyssinia arrived, but could only enter the city under protection or secrecy.¹²¹⁵ This is the classical story told by Islamic historian al-Tabari, which has, however, been subject to widespread criticism amongst Muslim scholars and been rejected as a spurious invention that does not form part of the authentic

¹²¹⁵ *ibid*, p. 147

tradition.¹²¹⁶ Traditionally, any event in the early Islamic history is only accepted as authentic if it is reported by most, if not all classical historians. The satanic verses story is either ignored or rejected as preposterous folklore by all the major historians including ibn Ishaq, ibn Hisham, al-Suhayli, ib Kathir, al-Bayhaqi, Qadi Iyad, ibn Khuzayamam al-Razi, al-Qurtabi, al-Ayni and al-Shawkani.¹²¹⁷ Furthermore, Al-Tabri is considered the most uncritical of classical historians, because he was a chronicler who reported every event and narrative that was circulating during the time of Mohammad in Mecca.¹²¹⁸ Much of the rejection of this incident results from chronological examination, which reveals irrational elements. The story allegedly happened after the first group of Muslims sought refuge in Abyssinia. We know that this migration took place in the month of Rajab during the fifth year of Mohammad's mission, or eight years before the exodus to Medina - *the hijra*. The verses (17:73-5) which state "They are constantly trying to tempt you away from which we have revealed to you, so that you may substitute in its place something of your own, in which case they would have actively taken you as a friend." (*Qur'an*, 17:73-5) were interpreted by al-Tabari as to warn the prophet. However, these verses were not in fact revealed until after the ascension of the Prophet, which occurred two to three years before the *hijra*. The verses (22:52), which were revealed to abrogate the so-called satanic verses, were revealed in the first year of the *hijra*, that is eight to nine years after the incident. Thus, it seems somewhat hard to believe that the Prophet was "admonished" six years after the event; that the offending verses, which undermined the very basis of the *Qur'anic* message and bear no relation whatsoever to any other *Shura* or reference in it, were tolerated for nine years before they were annulled. Sardar further argues that on purely rational grounds the satanic verses constituted the antithesis of everything the *Qur'an* had said up to that particular event and continued to say after the incident. Scholars contest that if there was an aspect of truth in this story, it would have caused a major incident in the early history of Islam and would have been mentioned in the extensive literature of the *hadith*.¹²¹⁹ Contrary to the *hadith* and Muslim historical accounts on the life of Mohammad, which on the basis of *riwaya* (the statement

¹²¹⁶ *ibid*, p. 148

¹²¹⁷ *ibid*, p. 148

¹²¹⁸ *ibid*, p. 149

¹²¹⁹ *ibid*, p.149; also see Syed Ali Ashraf, "Nihilistic, negative, satanic" in Impact International, 28 Oct-10 Nov. 1988

based on the chain of narrators and the text of the *hadith*) as well as *diraya* (credibility of the statement) reject the incident of the satanic verses, numerous Orientalist accounts depict it without reference to the debate amongst Islamic historians. In fact, at the core of the Orientalist view on Islamic history is the assumption that if central matters of the faith are concerned, Muslims cannot possibly be “objective” and must have distorted the records themselves. An example of this would be W. Montgomery Watt’s who, emphasising Mohammad’s political role, summarizes the incident as follows:

Muhammad must have had sufficient success for the heads of the Quraysh to take him seriously. Pressure was brought to bear on him to make some acknowledgement of the worship at the neighbouring shrines. He was at first inclined to do so, both in view of the material advantages such a course offered and because it looked as if would speedily result in a successful end of his mission. Eventually, however, through Divine Guidance as he believed, he saw that this would be a fatal compromise, and he gave up the prospect of improving his outward circumstances in order to follow the truth as he saw it. The rejection of polytheism was formulated in vigorous terms and closed the doors to future compromise.¹²²⁰

In this light, contemporary Orientalist, Daniel Pipes, takes an apologetic view towards Rushdie “because the Satanic verses incident derives from Tabari and several other impeccable sources of information about the life of Muhammad, Muslims must deal with it.”¹²²¹

Similar to such hermeneutics of Mohammad’s political ambitions, Rushdie sees the incident as a confusion of the sacred and profane of good and evil, and of revealed truth and man made fiction. It is the interdependence and ambiguity of these oppositions that interests Rushdie. In the novel “Satanic Verses”, Mahound¹²²², is the prophet-founder of a religion, which Rushdie calls “Submission” and which is based on Mahound’s divine revelations and recitations. For Rushdie, the episode of the satanic verses constitutes some kind of secular confrontation with the idea of divine revelation. Essentially, he

¹²²⁰ W. Montgomery Watt, Muhammad in Mecca (Oxford, Oxford University Press, 1953), pp.108-109

¹²²¹ D. Pipes, The Rushdie Affair – the Novel, the Ayatollah and the West, p.61

¹²²² The Oxford English Dictionary explains “Mahound” as the “false prophet” Mohammed, in the Middle Ages, often vaguely imagined to be worshipped as a God, and used as the name for the devil. Oxford English Dictionary (Oxford, Clarendon Press, 1970), Vol.6 p.38

intended to portray the visionary, mystical imaginative act as an extreme form of the act of imagination in general. During one of Gibreel Farishta's paranoid delusions he dreams about Mahound and how he strikes a compromise with the Grandee of the city Jahilia¹²²³ by approving of the city's idols, not because the devil put false verses in his mouth, but rather he saw an opportunity to advance his cause.

At this point, without any trace of hesitation or doubt, he recites two further verses. "Have you thought upon Lat and Uzza, and Manat, the third, the other?" – After the first verse, [...] the Grandee of Jahilia is already standing very straight. And Mahound, with silenced eyes, recites: "They are the exalted birds, and their intercession is desired indeed." As the noise – shouts, cheers, scandal, cries of devotion to the goddess Al-Lat – swells and bursts within the marquee, the already astonished congregation beholds the doubly sensational spectacle of the Grandee Abu Simbel placing his thumbs upon the lobes of his ears, fanning out the fingers of both hands and uttering a loud voice the formula: "Allahu Akbar."¹²²⁴

The reader then learns that the Mahound himself in fact forces the Archangel Gibreel to the revelation. Gibreel explains Mahound's "old trick, forcing my mouth open and making the voice, the Voice, pour out of me [...] made it pour all over him, like sick." Having wrestled with Gibreel, Mahound tells himself that " "It was the Devil", he says aloud to the empty air, making it true by giving it voice. "The last time it was Shaitan." This is what he has heard in his listening, that he has been tricked, that the Devil came to him in the guise of the archangel, so that the verses he memorized, the ones he recited in the poetry tent, were not the real thing but its diabolic opposite, not godly, but satanic."¹²²⁵ Mahound then rushes back to the city to renounce what he had said in order "to strike them from the record for ever and ever, so that they will survive in just one or two reliable collections of old traditions and orthodox interpreters will try and unwrite their story."¹²²⁶ Nevertheless, from the top of the mountain Gibreel watches Mahound eager to expunge the verses and "knows one detail, just one tiny thing that's a bit of a problem here, namely that it was me both times [...]. From my mouth, both the statement and the

¹²²³ Thus, Rusdhi renames Mecca *jahilia* (the time of ignorance before the arrival of Mohammad), which in itself was considered offensive

¹²²⁴ Salman Rushdie, *The Satanic Verses*, (London, Vintage, 1998), p. 114

¹²²⁵ *ibid.*, p. 123

¹²²⁶ *ibid.*, p. 123, It seems that Rushdie refers here to al-Tabari's account and the controversy it has caused amongst Islamic historians.

repudiations, verses and converses, universes and reverses, the whole thing [...] “. Reinforcing that he is obliged to utter verses according to Mahound’s needs, the Archangel concludes that “we all know how my mouth got worked.” ¹²²⁷ After the repudiation of the Satanic Verses, which was followed by a persecution against followers of “Submission”, Mahound shares with Khalid, the water carrier, that to cover up his deception he came up with the notion that Satan made him do it.

Awkwardly, he [Khalid] says: “Messenger, I doubted you. But you were wiser than we knew. First we said, Mahound will never compromise, and you compromised. Then we said, Mahound has betrayed us, but you were bringing us a deeper truth. You brought us the Devil himself, so that we could witness the workings of the Evil One, and his overthrow by the Right. You have enriched our faith. I am sorry for what I thought.

Mahound replies: “ “Yes.” Bitterness, cynicism. “It was a wonderful thing I did. Deeper truth. Bringing you the Devil. Yes, that sounds like me.” ” ¹²²⁸ In another part of Rusdhie’s narrative he uses the real historical character of Salman (the first Persian convert to Islam) and makes him the scribe of Mahound. Bored with this task, and realizing that he himself could claim to be Gibreel, the source of Mahound’s revelations, Salman decided to gradually change certain details of the recitations, inscribing increasingly longer parts of his own into what is considered by the followers of Submission the revealed word of God. Reflecting on the incident when Mahound received false revelations Salman, the Persian recounts, “Maybe I was Shaitan. The realization of this possibility gave him the diabolic idea. After that when he sat at the Prophet’s feet, writing down rules rules rules, he began, surreptitiously, to change things.” ¹²²⁹ Having successfully altered certain passages, Salman concludes:

Here is the point: Mahound did not notice the alterations. So there I was, actually writing the Book, or rewriting anyway, polluting the word of God with my own profane language. But, good heavens, if my poor words could not be distinguished from the Revelation by God’s own Messenger, then what did that mean? What did it say about the quality of the divine poetry? ¹²³⁰

¹²²⁷ *ibid*, p. 123

¹²²⁸ *ibid*, p. 125

¹²²⁹ *ibid*, p. 367

¹²³⁰ *ibid*, p. 367

It is true that Rushdie did not invent the issue of the Satanic verses. However, as these sequences form part of a fictional narrative, Rushdie inherently fails to elaborate on the discussion of this episode within the historical record. Hence, he also does not give any play to the reasons why this incident has been rejected. His offence ultimately lies in the fact that he goes beyond the charge that Mohammad adapted verses according to his interests and changed circumstances. Rushdie's narrative implies that Mahound's entire recitation did not derive from the Archangel Gibreel, but rather from Mahound himself. Essentially, the holy book on which "Submission" is based, is merely a human artefact built on deceit and imagination. Rushdie's premise for writing the "Satanic Verses" was that "there are no subjects which are off limits and that includes God, includes prophets." Being an atheist himself he felt that it was a "completely legitimate exercise" to write about religion and revelation from the point of view of a secular person." Most importantly, however, Rushdie was fascinated with the historical figure of Mohammad, which he described as "the only prophet who existed even remotely inside history. He is the only one about whom there is some [...] more-or-less factual historical information. That makes him a human being and doubly interesting."¹²³¹ Thus, by humanizing Mohammad as well as Islam, Rushdie went far beyond the Orientalist venture and was ultimately considered to "satirise the Prophet and His Companions" as well as to "ridicule religious consciousness of people" and "to remove any sense of reverence for angels, prophets, holy books, and hence any faith in God."¹²³² Whilst most of the reviews on the novel praised Rushdie's literary and artistic merit, the "Satanic Verses" evidently caused a furore, inciting religious passions in Britain, on the Indian sub-continent and elsewhere. Few people who protested against the publication actually read the book. As Taheri argued "the very idea of using the prophet Muhammad as a character in a novel is painful to many Muslims. The entire Islamic system consists of the so-called *Hodud*, or limits beyond which one should simply not venture."¹²³³ On the other side, those critics, who have read the book, stated that Rushdie's claim that his narrative

¹²³¹ Sharbani Basu interviews Salman Rushdie "Of Satan, archangels and prophets" in Sunday, India 18 -24 September, 1988

¹²³² Syed Ali Ashraf, "Nihilistic, Negative, Satanic" in Impact International, 28 Oct.- 10 Nov. 1988

¹²³³ The Times, 13 February 1989

consists of fictional figments of the imagination could not be considered an excuse for his insult. Referring to offending passages, such as the brothel “The Curtain” [English for *hijab*] in which the prostitutes of *Jahilia* adopt the names of Mohammad’s wives to titillate the clients, M.H. Faruqi, editor of *Impact International* called the *Satanic Verses* “obscene, libellous and blasphemous with clear undertones of racism and racial incitement”. Faruqi’s argument was that “there is no problem about it being fiction or not. It doesn’t matter if it’s a fiction, a serious book, a dream – the point is that the language should be decent. The problem is the abusive and insulting way the Prophet is described in the most filthy language.”¹²³⁴ It is against this background that one has to understand the furore which followed.

¹²³⁴ M.H. Faruqi, *Impact International*, 10 February, 1989

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