



مركز بروكنجز الدوحة
BROOKINGS DOHA CENTER

BROOKINGS DOHA CENTER ANALYSIS PAPER

Number 6, January 2013

A RIGHTS AGENDA FOR THE MUSLIM WORLD?

THE ORGANIZATION OF ISLAMIC COOPERATION'S
EVOLVING HUMAN RIGHTS FRAMEWORK

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Kayaoğlu would like to express his gratitude to the Brookings Doha Center – Qatar University Visiting Fellow Program for funding this project. He would like to thank the Brookings Doha Center staff, in particular Ibrahim Sharqieh, Shadi Hamid, and Samuel Plumbly for their encouragement and help throughout this project. He would also like to thank the Organization of Islamic Cooperation’s Secretary-General Ekmeleddin İhsanoğlu and staff members Rizwan Sheikh, Raouf Salama, Fatih Öke, Shaher Awawdeh, Cenk Uraz, Abdula Manafi Mutualo, and Hasan Basri Arslan for their help during his visit to the organization. He would also like to thank Zühtü Arslan, a Turkish Constitutional Court Judge and former member of the Independent Permanent Commission on Human Rights, for his time and help. Finally, he wants to thank Birol Başkan, Yüksel Sezgin, Kate Marshall, and Wanda Krause, who read and commented on earlier drafts of this report.

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EXECUTIVE SUMMARY

Given its position and influence, the Organization of Islamic Cooperation (OIC) is uniquely placed to act as a promoter of human rights in the Muslim world. Since its establishment in 1969, however, the organization has consistently failed to fulfill that potential and join other regional and international bodies in establishing effective human rights mechanisms. One of the reasons for this failure is well documented: the Organization of Islamic Cooperation lacks a clear framework for dealing with issues of compatibility between international human rights norms and the conservative brand of Islam dominant among its leading member states. Another more important obstacle, however, has attracted less attention. The organization's emphasis on national sovereignty has prevented the transfer of authority to what could otherwise be effective supra-national human rights mechanisms.

Under the reformist leadership of Secretary-General Ekmeleddin İhsanoğlu, human rights have now moved to the center of the OIC's agenda. This shift was formalized in a 2008 revision of the organization's charter. In an important development, an Independent Permanent Commission on Human Rights (IPHRC) was established in 2011 to promote the civil, social, and economic rights enshrined in the organization's human rights documents. Through an analysis of the IPHRC and the organization's other human rights instruments (including the 1990 Cairo Declaration on Human Rights in Islam and the 2005 Covenant on the Rights of the Child in Islam), this study assesses the OIC's recent efforts to strengthen its role as a human rights actor.

Over the twenty years since the Cairo Declaration was issued, a marked shift has taken place in the OIC's approach to human rights. The evolution

of its human rights mechanisms shows a gradual move away from emphasizing the centrality of *sharia*. While the Cairo Declaration referred to *sharia* as its "only source of reference," the Covenant on the Rights of the Child mentioned *sharia* within the broader context of Islamic values, while the IPHRC and its founding statute abandoned references to *sharia* altogether. This development is indicative of the OIC's increasing willingness to discuss these issues in the context of international human rights rather than exclusively within that of Islamic law and tradition.

As well as emphasizing *sharia*, the Cairo Declaration and the Covenant on the Rights of the Child reinforced a traditional view of sovereignty that empowers individual states and their often-authoritarian decision-makers. While the stress on *sharia* has diminished, the obstacles put in place by the organization's state-centrism have remained firm. Lately, the reluctance of member states to transfer any real authority to the OIC has undermined the effectiveness of the newly-established IPHRC.

The IPHRC has the potential to form part of an effective supra-national human rights regime, playing a role equivalent to that of the European Commission on Human Rights in the European system. The arrival of the body signals a newfound commitment to human rights issues within the OIC, and the acquiescence of some originally reluctant conservative member states is a promising sign. Further reasons for optimism can be seen in the diversity of the IPHRC's membership and the insistence on its members being "independent" human rights experts, without any criteria regarding knowledge of Islam.

At the same time, member states have taken important measures to limit the power of the IPHRC,

and the handling of human rights issues remains essentially within the control of national governments. Regarding membership, for instance, there are no restrictions on governments electing their own officials to the body. Critically, the IPHRC has only a few, relatively weak mechanisms, and almost all of its activities are contingent upon the request or approval of the OIC or the relevant member state. A decision to publish thematic rather than country-specific reports on human rights violations further diminishes its ability to apply pressure on rights offenders. Rather than emphasizing “human rights advocacy,” as other international systems do, the Commission is equipped to take an approach of “human rights diplomacy.” It aims to advance rights by reasoning with governments rather than by applying moral pressure. In essence, its function will be more consultative than protective.

Political decisions, rather than religious or cultural differences particular to Muslim-majority states, are the principal reason behind the IPHRC’s shortcomings. There is reason to hope, however, that it could yet become an effective mechanism. As the evolution of human rights commissions in other cases has shown, these bodies, once established, are often able to gradually build capital, assuage governments’ fears, and secure greater autonomy and authority. The Commission currently enjoys a degree of independence and has an interpretive authority over the OIC’s human rights documents, potentially allowing it to pursue an activist approach. It could also gain further leverage by mobilizing existing ties between the OIC and other international organizations, particularly the United Nations. Crucially, OIC bureaucrats themselves – and at least some member states – are eager for the body to have a stronger role.

The international human rights community should engage with the OIC in ways that increase the organization’s ability to become a reliable and effective partner in advancing human rights. Specific steps that can be taken include the following:

1. **Demand transparency from the IPHRC.** In the interest of greater accountability, informa-

tion about the Commission’s members, agenda, and internal rules and procedures should be made public.

2. **Promote institutional linkages between the IPHRC and other human rights bodies.** These could include the European Court of Human Rights, the UN Human Rights Council, and the UN Office of the High Commissioner for Human Rights. These more established human rights bodies can organize joint working sessions to help build the capacity of the IPHRC.
3. **Encourage the OIC to nominate and elect experts with a strong record of defending human rights.** Once elected, these experts would benefit from access to the international human rights community’s resources. For instance, they could be offered visiting positions in human rights organizations, research centers, and universities.
4. **Assist non-governmental organizations (NGOs) in OIC member states in pressuring governments to comply with human rights standards.** Thus far there has been poor integration of civil society organizations into the IPHRC, and some member states have expressly sought to limit the role played by NGOs in assisting the Commission’s work. There remains, however, an opportunity for restricted IPHRC collaboration NGOs. The international human rights community should provide expertise and training to relevant NGOs in Muslim societies to create grassroots pressure on member states, the OIC, and the IPHRC.

In encouraging the OIC to meet its potential as a human rights actor, the international human rights community should not look for quick solutions. Building regional human rights systems is a slow and difficult process. In establishing the IPHRC and thereby formalizing its human rights agenda, the OIC has taken an important step in the right direction.

INTRODUCTION

The Organization of Islamic Cooperation (OIC) was established in 1969 to promote Muslim solidarity and cooperation. As an intergovernmental body, it is second only to the UN in terms of membership and scope. It has 57 members – most, not all, are Muslim-majority states – and deals with a range of issues: peace and conflict resolution, Muslim minority communities, women’s and children’s rights, humanitarian assistance, combating Islamophobia, the promotion of intra-OIC trade and investment, cultural exchange, and education.¹ In terms of resources, however, the OIC is a modest organization: it employs about 160 professional staff at its headquarters in Jeddah² and its 2008 budget was \$22 million.³ The OIC has a strong record of bringing Muslim states together – at least symbolically – despite their deep ideological, national, and economic differences. It has become increasingly visible as an actor in the international public sphere, particularly through its work in the UN on issues such as Palestinian rights, Muslim minorities, and the dialogue of civilizations.

Over the course of the past decade, the OIC has been an active participant in international debates concerning human rights. In 2008, the organization’s charter was revised to include the promotion and protection of “human rights and fundamental freedoms” among its goals.⁴ The revised charter also paved the way for an Independent Permanent Commission on Human Rights (IPHRC)

to promote the civil, social, and economic rights enshrined in the organization’s human rights documents. These are principally the 1990 Cairo Declaration on Human Rights in Islam (the Cairo Declaration) and the 2005 Covenant on the Rights of the Child in Islam. The IPHRC was established in 2011 and had its first session in Jakarta in February 2012.

This study provides an assessment of the OIC’s human rights instruments. It argues that their impact has remained limited for two reasons. The first is religious: the OIC lacks a clear framework dealing with the issue of compatibility between international human rights norms and the conservative brand of Islam dominant among leading OIC member states such as Saudi Arabia, Iran, and Pakistan. The second reason is structural: the organization’s state-centric nature complicates the functioning of its human rights mechanisms. Within the OIC, the primacy accorded to states diminishes the organization’s authority as a supranational body and inhibits its ability to work with NGOs on the promotion of rights.

Despite its shortcomings, the OIC has real potential as an advocate of human rights in the Muslim world. Unfortunately, this potential has been overlooked by the international human rights community, which has little knowledge of the OIC and its human rights agenda. International debates about the OIC and human rights have been selective, fo-

1. See Ekmeleddin İhsanoğlu, *The Islamic World in the New Century: The Organization of Islamic Conference, 1969-2009* (New York: Columbia University Press, 2010).

2. Author’s interview with Fatih Öke, Communications Director, OIC, Jeddah, April 22, 2012.

3. The top contributors to the OIC’s budget are: Saudi Arabia (10 percent), Kuwait (9 percent), United Arab Emirates (7 percent), Libya (6 percent), Iran (5.5 percent), Malaysia, and Turkey (5 percent each). See Marie J. Petersen, *Islamic or Universal Human Rights: The OIC’s Independent Permanent Human Rights Commission* (Copenhagen: Danish Institute for International Studies, 2012), 46-47.

4. Organization of Islamic Cooperation, “Charter of the Organization of the Islamic Conference,” March 14, 2008, <<http://www.oic-oci.org/is11/english/Charter-en.pdf>>.

cusing on issues such as the defamation of religion, gender, and gay rights.

In discussing the OIC as a human rights actor and the factors preventing it from fulfilling such a role, this paper attempts to shift the debate on Islam and human rights from a cultural and religious framework to an institutional one. As such, its focus is not on the compatibility of *sharia* with universal human rights, but on the structural obstacles that prevent the OIC and its member states from establishing effective human rights mechanisms.

The paper offers three principal arguments. First, that Muslim states' commitment to a traditional understanding of sovereignty has been an obstacle to the advancement of human rights in the Muslim world. Second, it argues that the evolution of the OIC's human rights instruments shows a shift over time, from an emphasis on *sharia* to an emphasis on sovereignty. The study concludes by positing that if the OIC were to have greater authority over individual states on human rights issues, it could be a more effective force for promoting human rights in the Muslim world. An approach that focuses not on the difficulty of aligning human rights and Islamic law, but on the necessity of "sharing sovereignty," could empower OIC institutions and strengthen human rights NGOs.

Besides the analysis of primary documents, published interviews, and scholarly work on the subject, this paper uses information gathered through interviews. The author visited the OIC's headquarters in Jeddah in April 2012 and interviewed about ten staff members, including those from the Interim Secretariat of the IPHRC, as well as the Secretary General of the OIC, Ekmelledin İhsanoğlu. A former member of the IPHRC, Zühtü Arslan, was interviewed in Ankara in August 2012.

This paper has five sections. The first examines the issue of sovereignty in regional human rights systems. The three subsequent sections focus on each of the OIC's three human rights instruments – the Cairo Declaration, the Covenant on the Rights of the Child, and the IPHRC. The fifth section discusses ways in which the newly estab-

lished commission could address *sharia*-justified restrictions in the OIC's human rights documents. The conclusion offers recommendations for the international human rights community on helping the OIC become a reliable partner in advancing human rights.

A RIGHTS AGENDA FOR THE MUSLIM WORLD? THE ORGANIZATION OF ISLAMIC COOPERATION'S EVOLVING HUMAN RIGHTS FRAMEWORK

SOVEREIGNTY AND HUMAN RIGHTS

The debate over human rights in the Muslim world has focused largely on their compatibility with Islamic law. “One of the most striking and consistent features in all Islamic human rights schemes is the use of Islamic criteria to restrict human rights,” writes Ann Elizabeth Mayer.⁵ These sharia-based restrictions set “the stage not just for diminution of these rights but potentially denying them altogether.”⁶ On the other side of the debate, many have argued against any incompatibility between sharia and human rights. Twentieth century Islamic revivalist Abul Ala Mawdudi asserts that “Islam has laid down some universal fundamental rights for humanity as a whole.”⁷ Splitting the difference, Mashood Baderin argues for “a paradigm shift ... from traditional hardline interpretations of sharia and also from exclusionist interpretations of international human rights law,” envisioning an alignment of sharia and international human rights.⁸

An equally significant obstacle to the promotion of human rights in the Muslim world is the issue of sovereignty. Where other regional organizations have succeeded in establishing mechanisms to advance human rights, the OIC has so far failed. Although the organization has several human rights instruments, a closer analysis of these mechanisms

shows that they reinforce a traditional view of sovereignty that empowers individual states and their often authoritarian decision-makers.

The OIC’s foundational documents are filled with references to the sanctity of state sovereignty. The short preamble to the OIC Charter, for instance, consigns the promotion of human rights to the “constitutional and legal systems” of member states.⁹ This state-centered focus is also reflected in the OIC’s attitude toward the Universal Declaration of Human Rights (UDHR). A 1998 OIC Resolution on the Fiftieth Anniversary of the UDHR called for “the recognition and full respect of the principles of inviolability of the sovereignty and independence of states, and of non-interference in their internal affairs.”¹⁰

For human rights advocates, sovereignty is a double-edged sword. The state is the primary organ for the promotion of human rights, yet it is also the primary threat to those rights. On the one hand, the internationally recognized right to self-determination is vital for the realization of universal human rights. On the other hand, deference to territorial jurisdiction and the norm of non-intervention in the domestic affairs of other states often creates space for the violation of rights within or even by states themselves.¹¹ Many states lack the national-level mechanisms to prevent such violations; even

5. Ann E. Mayer, *Islam and Human Rights* (Third Edition) (Boulder, CO: Westview Press, 2007), 77.

6. *Ibid.*, 97.

7. Abul Ala Mawdudi, *Human Rights in Islam* (Leicester: The Islamic Foundation, 1976), 10.

8. Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford: Oxford University Press, 2002), 6.

9. In other examples, the Charter’s preamble calls on member states “to respect, safeguard, and defend the national sovereignty, independence and territorial integrity of all Member States,” and urges them “to respect the right of self-determination and non-interference in the domestic affairs and to respect sovereignty, independence and territorial integrity of each Member State.” “Charter of the Organization of the Islamic Conference,” Organization of Islamic Cooperation, <<http://www.oic-oci.org/is11/english/Charter-en.pdf>>.

10. OIC Resolution NO 56/25-P, “On the Contribution of the Organization of the Islamic Conference on the Occasion of the Fiftieth Anniversary of the Universal Declaration of Human Rights,” March 1998, <<http://www.oic-oci.org/english/conf/fm/25/resolutions25-p-3.htm#56>>.

11. Henry J. Steiner, Philip Alston, and Ryan Goodman, *International Human Rights* (Oxford: Oxford University Press, 2007), 669-708.

where they do exist, they are often ineffective. To address these weaknesses and make “themselves mutually accountable for the respect of human rights,”¹² European countries, for example, have increasingly turned to supranational instruments. Since the Second World War, this has increasingly become the path of choice, with states departing from traditional, Westphalian views of sovereignty and empowering international organizations with jurisdiction over human rights issues.¹³ Often these steps are taken through the establishment of a regional human rights regime.¹⁴

Regional Human Rights Regimes and Transferring Sovereign Authority

An international human rights regime is defined as a set of standards and decision-making procedures that a group of states accept as authoritative.¹⁵ The UN human rights system can be seen as an international human rights regime; it is complemented by a variety of regional regimes. Human rights regimes typically include four types of instruments: a declaration, a charter, a commission, and a court. A declaration establishes the regime’s broad principles in a non-binding framework; a charter (or covenant) elaborates on these principles in a binding treaty; a commission monitors the implementation of these rights; and a court adjudicates disputes over these rights. As Table I in the Appendix illustrates, the evolution of regional human rights regimes has been uneven across regions, and not all regimes have all four of the above instruments.¹⁶

The strength of a regional human rights system depends on the level of authority it has over member states in terms of standard-setting, monitoring, and enforcement. In a 2012 assessment of regional human rights systems, Jack Donnelly characterized

Europe as having a “strong international enforcement regime,” with authoritative regional norms and binding decision-making. The inter-American system can be considered “international promotional,” where a set of authoritative regional norms exists, yet regional monitoring remains weak. He terms the African system “international declaratory,” where there are weak standards replete with exemptions and little promotion. Donnelly argues that Asia and the Arab world, meanwhile, lack any effective human rights regimes, though there are signs of change with the Arab League’s and Association of Southeast Asian Nation’s (ASEAN’s) human rights initiatives.¹⁷

Once established, human rights regimes often evolve by gradually acquiring more authority from their member states. The African system has developed considerably over the past 20 years; broad guidelines have given rise to stronger norms and even a “promotional regime” in which an international body encourages or assists governments in implementing these norms. Typically, where leading states in the organization commit, even rhetorically, to human rights values, it becomes easier to spread these values and establish a mechanism to implement them. These steps, however, are often frustrated by strong resistance from at least some member states.

The development of regional human rights regimes is subject to a range of complicating factors, including states’ level of commitment to human rights, the level of democratization within member states, and the influence of external actors. Regional organizations around which rights regimes form are also important actors in this process. This is illustrated by the case of the Council of Europe, which gradually extended its authority over member states. The EU’s membership condi-

12. Jamie Mayerfeld, “A Madisonian Argument for Strengthening International Human Rights Institutions: Lessons from Europe,” in *Global Governance, Global Government*, ed. Luis Cabrera (Albany, NY: SUNY Press, 2011), 212.

13. Steiner, Alston, and Goodman, *International Human Rights*, 925-1062.

14. Jack Donnelly, “International Human Rights: A Regime Analysis,” *International Organization* 40, no. 3 (Summer 1986): 602.

15. Jack Donnelly, *Universal Human Rights in Theory and Practice* (Second Edition), (Ithaca: Cornell University Press, 2003), 27. For a general discussion on international regimes, see Stephan Krasner ed., *International Regimes* (Ithaca: Cornell University Press, 1983).

16. Jack Donnelly, *International Human Rights* (Fourth Edition), (Boulder, CO: Westview Press, 2013), 95-103.

17. Donnelly, “International Human Rights: A Regime Analysis,” 633.

tions and demands and overall democratization in Europe have been the main reasons for the Council of Europe's success in building a rigorous human rights regime. But the gradualist approach taken by institutions such as the Council of Europe, the European Commission,¹⁸ and the European Court of Human Rights was also extremely important. An incremental approach allowed the European system to evolve from its initial phase of the promotion of human rights (1950s) to the monitoring of human rights (1960s), and from there to the enforcement of human rights (1970s).¹⁹

In the Muslim world, few of the components of an international human rights regime are in place. The Cairo Declaration, the Covenant on the Rights of the Child in Islam, and the Independent Permanent Human Rights Commission in principle provide the OIC with an important basis from which to demand member states to improve their human rights practices. The recently established IPHRC, in particular, could facilitate the creation of a strong international human rights system for OIC member states. That will depend, however, on the willingness of those states to grant it standard-setting and monitoring capabilities, as well as on the ability of the OIC to establish some degree of authority over member states.

CAIRO DECLARATION ON HUMAN RIGHTS IN ISLAM (1990)

In 1990, the OIC approved the Cairo Declaration on Human Rights in Islam. Some critics of the OIC charged that the Cairo Declaration – prepared in advance of the 1993 World Conference on Human Rights – was an attempt to undermine the UDHR.²⁰ Others, however, perceived it as an attempt to reconcile the concept of human rights and Islam.²¹

The OIC itself described the Cairo Declaration as “complement[ing] the Universal Declaration as it addresses [the] religious and cultural specificity of the Muslim countries.”²² The Declaration in fact codifies many of the rights found in the International Bill of Human Rights, in addition to adding two specifically “Islamic” rights: the right to remain Muslim (Article 10) and the prohibition of usury (*riba*) (Article 14). The Declaration says nothing about the freedom of association and curtails freedom of religion and speech by forbidding proselytizing to Muslims (Article 10).

The Centrality of Sharia in the Cairo Declaration

From an international human rights perspective, the controversial nature of the Cairo Declaration lies in its claim of adherence to Islamic law. The document's preamble affirms that “fundamental rights and universal freedoms are an integral part of [Islam]” and that these rights and freedoms are “binding divine commandments” revealed to the Prophet Muhammad in the Quran. Yet sharia is invoked in the Declaration in ways that many interpret as constraining universal rights. Article 22 states that “everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of sharia,” while Article 12 affirms that “every man shall have the right, within the framework of sharia, to free movement.” Articles 24 and 25 further solidify the supremacy of sharia by asserting that the body of Islamic law is the Declaration's “only source of reference.”

For critics of the Declaration, such cursory use of sharia to justify sweeping limitations on universal human rights indicates four important shortcomings.²³ First, it renders the document too restrictive and undermines the universality of the rights

18. David P. Forsythe, *Human Rights in International Relations* (Cambridge: Cambridge University Press, 2000), 113.

19. Donnelly, *International Human Rights*, 95-96 and 106-107.

20. Azin Tadjini, “The Organization of Islamic Cooperation and Regional Challenges to International Law and Security,” *Amsterdam Law Forum* 4, no.2 (2012): 36-48.

21. Baderin, *International Human Rights and Islamic Law*.

22. The Ambassador of Pakistan addressing the Human Rights Council on behalf of the OIC on December 10, 2007. International Humanist and Ethical Union, “Islamic Law vs. Human Rights,” March 10, 2008, <<http://www.iheu.org/node/2949>>.

23. Mayer, *Islam and Human Rights*; Tadjini, “The OIC and Regional Challenges to International Law and Security”; and International Ethical and Humanist Union, “Universality is Under Attack at the UN,” January 3, 2008, <www.iheu.org/node/2874>.

it describes. Secondly, the Declaration – perhaps understandably – fails to specify what exactly constitutes sharia, meaning that its restrictions of the rights mentioned are ambiguous. Further, the state’s role in defining and applying sharia means that the Cairo Declaration empowers governments over individuals.²⁴ In most cases, the integration of sharia into the domestic legal systems of Muslim-majority states gives the state a degree of control over the definition and application of sharia.²⁵ For instance, Egypt’s Supreme Constitutional Court, Iran’s Guardian Council of the Constitution, and Pakistan’s Supreme Court are all state-based authorities that issue rulings on the principles and precepts of sharia. Even in Saudi Arabia, where sharia continues to be “identified with a community of scholars, trained in autonomous educational institutions,”²⁶ state bureaucracies have enormous influence on the legal system.²⁷ In the absence of an international authority to define sharia, the Cairo Declaration effectively diminishes the universality of human rights by relegating them to the interpretations of national governments.

Finally, many human rights scholars argue that the Cairo Declaration – largely through its alignment with sharia – directly contradicts certain international human rights. As Abdullahi Ahmed An-Naim points out, most traditional interpretations of sharia accept the legitimacy of slavery, grant only subordinate status to religious minorities, circumscribe women’s rights, and prohibit conversion from Islam.²⁸ This is not to say that sharia by necessity

contradicts ideas of international human rights; numerous reform-minded scholars have offered new interpretations of Islamic law that seek to reconcile the two.²⁹ Even more traditionally oriented scholars – as well as some Islamist groups – have increasingly turned to notions such as *maqasid al-sharia* (higher objectives of the law) and *maslaha* (public interest) to endorse interpretations of sharia that minimize contradictions with international human rights norms.³⁰ Still, the Cairo Declaration is the product of OIC member states with centralized, conservative interpretations of Islamic law that include Iran and Saudi Arabia. As such, the Declaration fails in itself to reconcile conflicts between sharia and ideas of human rights.³¹

These shortcomings render the Cairo Declaration ineffective as a mechanism for the promotion and protection of human rights. In fact, Muslim advocacy groups, Muslim scholars of human rights, and even OIC Secretary-General Ekmeleddin İhsanoğlu largely ignore the Declaration in their discussions of Islam and human rights.³² Writing in 2003, Mashood Baderin argued, “the lack of an interpretative or enforcement organ has rendered the OIC Cairo Declaration on Human Rights in Islam a dormant document, which neither the Muslim states nor the OIC as a body formally refers to in the face of the sometimes obvious violations of basic and fundamental human rights in some Muslim states.”³³ This is the problem that the OIC seeks to address with the establishment of the IPHRC, to be discussed later in this paper.

24. Tadjdini, “The OIC and Regional Challenges to International Law and Security.”

25. For how and why this process occurred in the Ottoman Empire, see Turan Kayaoğlu, *Legal Imperialism: Sovereignty and Extraterritoriality in Japan, the Ottoman Empire, and China* (Cambridge: Cambridge University Press, 2010), 104-149.

26. Robert W. Hefner, “Introduction,” in *Shari’a Politics: Islamic Law and Society in the Modern World*, ed. Robert W. Hefner (Bloomington: Indiana University Press, 2011), 21.

27. Sami Zubedia, *Law and Power in the Islamic World* (New York: I. B. Tauris, 2010), 153-56. See also Frank E. Vogel, “Saudi Arabia: Public, Civil, and Individuals Shari’a in Law and Politics,” in *Shari’a Politics: Islamic Law and Society in the Modern World*, ed. Hefner, 55-93.

28. Abdullahi Ahmed An-Naim, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International Law* (Syracuse, NY: Syracuse University Press, 1990). See also Mayer, *Islam and Human Rights*.

29. See for example Khaled Abou El Fadl, *The Great Theft: Wrestling Islam from the Extremists*, (New York: Harper Collins, 2005), 180-203; Abdullahi Ahmed An-Naim, *Islam and the Secular State* (Cambridge, MA: Harvard University Press, 2008).

30. For more on *maqasid al-sharia* and *maslaha*, see Jasser Auda, *Maqasid al-Shariah As Philosophy of Islamic Law* (Herndon, VA: International Institute of Islamic Thought, 2008). For an example of its application to human rights, see Baderin, *International Human Rights and Islamic Law*.

31. Ann E. Mayer, “Review of ‘International Human Rights and Islamic Law,’” *The American Journal of International Law* 99, no. 1 (January 2005): 305.

32. Katrina Dalacoura, *Islam, Liberalism, and Human Rights* (Third Edition), (New York: I.B. Tauris, 2007); Mahmood Monshipouri ed., *Human Rights in the Middle East* (New York: Palgrave Macmillan, 2011); İhsanoğlu, *The Islamic world in the New Century*, 181-188.

33. Baderin, *International Human Rights and Islamic Law*, 228.

THE COVENANT ON THE RIGHTS OF THE CHILD IN ISLAM (2005)

The OIC has long focused on issues related to children, women, and the family. While standard-setting on women's rights is lagging – despite Secretary-General İhsanoğlu's efforts³⁴ – the OIC has established standards on the rights of children and produced several declarations and resolutions emphasizing children's well-being, health, and protection.³⁵ The most authoritative of these statements came in June 2005 with the Covenant on the Rights of the Child in Islam – the only binding human rights document the OIC has produced thus far. Its two main objectives are: to care for and strengthen families, such that the husband and wife can raise physically and spiritually healthy children; and to establish the conditions in which Muslim children can be proud of their nation, country, and religion. The document emphasizes children's rights to education, health care, and a safe environment.

In terms of enforcement, the Covenant calls for the establishment of an "Islamic Committee on the Rights of Child" to meet every other year to "examine the progress made in the implementation of [the] Covenant" (Article 24). To date, OIC members have failed to establish such a committee, which, if created, would have monitoring authority over OIC member states. In its absence, the IPHRC would monitor the implementation of the Covenant, given its general mandate to interpret and offer "refinements" on all OIC human rights documents.

It could be argued that the concentration on the cause of children's rights is part of an effort to restrict rights in other areas. An emphasis on children's rights provides means to counter liberal arguments about women's rights, gender equality,

and sexual orientation. The Covenant emphasizes the role of traditional family and Islamic values in protecting the rights of the child, privileging the role of collective bodies (the traditional family, the nation) and stressing responsibilities in securing the rights of children. These references firmly ground the document in a conservative Islamic framework and distinguish its approach from a liberal view that emphasizes individuals (rather than collectives) and their rights (rather than responsibilities).³⁶

De-emphasizing Sharia in the Covenant

A comparison of the place of sharia in the Covenant on the Rights of the Child in Islam and the Cairo Declaration reveals some notable differences. While both texts have several references to sharia, the Covenant does not establish it as a guiding force in interpreting the document. In an apparent contradiction of the Declaration, the Covenant does not restrict children's rights to those specified in the body of Islamic law.

Moreover, there is language in the Covenant that could be construed as a challenge to practices which are sometimes justified through sharia. Article 4, for instance, urges member states to make efforts to "end action based on customs, traditions, or practices that are in conflict with the rights and duties stipulated in this Covenant." Female genital mutilation could be one example of a cultural practice – linked erroneously to sharia – that the Covenant would push states to curtail.³⁷

While de-emphasizing sharia somewhat, the Covenant does not do the same for sovereignty. In other words, while the Covenant downplays sharia as religious law, it strengthens and supports sharia as domestic law. As with the Cairo Declaration, references to sharia elevate member states' sovereign

34. İhsanoğlu, *The Islamic World in the New Century*, 187.

35. Yara Abdul-Hamid, "Child Rights Situation Analysis for Middle East and North Africa," Save the Children Sweden, August 2011, <<http://mena.savethechildren.se/PageFiles/2867/Regional%20MENA%20CRSA.pdf>>.

36. See Turan Kayaoğlu, "Giving an Inch to Win a Yard only to Lose a Mile: Muslim Activists Adapting to Liberalism in the UN," American Political Science Association 2012 Annual Meeting Paper, <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2106671>.

37. Nasrin Mosaffa, "Does the Covenant on the Rights of the Child in Islam Provide Adequate Protection for Children Affected by Armed Conflicts," *Muslim World Journal of Human Rights* 8, Issue 1 (2011): 1-21.

prerogatives, rather than promoting a uniform religious code.

INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION (2011)

In 2011, the OIC launched the Independent Permanent Human Rights Commission. The IPHRC's stated goals are to promote human rights in member states and to protect Muslim minorities worldwide. The Commission held its inaugural meeting in Jeddah in December 2011, with its first and second regular sessions in Jakarta and Ankara in February and August 2012, respectively. References to Islam or sharia are strikingly absent from both the IPHRC's name and its founding statute. As discussed below, major debates surrounding the establishment of the Commission – on issues such as its membership or autonomy – centered largely on the issue of sovereignty and the degree of authority it would have over OIC members.

Road to the IPHRC

The idea of an Islamic human rights commission is not new. When the OIC issued the Cairo Declaration in 1990, the organization expressed its intention to prepare a binding human rights charter and establish such a commission. With the adoption of a ten-year “program of action” in 2005, human rights gained greater prominence on the OIC agenda. As well as urging greater political participation, accountability, and transparency,³⁸ the program called for the establishment of “an independent permanent body to promote human rights in the member states,” and

for the “elaboration of an OIC Charter for Human Rights.” The program also asks the OIC to “introduce changes to national laws and regulations in order to guarantee the respect of human rights in Member States.”³⁹ A panel of five experts in international and national human rights organizations prepared the draft statute detailing the mandate and authority of the body. It was approved by the OIC Council of Foreign Ministers in 2011, effectively establishing the first Muslim human rights commission.⁴⁰

There were several reasons behind the OIC's push for a human rights commission. First, it was conceived as part of proposed organizational reforms under İhsanoğlu's leadership, designed to make the OIC a more effective body.⁴¹ These reforms have included a symbolic change of name (from the Organization of the Islamic Conference to the Organization of Islamic Cooperation), as well as more substantial changes to the organization's outlook. Its charter has been revised, adopting the promotion of human rights, the dialogue of civilizations, and combating Islamophobia as major goals.⁴² An increasing emphasis on addressing the problems of Muslim minorities⁴³ – particularly due to the growth of Islamophobia after the September 11 attacks – was also a factor leading to the establishment of the IPHRC.⁴⁴

A further motive behind the establishment of the IPHRC, highlighted in interviews with officials, was a desire to increase the OIC's visibility and credibility both among Muslims and the broader global public. The establishment of the Commission was envisaged, in the words of the Secretary-

38. Organization of Islamic Cooperation, “Ten-Year Programme of Action to Meet the Challenges Facing the Muslim Ummah,” December 2005, <<http://www.oic-oci.org/ex-summit/english/10-years-plan.htm>>.

39. Ibid.

40. Petersen, *Islamic or Universal Human Rights*, 17.

41. See İhsanoğlu, *The Islamic world in the New Century*.

42. Organization of Islamic Cooperation, “Charter of the Organization of the Islamic Conference,” March 14, 2008, <<http://www.oic-oci.org/is11/english/Charter-en.pdf>>. For more on OIC efforts to promote the dialogue of civilizations, see Turan Kayaoğlu, “Constructing the Dialogue of Civilizations in World Politics: A Case of Global Islamic Activism,” *Journal of Islam and Christian-Muslim Relations* 23, no. 2: 129-47. For more on the OIC's stance on the defamation of religions, see Kayaoğlu, “Giving an Inch to Win a Yard only to Lose a Mile.”

43. Author's interview with Abdula Manafi Mutualo, Secretary of the Islamophobia Observatory and Culture and Social Affairs Officer of the OIC, Jeddah, April 22, 2012.

44. Organization of Islamic Cooperation, “Resolution No 1/38-Leg On Follow up and Coordination of Work on Human Rights,” in “Resolutions on Legal Affairs Adopted by the 38th Session of the Council of Foreign Ministers,” June 28-30, 2011, <<http://www.oic-oci.org/38cfm/en/documents/res/LEG-RES-38-CFM-FINAL-2.pdf>>.

General, as a “boost [to] the OIC’s credibility in the eyes of the outside world.”⁴⁵ It can also be seen as an extension of a new humanitarian agenda that emphasizes aid, disaster relief, and collaboration with civil society organizations.⁴⁶

Internal dynamics within the OIC itself also played a critical role in the creation of the IPHRC. The traditional dominance of Saudi Arabia, Iran, and Pakistan within the organization has in the last few years been countered by the growing involvement of countries such as Turkey, Malaysia, Morocco, and Indonesia. While the former “want a more political agenda including the spread of theological influence,” the latter “envision the [OIC] as a forum for a cultural agenda pushing moderation.”⁴⁷ The latter group, which “played an important role in promoting the establishment of the human rights commission,”⁴⁸ has been empowered by the election of the reform-minded İhsanoğlu. Unlike his predecessors, who have been appointed following backroom negotiations, İhsanoğlu was elected by a vote among member states. The promotion of human rights occupied a prominent place in İhsanoğlu’s “moderation and modernization” agenda.⁴⁹ This reformist faction succeeded in pushing through the establishment of the IPHRC, despite the fears of traditional powers who argued that it might be used for political, even sectarian, ends.

In sum, the IPHRC signals a newfound commitment to human rights issues within the OIC. It represents a shift away from the organization’s past cynicism on human rights. Both the OIC bureaucracy and the more democratically oriented member states, Turkey and Indonesia, are now pushing for the organization to take a leading role in promoting human rights in the Muslim world.

Significantly, these states and the OIC seem to have effectively co-opted the conservative member states for this agenda. It is still too early to tell, but unified political support for the Commission gives it a degree of legitimacy that could make it an effective actor in promoting human rights and encouraging political and legal reform among member states.

The Commission’s Members: Independent Experts

The make-up of the IPHRC encourages a degree of optimism about its potential as an effective, independent actor. According to the IPHRC’s founding statute, the OIC’s Council of Foreign Ministers will elect the Commission’s 18 members from nominees proposed by member states. The 18 members will serve three-year terms, to be renewable once (Article 3).⁵⁰ While specifying that members must be human rights experts, no criteria relating to knowledge of Islam are imposed. In addition, the statute encourages regional balance and the representation of women among the elected experts (Articles 6-7). Still, the statute lacks an explicit provision requiring the commissioners’ independence and impartiality.⁵¹ Moreover, the country hosting the Commission’s meeting – the location rotates among member states – is provided with additional powers, as the statute requires IPHRC members and attendees to acquire visas from the host state.

In advance of the establishment of the Commission, there was significant debate on what would constitute a “human rights expert.” While Iran advocated that “experts” should be government officials directly accountable to their home states (similar to ASEAN’s Intergovernmental Human

45. “İhsanoğlu Urges Finalization of the Statute of the Human Rights Commission,” OIC Journal Issue 13 (January-April 2010): 19.

46. Petersen, *Islamic or Universal Human Rights*, 13.

47. Toni Johnson, “The Organization of the Islamic Conference,” Council on Foreign Relations Backgrounder, June 29, 2010, <<http://www.cfr.org/religion/organization-islamic-conference/p22563>>.

48. Petersen, *Islamic or Universal Human Rights*, 10.

49. İhsanoğlu, *The Islamic World in the New Century*.

50. Organization of Islamic Cooperation, “The Statute of the IPHRC,” in “Resolutions on Legal Affairs Adopted by the 38th Session of the Council of Foreign Ministers,” June 28-30, 2011, <<http://www.oic-oci.org/38cfm/en/documents/res/LEG-RES-38-CFM-FINAL-2.pdf>>.

51. Ioana Cismas, “Introductory Note to the Statute of the OIC Independent Permanent Human Rights Commission,” *International Legal Materials* 5, no. 6 (February 2011): 1148-1160.

Rights Commission), more liberal-leaning states insisted that the experts be independent. A compromise specified that members must be “independent experts,” but would be nominated by member states, with no restriction on putting forward government officials.⁵² This structure makes the members more independent than their Asian counterparts. They are comparable to their African counterparts, but significantly less independent than their European and American counterparts.⁵³

Of the 18 experts elected to the IPHRC in 2011, equal numbers come from Arab, Asian, and African states, and four of the 18 members – those from Indonesia, Malaysia, Sudan, and Afghanistan – are women.⁵⁴ The members are mostly diplomats, bureaucrats, and academics. While some are well-respected in the international human rights community, others are “known for their strong opposition to at least parts of the universal human rights agenda.”⁵⁵ For a photo of the current IPHRC members, refer to Image I in the Appendix.

None of the 18 representatives is a religious scholar, but most have strong ties to their states’ bureaucracies, indicating OIC members’ desire to retain influence within or over the Commission. Some are even “formally or informally appointed by their member-state governments.”⁵⁶ The imposition of a relatively short tenure of three years (with the possibility of renewal) may make these experts hesitant to directly challenge member states.⁵⁷ Clearly, OIC member states often remain reluctant to renounce sovereignty that allows them significant control over the application of human rights.

For his part, the Secretary-General is confident that the current IPHRC members are committed to advancing human rights.⁵⁸ Their diverse backgrounds are undoubtedly an asset in making the Commission more effective in “human rights diplomacy” but do not necessarily make them strong “advocates” in the mold with which most human rights activists are familiar.⁵⁹ Human rights diplomacy acknowledges the primacy of sovereignty and requires international actors to work with the state, understand their concerns, and reason with governments to improve human rights. By contrast, human rights advocacy aims to mobilize international and non-state actors to apply moral pressure to induce states to address human rights violations. Many of the experts have experience in national, regional, and international human rights organizations. An optimist would argue that this is an asset in their work on the Commission. Pessimists, however, will use the same observation to suggest the limited independence of the “independent” experts from member states.

The IPHRC’s Jurisdiction

In the future, the IPHRC and the OIC bureaucracy are likely to demand greater independence and authority over individual states. Such a transfer of authority will be necessary if the Commission is to achieve the vision of its supporters. That vision, as stated by Secretary-General İhsanoğlu, is to advance human rights and the preservation of Islamic values through the promotion of “good governance, democracy, human rights, and fundamental freedoms and the rule of law, at both the national and the international levels.”⁶⁰ These are ambitious and admirable goals, par-

52. Ibid.

53. For the African Commission and Inter-American Commission see Steiner, Alston, and Goodman, *International Human Rights in Context*, 1062.

54. This aligns with İhsanoğlu’s promotion of women in the OIC bureaucracy and of issues related to women in the OIC’s agenda. Author’s interview with Ekmeleddin İhsanoğlu, Secretary-General of the OIC, Jeddah, April 21, 2012.

55. Petersen, *Islamic or Universal Human Rights*, 35

56. Ibid, 30.

57. OIC, “The Statute of the IPHRC,” <<http://www.oic-oci.org/38cfm/en/documents/res/LEG-RES-38-CFM-FINAL-2.pdf>>.

58. Author’s interview with Ekmeleddin İhsanoğlu, Secretary-General of the OIC, Jeddah, April 24, 2012.

59. Author’s interview with Raouf Salama, Legal Officer, Interim Secretariat of the IPHRC, Jeddah, April 22, 2012. For more on this approach see Michael O’Flaherty et al eds., *Human Rights Diplomacy: Contemporary Perspectives* (Leiden: Brill, 2011).

60. Siraj Wahab, “OIC Sets Up its Own Rights Watchdog.” Arab News, June 29, 2011, <<http://www.arabnews.com/node/382329>>.

ticularly for OIC member states – a group which includes few democratic states and several states with reputations as major human rights abusers.

The Commission’s founding statute reflects this vision and furnishes the body with some jurisdiction over member states.⁶¹ Several of these powers, however, were subsequently removed or diluted. For example, the initial draft included an article saying that “the Commission shall seek to ensure the promotion and protection of civil, political, economic, social, and cultural rights in the member states.” That was amended by member states, which inserted language that protects their sovereignty: “The Commission shall support Member States’ efforts to consolidate civil, political, economic, social, and cultural rights” (Article 9). Another proposed article that would allow the Commission to “investigate any possible human rights violations by OIC Member States” was deleted entirely.⁶²

As a result, the Commission now has more of a consultative rather than protective function. Its duties include garnering the support of governmental and non-governmental human rights organizations. In addition, the Commission is expected to “conduct studies and research” on human rights (Articles 15-16) and provide “technical support for capacity building,” for instance in meeting the reporting requirements of human rights mechanisms.⁶³ These functions allow only a limited, supporting role for the Commission; its actions are largely dependent on the OIC or the requests of member states.

A major tool in the arsenal of international human rights organizations is the ability to publish country reports and resolutions which in effect “name and

shame,” thereby exerting moral pressure to curb the violation of human rights.⁶⁴ OIC staff members interviewed for this study alluded to the downside of this strategy: it can sometimes backfire, producing defensive responses or outright denials. The OIC, one senior staff member said, wants to follow a different strategy. It will publish thematic rather than country-specific reports and resolutions.⁶⁵ This strategy is consistent with the OIC’s positions at the UN Commission of Human Rights and the Human Rights Council; one OIC representative at the UN Commission argued that these resolutions “were often politically motivated and did not help in the promotion and protection of human rights.”⁶⁶ An OIC staff person argued that the issue-specific focus of the thematic reports would depoliticize the human rights problems they addressed and allow countries to act on human rights without losing face. In other words, rather than “human rights advocacy” through moral pressure, the OIC envisions the Commission engaging in “human rights diplomacy” through persuasion.⁶⁷

Still, there are means by which the IPHRC could circumvent or reduce state control and expand its mandate. Article 17 of the IPHRC’s founding statute provides the Commission with a degree of independence, allowing for a potentially activist role.⁶⁸ The article grants the body an interpretative authority over OIC human rights documents – “upon the [member states’] request.” Even without such a request, the Commission “may submit recommendations on the refinement of OIC human rights declarations and covenants.” In other words, just as UN human rights bodies claim authoritative interpretation of UN human rights documents, the IPHRC can claim authoritative interpretation of OIC human rights documents. In the absence

61. OIC, “The Statute of the IPHRC,” <<http://www.oic-oci.org/38cfm/en/documents/res/LEG-RES-38-CFM-FINAL-2.pdf>>.

62. Petersen, *Islamic or Universal Human Rights*, 18.

63. OIC, “The Statute of the IPHRC,” <<http://www.oic-oci.org/38cfm/en/documents/res/LEG-RES-38-CFM-FINAL-2.pdf>>.

64. Thomas Risse, Stephen C. Ropp, and Kathryn Sikkink, *The Power of Human Rights: International Human Rights and Domestic Change* (Cambridge: Cambridge University Press, 1999).

65. Author’s interview with Rizwan S. Sheikh, Executive Director of the Interim Secretariat of the IPHRC, Jeddah, April 21, 2012.

66. Steiner, Alston, and Goodman, *International Human Rights*, 797.

67. The Commission’s consultative nature prompts Marie Petersen to suggest that it is modeled on the UN Human Rights Council Advisory Committee rather than the UN Human Rights Committee. Petersen, *Islamic or Universal Human Rights*, 22.

68. Cismas, “Introductory Note to the Statute of the IPHRC,” 1150.

of an OIC Charter of Human Rights, the Commission would therefore be responsible for elaborating the Cairo Declaration's broad principles. The Commission could also gain leverage over member states by mobilizing existing, often strong relations between the OIC and other international organizations – particularly the UN, where the OIC enjoys observer status. The OIC's close relationship with the UN was evident in the establishment of the IPHRC; three of the five members on the advisory panel that prepared the draft statute had previous experience working within the UN human rights system.⁶⁹ Senior UN officials, including the UN High Commissioner for Human Rights, participated in key meetings on the formation of the IPHRC.⁷⁰ The Commission's founding statute also explicitly mandates the Commission to cooperate with "international and regional human rights organizations" (Article 15).

This close cooperation is in line with the vision of the OIC leadership. İhsanoğlu, for example, has stated the organization's desire "to integrate [the OIC's human rights system] with the United Nations system." and noted that the Commission will be a means to that end.⁷¹ One interviewed staff member saw a role for the OIC in improving its members' relations with the UN Human Rights Council on issues such as providing technical support and preparing state reports for periodic reviews.⁷² The OIC leadership sees the IPHRC as a means to draw the UN human rights system and OIC member states closer together; it was introduced not as an "alternative human rights system ... but rather as an attempt to ... work within the existing system."⁷³ This sort of cooperation would strengthen the Commission's capabilities as a promoter and

protector of human rights in the Muslim world. One issue that will be critical in determining the Commission's relative power is the question of defining its rules and procedures. IPHRC members have recently prepared a draft document of the rules and procedures, but at the time of writing it had yet to be approved by the Council of Foreign Ministers, which will likely seek to dilute the Commission's authority further. One staff member told me that the Commission is also asking for the right to revise the Commission's rules and procedures. If approved, this could dramatically enhance the Commission's position vis-à-vis member states.⁷⁴

As one OIC official indicated, IPHRC members' understanding of the body's statute may matter more than that of different governments. The same official explained that there are signs that the Commission is already using creative strategies in an attempt to expand its mandate. For example, although the statute does not allow "investigative state visits," the Commission is looking to include the right to "informative state visits" among its tools.⁷⁵

The IPHRC's jurisdiction is restricted but there are significant loopholes that the Commission can utilize to expand it. Ongoing debates about the IPHRC's founding statute indicate that OIC bureaucrats, and at least some members of the Commission itself, are eager for the body to have a stronger role. The Commission's members are aware of their limited power, and some have criticized the statute as giving a mandate for the promotion – but not protection – of human rights.⁷⁶ It seems that despite some states' attempt to control the commission by installing sympathetic bureaucrats, the Commission's leading members are critical of

69. These three were: Ibrahim Salama, Director of the Human Rights Treaties Division, UN Office of the High Commissioner for Human Rights; Adama Dieng, Registrar of the International Criminal Tribunal for Rwanda; and Mahjoub El Haiba, a former member of the UN Human Rights Committee.

70. Petersen, *Islamic or Universal Human Rights*, 26.

71. Toni Johnson, "The OIC on Democracy and Human Rights," Council on Foreign Relations, October 1, 2010, <<http://www.cfr.org/reli-gion/oic-democracy-human-rights/p23062>>.

72. Author's interview with Rizwan S. Sheikh, Executive Director of the Interim Secretariat of the IPHRC, Jeddah, May 14, 2012.

73. Petersen, *Islamic or Universal Human Rights*, 30.

74. Author's interview with Raouf Salama, Legal Officer, Interim Secretariat of the IPHRC, Jeddah, April 22, 2012.

75. Author's interview with staff member of the Interim Secretariat of the IPHRC, Jeddah, April 23, 2012.

76. Author's interview with Zühtü Arslan, former member of the IPHRC Ankara, September 21, 2012.

member states' human rights records. These members would probably not challenge the member states directly but could seek to use the Commission's power to the fullest extent possible in order to build its credibility with governments, publics, and civil society. The moral and political authority of the Commission may well grow over time, giving it a stronger basis from which to claim more autonomy and authority from member states.⁷⁷

The IPHRC's First Session

The IPHRC's first session, held in Jakarta in February 2012, offered important indications of the direction it intends to follow. At the meeting, the Secretary-General outlined five principles. First, the Commission will complement rather than replace other national and international human rights mechanisms. It will follow a "remedial" approach, helping OIC member states improve human rights practices without assuming a judgmental stance on their human rights problems. The Commission, he said, will fulfill a "guidance" function, providing member states with services like human rights training for the police. He emphasized that it would take a gradual approach, building its credibility and mandate over time. Finally, he said, the Commission will prioritize the most pressing human rights problems.

The Commission decided that three items would remain on its permanent agenda: civil, political, economic, social, and cultural rights in member states; other human rights issues present on the OIC agenda (such as the plight of Muslim minorities); and the human rights situation in Palestinian or other territories occupied by Israel in 1967. Three particular areas – all of them related to economic or social rights – were identified as priorities for the Commission: the rights of women and children; the right to development; and the right to education. The first meeting also expressed con-

cerns about human rights violations in Syria, ongoing since 2011, and the Quran burning and ensuing protests in Afghanistan in 2012.⁷⁸

The result of the first session was mixed. On the one hand, it did not signal the arrival of a strong mechanism for the protection of human rights. The emphasis on gradualism, the relative prioritization of the various issues, and the guidance to member states all suggest a relatively weak start for the Commission's work. On the other hand, the experts' ability to focus on long-term concerns and debates on broad issues (beyond a historic focus on Israel-Palestine and the rights of Muslim minorities) indicate that the Commission is working towards building its moral and political capital as a human rights actor.

The IPHRC's Structural Shortcomings

Three structural problems will likely limit the Commission's effectiveness. First, the IPHRC has only a few, relatively weak mechanisms. This weakness becomes particularly clear when compared to the powers of other international or regional human rights commissions. All other such systems have monitoring mechanisms, such as periodic review of state reports, country visits, and complaint mechanisms for inter-state problems or individual grievances. Almost all IPHRC activities are contingent on the request or approval of the OIC or a relevant member state. In other words, OIC members have carefully guarded their sovereignty and denied their Commission any significant independent authority.

Second, there has been no integration of civil society organizations into the IPHRC. While the OIC Charter allows cooperation with "Islamic and other organizations" (Article 26), the OIC lacks a clear and inclusive mechanism for NGO accreditation and has traditionally excluded civil society from

77. Ekmeleddin İhsanoğlu, "Statement by H.E. the Secretary-General at the First IPHRC Session," February 20, 2012, <http://www.oic-oci.org/topic_detail.asp?t_id=6449&x_key>.

78. Maha Akeel, "OIC Human Rights Body Identifies Women's Rights, Education, Development, and Research as Priority," *OIC Journal* Issue 20 (January-March 2012): 28-30.

its official business. It was only in 2007 that the organization agreed to allow NGOs to apply for consultative status, and even then the rules governing these applications and the benefits of this status were unclear.⁷⁹ The OIC has also largely ignored human rights NGOs in the development of the Commission, denying them any input on the drafting of the IPHRC's establishing statute. While the statute specifies that "the Commission will promote and support member state-accredited NGOs" (Article 15), it also enumerates additional requirements for inviting an OIC-accredited NGO to participate in IPHRC meetings. It specifies that the Commission must seek "the host country's consent and the approval of all the members of the Commission" (Article 21).⁸⁰ These are exacting requirements for NGO participation, and they constitute a threat to the long-term success of the Commission's work. The effective mobilization of civil society groups is of key importance in efforts to increase the IPHRC's legitimacy among member state populations, establish non-state channels of information, and advance human rights through grassroots pressure.

The arrival of the IPHRC has already mobilized the NGO community in the Muslim world, and these actors have lobbied to be an integral part of its work. Under the leadership of MAZLUMDER, a Turkish human rights NGO, more than 230 NGOs from 24 OIC countries appealed to the organization to "ensure space for civil society participation in the Commission and follow a process that is consultative and inclusive of civil society at all levels." These NGOs urged the Commission "to proactively protect human rights, women's rights, children's rights, and the rights of Muslim and non-Muslim minorities ... in all 57 OIC member countries," and indicated that they "are pleased to be partners in these efforts."⁸¹

If granted greater influence within the Commission, these NGOs could play a prominent role in

the promotion of human rights in OIC member states. NGO activism has been important in other regional human rights systems like the Organization of American States (OAS) and the European Commission (EC), and it has produced significant improvements in their respective human rights regimes. Although the OIC leadership realizes the importance of incorporating NGOs in the IPHRC, the current OIC Charter and the IPHRC's founding statute provide them only a limited space.

One OIC official said that the advisory panel that prepared the draft statute and some states such as Turkey have pushed for a Commission that accommodates a strong NGO presence, but that several others, including Saudi Arabia, have resisted. These dissenters have argued that NGOs would politicize the Commission's work.⁸² The compromise was for limited integration, allowing for progressively greater inclusion. The first NGOs to participate will probably be research institutes and organizations dealing with economic, social, and cultural rights, rather than those with a focus on political and civil rights. As the case of MAZLUMDER shows, the mere existence of the Commission has mobilized the NGO community. With the help of some key states and the OIC bureaucracy, the Commission could in future provide a much-needed platform to civil society organizations.

Third, the jurisdictional reach of the Commission is both ambitious and problematic. Allowing for a potentially universal jurisdiction, its statute asks the Commission "to monitor observance of the human rights of Muslim communities and minorities" (Article 10). The OIC has the mandate to protect the rights of Muslim minorities everywhere. Many international human rights issues, such as combating Islamophobia and addressing the defamation of religions, have a prominent place on the OIC's human rights agenda. The OIC was heavily involved in controversies that followed *Jyllands-Posten's* provocative cartoons of the Prophet Muhammad

79. Marie J. Petersen, "For Humanity or for the Umma," PhD dissertation, University of Copenhagen, 2011.

80. OIC, "The Statute of the IPHRC," <<http://www.oic-oci.org/38cfm/en/documents/res/LEG-RES-38-CFM-FINAL-2.pdf>>.

81. A copy of the letter and list of its signatories can be found at: <http://eski.mazlumder.org/dosyalar/Letter_to_ihsanoglu_English.pdf>.

82. Author's interview with staff member of the Interim Secretariat of the IPHRC, Jeddah, April 23, 2012.

and Geert Wilders' anti-Islamic movie, *Fitna*.⁸³ In these instances, the OIC presented itself as an advocate of Muslim minorities' rights. Yet the basis on which the OIC claims to speak on the behalf of Muslims in non-member states remains unclear, especially as the OIC's state-centric organization does not allow for the representation of these Muslim minorities. Finally, there is a notable double standard at play: while the IPHRC's founding statute calls for monitoring the human rights of Muslim minorities in non-member states, it denies the Commission a similar function regarding human rights issues in OIC member states.

Political decisions, rather than religious or cultural differences particular to Muslim-majority states, are the principle reason behind the Commission's shortcomings. Its problems are institutional and stem from a reluctance to transfer authority from member states to the Commission. But as the evolution of human rights commissions in other regions indicates, the bodies, once established, can build capital, assuage governments' fears of politicization, and gradually secure greater autonomy and authority. If these other cases provide a lesson, it is this: the Commission will need to be strategic in accommodating member state preferences without losing its moral standing. While it is too early to know if they will achieve this delicate balance, the Commission's experts, its structure, and its activities thus far give reasons to be hopeful.

SHARIA, THE CAIRO DECLARATION, AND THE IPHRC

Since the Cairo Declaration, the OIC has moved away from an emphasis on sharia but maintained the centrality of the traditional conception of sov-

ereignty in its human rights instruments. Islamic law, therefore, remained on the sidelines of the debate over the IPHRC. Yet sharia is not irrelevant to human rights in the Muslim world, nor to the OIC's plans to promote and protect these rights. Even if the Cairo Declaration has diminished in importance, the sharia-related issues it raises – freedom of speech, women's rights, freedom of religion – will remain central to any serious attempts to improve human rights in the Muslim world. The popularity of traditional views of sharia among Muslims and its place in the legal systems of many OIC countries make that clear.⁸⁴ Sharia's compatibility with human rights will certainly resurface in the course of the IPHRC's work, particularly in the preparation of advisory opinions or the interpretation of OIC documents.

This debate is also relevant to the OIC's search for a new paradigm in reconciling international human rights norms and Islamic values. The OIC is expecting the IPHRC to lead this debate. A report authored by the OIC's Cultural and Social Affairs Department, the unit responsible for the creation of the Commission, states that the "Commission will introduce a paradigm shift within OIC in the way universal human rights and freedoms flow together with Islamic values to offer a coherent and strong protection system aimed at facilitating the full enjoyment of all human rights in the Member States."⁸⁵ Some – including former United Nations Special Rapporteur Doudou Diene – have challenged OIC staff members and independent experts to move beyond the ideological trap of "a human rights versus Islam dichotomy."⁸⁶ İhsanoğlu himself has noted "the need to refine the 1990 Cairo Declaration on Human Rights in keeping with the current global human rights discourse."⁸⁷ Based on the conclusions of human rights scholars

83. Author's interview with Abdula Manafi Mutualo, Secretary of the Islamophobia Observatory and Culture and Social Affairs' Officer of the OIC, Jeddah, April 22, 2012.

84. Not everyone agrees that the debate about sharia will likely occupy a prominent place in the IPHRC's agenda. One former IPHRC official suggested that the Commission is likely to focus on issues such as preventing torture and establishing due process of law – issues of great concern that are also areas of consensus among member states. Author's interview with Zühtü Arslan, former member of the IPHRC Ankara, September 21, 2012.

85. "OIC Independent Permanent Commission on Human Rights," *OIC Journal* Issue 17 (April-June 2011): 15.

86. Author's interview with Raouf Salama, Legal Officer, Interim Secretariat of the IPHRC, Jeddah, April 22, 2012.

87. "OIC Gears Up to Establish Human Rights Commission," *Today's Zaman*, April 13, 2009, <http://http://www.todayszaman.com/news-Detail_getNewsById.action?newsId=172301>.

and the approaches taken by other human rights organizations, it is possible to come up with seven scenarios, some more plausible than others, for how the Commission could approach questions about the compatibility of Islamic law with international human rights treaties and practices.

First, there is the example of the European Court of Human Rights (ECtHR), which upheld the Turkish Constitutional Court's decision to close the Refah Party in *Refah Partisi v. Turkey*. In its ruling, the court defined sharia as the “dogma and rules laid by” Islam and ruled that it is incompatible with democracy and human rights, “particularly with regard to its criminal law and criminal procedure, its rules on the legal status of women and the way it intervenes in all spheres of private and public life in accordance with religious precepts.”⁸⁸ The Commission is obviously unlikely to follow the example of the ECtHR, whose narrow interpretation of sharia as positive law supporting a rigid and oppressive legal system is at odds with other understandings of Islamic law. Given widespread support for sharia among Muslim populations,⁸⁹ a decisive move away from sharia is simply not realistic.

Second, the Commission could offer its own interpretation of sharia. These interpretations, Ioana Cismas hopes, could “promote human rights and uphold the existing international obligations of the OIC member states.”⁹⁰ This option assumes a “constructionist” approach, which argues that since “sharia was constructed by the early Muslim jurists out of the fundamental sources of Islam, namely the Qur’an and Sunna”⁹¹ (actions and say-

ings of the Prophet Muhammad), it can be reconstructed by modern-day jurists and human rights experts. Many OIC members, Islamist parties, religious groups, and scholars will likely resist this approach, however.⁹² Moreover, this reinterpretation would be complicated by differences across and within madhabs (schools of Islamic thought) about the methods and specifics of sharia, as well as the differing place of sharia in the legal systems of OIC members. Finally, it is not clear whether such interpretations would necessarily lead to human rights-compatible understandings of sharia.

Another option could see the Commission follow the “margin of appreciation” doctrine.⁹³ Developed within the European Court of Human Rights, this approach allows the consideration of cultural and historical differences when the Court applies the European Convention.⁹⁴ In a similar fashion, the IPHRC may seek to offer context-dependent interpretations of the OIC’s human rights documents. This approach may provide flexibility in dealing with politically sensitive issues while maintaining a strong moral standing on human rights. It could also allow the Commission to offer divergent advice and interpretations to accommodate historical, cultural, and sectarian differences; sharia could be considered one of the factors that produce such differences.

Fourth, the Commission could follow Article 17 of the IPHRC’s statute and submit “recommendations on the refinement of OIC human rights declarations and covenants.”⁹⁵ These recommendations could provide general statements on how the emphasis on sharia and concern for human rights

88. European Court of Human Rights, “Case of Refah Partisi (Welfare Party) and Others v. Turkey,” February 13, 2003, <<http://www.iilj.org/courses/documents/RefahPartisivTurkey.pdf>>.

89. John Esposito and Dalia Mogahed, *Who Speaks for Islam? What a Billion Muslims Really Think*, (New York: Gallup Press, 2007), 46-54.

90. Cismas “Introductory Note to the Statute of the IPHRC,” 1149.

91. An-Naim, *Toward an Islamic Reformation*, 11.

92. Cismas, “Introductory Note to the Statute of the IPHRC,” 1149.

93. See Eyal Benvenisti, “Margin of Appreciation, Consensus, and Universal Standards,” *Journal of International Law and Politics* 31, no. 4 (1999): 843-854; Douglas Donoho, “Autonomy, Self-Governance, and the Margin of Appreciation: Developing a Jurisprudence of Diversity within International Human Rights,” *Emory International Law Review* 15, no. 2 (Fall 2001): 391-466. For an attempt to justify differences between Islamic and international human rights norms using the doctrine of margin of appreciation see Baderin, *International Human Rights and Islamic Law*.

94. European Court of Human Rights, “Case of Leyla Sahin v. Turkey,” November 10, 2005, <<http://www.strasbourgconsortium.org/document.php?DocumentID=3814>>.

95. OIC, “The Statute of the IPHRC,” <<http://www.oic-oci.org/38cfm/en/documents/res/LEG-RES-38-CFM-FINAL-2.pdf>>.

could be reconciled. Over time, they could gradually evolve into a body of work on how to negotiate the differences between traditional interpretations of sharia and international human rights law.

Fifth, the Commission could opt to prepare an OIC Charter on Human Rights. Such a charter has been on the OIC's agenda since it adopted the Cairo Declaration in 1990. In the process of preparing such a charter, the Commission could elaborate on the Cairo Declaration's principles and specify the exact place of sharia in the charter's binding articles. While the proposed charter may not guarantee the compatibility of sharia and international human rights, it may specify the points of agreement and disagreement better than the Cairo Declaration. The preparation of a new charter, however, would be a heavily contested process; the OIC has been putting it off for over 20 years.

Sixth, the Commission could also simply avoid discussing sharia and ignore references or justifications based on Islamic law. This is the approach taken by the African Commission on Human and People's Rights when countries invoke sharia-based justifications for their policies. The African Commission thus effectively disengages from sharia issues, explicitly stating that it will not comment on a policy that is either required or accommodated by Islamic law. It also states that it will not consider arguments based on sharia, and instead develops separate human rights-based arguments to determine whether the policy in question violates the African Charter on Human and People's Rights.⁹⁶

Finally, the Commission could develop a method to show that sharia can be interpreted in a way that is compatible with international human rights. This would require some adjustment in the OIC's approach, and possibly even dropping the language of sharia altogether. Several staff members

interviewed for this study indicated that the increasingly held view within the OIC supports relegating sharia to a supplementary position in relation to international human rights. The proposed formula is that the OIC promote human rights "in conformity with international human rights and the added value of Islamic principles."⁹⁷ Besides privileging the International Bill of Human Rights over Islamic law, this view sees sharia as broad moral teachings rather than strict legal injunctions. This approach conforms with the mandate of the OIC charter (which has been revised to mention the IPHRC): "The Independent Permanent Commission on Human Rights shall promote the civil, political, social and economic rights enshrined in the organization's covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values" (Article 15). This move toward broader Islamic values would seek to align human rights with maqasid al-sharia (higher objectives of the law) and maslaha (public interest).⁹⁸

96. For an example see *Curtis Francis Doebbler v. Sudan*, discussed in Steiner, Alston, and Goodman, *International Human Rights in Context*, 1076-79.

97. Author's interview with Raouf Salama, Legal Officer, Interim Secretariat of the IPHRC, Jeddah, April 22, 2012.

98. Baderin, *International Human Rights and Islamic Law*.

CONCLUSIONS AND RECOMMENDATIONS

The international human rights community faces daunting challenges in advancing human rights in the Muslim world. Despite being well placed to address those challenges, the most important organization among Muslim states, the OIC, has so far failed to do so. The findings of this study suggest two main reasons. One is the absence of a clear framework for explaining how the conservative brand of Islam dominant among the OIC's most powerful member states is compatible with international human rights. The second and often overlooked reason is that the OIC's state-centrism prevents the transfer of authority to a supranational body and limits the ability of NGOs to lobby within the OIC. As previously discussed, the establishment of an international body with authority to set and monitor the implementation of human rights standards and the promotion of the role of NGOs are the two major mechanisms for advancing human rights on the international stage. Shortcomings in this regard are also critical in explaining human rights failures in Muslim societies.

In the two decades from the Cairo Declaration in 1990 to the establishment of the Independent Permanent Commission on Human Rights in 2011, the OIC has gradually shed the language of sharia. The Cairo Declaration referred to sharia as its only source, the Covenant on the Rights of the Child mentioned it within the context of Islamic values (2005), and the IPHRC and its statute (2011) abandoned references to sharia altogether. This shift is indicative of the OIC's increasing willingness to discuss rights within the context of international human rights rather than exclusively within that of Islamic law and tradition.

Given the OIC's ambition as a human rights actor, the international human rights community

should prioritize engagement with the OIC. This would provide the organization with much needed prestige and knowledge that could help in efforts to establish autonomy and authority over human rights issues in member states. Such engagement would also bring constructive criticism of the IPHRC's work and, in the long run, increase the OIC's ability to hold its members accountable for human rights violations. Holding Muslim states accountable to human rights standards they have established for themselves would represent a major step forward.

There are several ways in which the human rights community – Western states, NGOs, and inter-governmental bodies – can help the OIC become a reliable and effective partner in advancing human rights. First, the international human rights community should demand transparency from the IPHRC. At the time of writing, the IPHRC did not have a permanent secretariat or even a website. Very little is known about the background of some of the Commission's members, the agenda of its meetings, the minutes of its debates, the text of its resolutions, or indeed about the body's rules and procedures. In the interest of greater accountability, this information should be made public.

Second, the international human rights community should promote institutional linkages between the IPHRC and other human rights bodies such as the Council of Europe, the ECtHR, the UN Human Rights Council, and the UN Office of the High Commissioner for Human Rights. In doing so, international actors should utilize the IPHRC statute's encouragement of collaboration with other human rights organizations. These more established human rights bodies could organize joint working sessions and help the IPHRC staff's professional development.

Third, the international human rights community should encourage the OIC to nominate and elect experts with a strong record of defending human rights. Once elected, these experts would benefit from access to the international human rights community's resources, for instance by offering them visiting positions in human rights organizations, research centers, and universities.

Finally, active NGOs in OIC member states can play an important part in mobilizing their populations and pressuring governments to comply with human rights standards. Since the IPHRC's founding statute allows for cooperation – albeit limited – with NGOs, the international human rights community can provide expertise and training to relevant NGOs in Muslim societies. Those NGOs can in turn create grassroots pressure on member states, the OIC, and the IPHRC.

The OIC's current approach should be welcomed by those concerned with human rights in the Muslim world. Despite its shortcomings, the organization holds significant potential as an advocate and protector of human rights. More than other human rights organizations, the OIC is well situated to utilize Islamic values and traditions to substantiate arguments for advancing human rights. As a Muslim-only forum, the OIC also provides an environment for internal criticism of human rights practices.

In encouraging the OIC to meet its potential as a human rights actor, the international human rights community must be wary of quick solutions. Building regional human rights systems is a slow and difficult process. In establishing the IPHRC with the strong, unified support of its member states and thereby formalizing its human rights agenda, the OIC has taken an important step in the right direction.

APPENDIX

TABLE I

	Declaration	Charter	Commission	Court
Universal (The UN System)	Universal Declaration of Human Rights (1948)	International Covenant on Civil and Political Rights (1966); International Covenant on Economic, Social, and Cultural Rights (1966)	Human Rights Committee (1977); Commission on Economic, Social, and Cultural Rights (1985)	None
European System (The Council of Europe)	None	European Convention on Human Rights (1953)	European Commission on Human Rights (1954-1998)	European Court of Human Rights (1959)
Inter-American System (The Organization of American States)	American Declaration of the Rights and Duties of Men (1948)	American Convention of Human Rights (1969)	Inter-American Commission on Human Rights (1959)	Inter-American Court of Human Rights (1979)
African System (The African Union)	None	African Charter on Human and People's Rights (1981)	African Commission on Human and People's Rights (1986)	African Court on Human and People's Rights (2004)
Arab System (The Arab League)	None	Arab Charter of Human Rights (2005; revised)	Arab Human Rights Committee (2008)	None
Asian System (ASEAN)	ASEAN Human Rights Declaration (in preparation)	None	ASEAN Intergovernmental Commission on Human Rights (2009)	None
Islamic System (The Organization of Islamic Cooperation)	Cairo Declaration of Human Rights in Islam (1990)	(Only on one issue area, children's rights)	Independent Permanent Human Rights Commission (2011)	None

IMAGE I



IPHRC members at the body's first session in Jakarta February 2012. OIC Secretary-General Ekmelledin İhsanoğlu is tenth from the left.

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