

Islam and Intra-Muslim Regional Human Rights Mechanisms

*Kamran Hahsemi**

Abstract

The OIC and the Arab League are the largest intergovernmental organizations whose membership is comprised solely of Muslim states. In the early 1990s each organization adopted a human rights document: the Cairo Declaration on Human Rights in Islam (CDHR) and the Arab Charter on Human Rights (ACHR), respectively. These documents remained inactive for more than a decade until both organizations resumed their human rights activities in early 2000s, leading in March 2008 to the adoption of a new Charter for the OIC, with special emphasis on human rights, as well as the entering into force of a new version of the ACHR.

This paper will examine the extent to which Islam might contribute to the internal promotion and protection of human rights and the establishment of intra-Muslim regional human rights mechanisms. A special approach in the developing world towards human rights fulfillment is the "cultural-religious oriented approach". For Muslims this multifaceted approach is discussed in the "Islam and human rights" discourse. Islam is the central common element among all Muslim states for establishing a human rights system. In this regard, the paper provides a survey on traditional Muslim law and its relevance to the concept of rights. In order to provide a better understanding of the relevance of Islam to human rights, the study makes a distinction between the three Islamic concepts of Islamic core principles/values, Muslim legal traditions, and Shariah. In line with this distinction the CDHR, as the most well-known contemporary source of Islam and human rights, is discussed.

* Dr. Kamran Hashemi is a Human Rights and International Law Lecturer at Iranian universities and Director of the Non-Aligned Movement for Human Rights and Cultural Diversity (kamranhashemi1@yahoo.com).

The paper argues that after two decades since the adoption of the CDHR, and following a long running debate on Islam and human rights, the related human rights documents in the Arab League and the OIC in recent years tend to avoid referring to the controversial or ambiguous areas between religious legal traditions and human rights and leave them to be resolved in the process of time within more progressive endeavors of related states. Instead references to Islam in these documents have been limited to contributing areas of the religion to human rights, i.e. to "Islamic principles and values".

Introduction

The Organization of Islamic Cooperation (OIC) and the Arab League are the largest intergovernmental organizations whose membership is comprised solely of Muslim states. In the early 1990s each organization adopted a human rights document: the Cairo Declaration on Human Rights in Islam¹ (CDHR) and the Arab Charter on Human Rights² (ACHR), respectively. These documents remained inactive for more than a decade until both organizations resumed their human rights activities in early 2000s, leading in March 2008 to the adoption of a new Charter for the OIC³, with special emphasis on human rights, as well as the entering into force of a new version of the ACHR⁴. This paper will examine the extent to which Islam might contribute to the establishment of intra-Muslim regional human rights mechanisms.

A special approach in the developing world towards human rights fulfillment is the "cultural-religious oriented approach". For Muslims this multifaceted approach is discussed in the "Islam and human rights" discourse. Islam is the central common element among all Muslim states for establishing a human rights system. Islam, with an age of fourteen

¹ Adopted on 5 August 1990, U.N. GAOR, World Conference on Human Rights, 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993).

² Reprinted in 18 Hum. Rights Law Journal, 151 (1997).

³ Adopted by the 11th OIC Summit on 14 March 2008 in Dakar.

⁴ Reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), entered into force, 15 March 2008.

centuries, and with more than one billion followers throughout the world, is, like all of the great religions, a diverse body of essential principles, moral values and worship, with spiritual, agnostic, ethical, theological and philosophical aspects running parallel to human elements, including history, civilization, culture, politics, law and related customs and traditions of different communities. In order to provide a better understanding of the relevance of Islam to human rights, the study makes a distinction between the three Islamic concepts of Islamic core principles/values, Muslim legal traditions, and *Shariah*.

Muslim States, the OIC and the Arab League

The term "Muslim states" in this study refers to the 57 member states of the OIC (the OIC members), with mostly predominant Muslim populations⁵. Spreading over four continents, the OIC is the second largest intergovernmental organization after the United Nations⁶. Intergovernmental organizations aim at cooperation in the different spheres of culture, economics, politics and security. The OIC, however, is formed mainly on the basis of religious identity, and given the vast areas of diversity among the OIC members, Islam is the only common element which binds them together. Khan indicates:

"After the UN, it is the OIC alone that has so much diversity within its fold. The single common dominator among the OIC

⁵ The list of members of the OIC is available at the website of the Organization at: <<http://www.oic-oci.org>>.

⁶ The Organization was established on 25 September 1969 when the first meeting of the leaders of the Muslim world was held in Rabat, Morocco, in the wake of the Israeli attempt to burn down the Al-Aqsa Mosque on 21 August 1969. This summit also resolved that Islamic nation states should foster close cooperation and mutual assistance in the economic, scientific, cultural and spiritual fields. As a first step toward facilitating such cooperation, the summit established the Islamic Conference of Foreign Ministers (ICFM), which eventually adopted the Charter of the Organization at its third meeting in March 1972. On emergence of the OIC see Saad S.Khan, *Reasserting International Islam: A Focus on the Organization of the Islamic Conference and Other Islamic Institutions*, (Oxford University Press, (2001), 11-18.

member states is Islam, otherwise there is not one thing, geography, language, culture, national priorities etc., that is common among, say, Bosnia, Senegal, Libya, Qatar, Tajikistan, and the Maldives."⁷

Syed argues that presently even Islam as "a semi-dormant ideology does not provide sufficient force to overcome political, ethnic, sectarian, and economic disputes existing within the countries of the OIC bloc⁸". An-Na'im has a similar view on the role of Islam in the Arab world:

"While Islam is often assumed to be a major factor in the presumed unity of 'Arab culture', there are some strong differences in the way it is understood and practiced in various parts of the region, especially in terms of its relationship to the state and public life, from Tunisia to Saudi Arabia, and from Somalia to Syria and Iraq."⁹

After the OIC, the Arab League is the second largest intra-Muslim regional organization. The Arab League was formed in Cairo on 22 March 1945 with six members: Egypt, Iraq, Jordan, Lebanon, Saudi Arabia, and Syria; it currently has 22 members. The main goal of the League is to draw the relations between member states closer and to coordinate collaboration between them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries¹⁰.

⁷ Khan (note 7), 181. For other critical discussions on the OIC see generally, *The Iranian Journal of International Affairs*, Special Volume on the OIC, Vol.9, No.3, (Fall 1997).

⁸ Fasahat H.Syed, *Structural Reform in the OIC*, *The Iranian Journal of International Affairs*, *Ibid*, 399.

⁹ Abdullahi A. An-Na'im, *Human Rights in the Arab World: A Regional Perspective*, 23 *Human Rights Quarterly* 3 (2001), 707.

¹⁰ See *Pact of the League of Arab States*, U.N. doc. A/C. 6/L.111 (also in U.N. Treaty Series, vol. LXX, pp. 237-263).

Muslim law (Muslim Legal Traditions) in its Historical Context, and the Concept of Rights

The Prophet Muhammad was born in Mecca in 570 A.D and in 610 received the first verses of the Holy Quran. After ten years in Mecca he migrated to Medina in 622, where he established the first Muslim community. The situation of Arabs before Islam is described by Mahmasani as follows: "The Arabs in *jahilyah* (the pre-Islamic era) lived a simple - almost primitive existence on their peninsula and the areas adjacent to it. Their society was a composite of disunited tribes with no central authority to bind them together in a coherent whole.¹¹" Considering the Arab law in *jahilyah*, Schacht states:

"The positive law of the ancient Arabs is decidedly profane, matter-of-fact, and informal; even their penal law is reduced to questions of compensation and payment. ...The law of personal status and family, of inheritance, and criminal law were dominated, both among the Bedouins and among the sedentary population, by the ancient Arabian tribal system. This system implied the absence of legal protection for the individuals outside his tribe, the absence of a developed concept of criminal justice and the reduction of crimes to torts, the responsibility of the tribal group for the acts of its members, and therefore blood feuds, mitigated by the institution of blood-money.... The relations of sexes in pre-Islamic Arabia were characterized not so much by polygamy, which certainly existed, as by the frequency of divorce, loose unions, and promiscuity, which sometimes make it difficult to draw a line between marriage and prostitution. Slavery and concubinage with slave women were taken for granted. The absence of an organized political authority in Arab society, both Bedouin and

¹¹ Subhi Mahmasani, *Falsafat Al-Tashri fi Al-Islam, the Philosophy of Jurisprudence in Islam* (trans. F. Ziadeh) (1961), 15.

sedentary, implied the absence of an organized judicial system¹²."

The basic purpose of Islam and indeed of all religions according to the Holy Quran is humanistic, ethical, moral and spiritual¹³. Therefore, "[t]he primary reason for sending the prophets was to proclaim truths and lay down eternal values, not to make laws¹⁴". Mohammad, however, in line with his mission, had to apply the eternal values in his message into the daily law and politics of Medina, where he, like Moses and unlike Jesus, faced new responsibilities as the ruler and legislator.

After the death of the Prophet, with the speedy expansion of Muslim territories, medieval scholars had to address the vast and variable legal requirements of the new Muslim territories. The development of Muslim law therefore was based on the endeavors of Muslim jurists through the exercise of legal reasoning (*ijtihad*) and using specific jurisdictional methods¹⁵.

Muslim law "was at the time of introduction no doubt a major step forwards¹⁶". It entailed "a highly developed awareness of rights and obligations, a combination which enabled Islam to formulate a system that would seek to safeguard the rights of individuals to an extent which

¹² Joseph Schacht, *An Introduction to Islamic Law* (Oxford At the Clarendon Press, 1964), 6-7.

¹³ See the Holy Quran, for example verses, 2:151 and 62:2.

¹⁴ Mohammad Mojtahed Shabestari, Interview with: 42 Howzeh (1991), quoted in: Asghar Shirazi, 'Criticism from Outside' Chapter 16, in: *The Constitution of Iran*, available at the website of Dr. Abdolkarim Soroush at: <<http://www.seraj.org/schirazi.htm>>.

¹⁵ The two main jurisprudential methods according to *Sunni* branch of Islam are *ijmaa* and *qiyaas*. *Ijmaa* is consensus of opinions, and *qiyaas* means reasoning by juristic analogy. The science of law is called *fiqh* and the body of Muslim law is in fact a creation of *fiqh*.

¹⁶ Tore Lindholm, *Human Rights in Christianity and in Islam*, in: Silvennoinen Suvikki & Markku Suksi (eds.) *Human Rights and Religion: the Case of the Sudan* (1997), 82.

was not common in the legal thinking of many cultures and civilizations¹⁷". An-Na'im states:

"In my view, by securing a relatively advanced degree of protection for the rights of women and non-Muslims, historical formulations of *Shariah* did provide for better protection of human rights than other normative systems in [the] past. For example from the very beginning, *Shariah* was understood to require an independent legal personality for the women, and the protection of certain minimum rights for them in inheritance and family relations, beyond what was possible under other major normative systems until the nineteenth century. Similarly, *Shariah* guarantees specific rights for the so-called People of the Book (mainly Christians and Jews), more than what had been provided for under other major normative systems in the past¹⁸".

Similarly, Ostrog points out:

"Considered from the point of view of its logical structure, the system [Muslim law] is one of rare perfection. Those Eastern thinkers of the ninth century laid down on the basis of theology, the principle of the rights of Man, in those very terms, comprehending the rights of individual liberty, and inviolability of person and property, elaborated a law of war of which the humanist, chivalrous prescriptions would have put to the blush certain belligerents in the Great War; expounded a doctrine of

¹⁷ B. Breiner, A Christian View of Human Rights in Islam', quoted in: Mashood A Baderin, Establishing Areas of Common Ground between Islamic Law and International Human Rights, 5 the International Journal of Human Right 2 (2001), 85.

¹⁸ Abdullahi Ahmed An-Na'im, Islam and Human Rights: Beyond the Universal Debate, in: Asil, Proceedings of the 94th Annual Meeting, 5-8 April 2000, Washington, DC., 95-103.

toleration of non-Muslim creeds so liberal that our West had to wait a thousand years before seeing equivalent principles adopted¹⁹".

On the historical treatment of religious minorities by Muslims, Mayer points out that "[i]n particular, the treatment of the Jewish minority in Muslim societies stands out as fair and enlightened when compared with the dismal record of Christian European persecution of Jews over the centuries²⁰". She also states: "The annals of history point out the fact that the same degree of religious freedom as granted by *Shariah* to the non-Muslims living in Islamic states were non-existent in the history of other religions²¹". Bielefeldt has a similar comparison as follows: "Historic evidence shows that some Christian minorities and dissidents preferred living under Islamic rule to being persecuted by their fellow Christians in the Byzantine and Habsburg empires. Thus, with regard to religious tolerance, Islam seems to have a better historical record than Christianity²²".

In fact, The *Dhimmah* (Muslim legal traditions on minorities), - although a part of its conditions with the standards of today is discriminatory against non-Muslims - has provided the widest and oldest system for recognition, protection and regulation of the status of religious minorities among majority Muslims; the system has survived for about fourteen centuries in an extended area from Spain in Western Europe to the Pacific Ocean in

¹⁹ C.L. Ostrong, *The Angora Reform*, three lectures delivered at the centenary celebrations of University College on 27-29 June (University of London Press, 1927), pp.30-31, cited in: Asef A. A. Fysee, *Outlines of Muhammadan Law*, Third Edition (Oxford University Press, 1964), 53-54, quoted in: Mashood A Baderin, *Establishing Areas of Common Ground between Islamic Law and International Human Rights*, *The International Journal of Human Rights* 2 (2001), 86.

²⁰ Anne Elizabeth Mayer, *Islam and Human Rights, Tradition and Politics*, Third Edition (Westview Press 1999), 136.

²¹ Abdur Rahman I Doi, *Non-Muslims under Shariah (Islamic Law)*, Third Edition (Ta ha Publishers Ltd, 1983).

²² Heiner Bielefeldt, *Muslim Voice in the Human Rights Debate*, *17 Human Rights Quarterly* 4 (1995), 597-8.

East Asia. In recent centuries the *Dhimmah* system, by the name of *Millet*, governed the status of minorities in multi-religious areas under the Ottoman reign in parts of Eastern Europe and most areas of the Middle East and North Africa²³.

In the same vein, Van Bueren on children rights states that "the very concept that children possess rights has a far older tradition in Islamic law than in international law, where the notion did not emerge until the twentieth century²⁴". It has even been suggested that child-rearing practices in medieval Islamic societies revealed a greater concern for the child's needs than in recent European societies²⁵.

Finally for the purpose of this study, when a reference to early (classical, historical or traditional) Muslim law is made, the terms "Muslim law", "Islamic law" or "Muslim legal traditions" all have a similar meaning. "Legal traditions" or "religious legal traditions" are more familiar terms for non-Muslim readers, because other religions and civilizations have such traditions as well²⁶. Furthermore, by using the term 'traditions' it is easier to remember that, when comparing Muslim legal traditions with modern human rights norms, the former date from before the tenth century, while the latter are the achievement of the last six decades of modernity and post-modernity. As Bielefeldt states: "the emancipatory principle has been articulated only in the modern era. By comparison, the Islamic *Shariah*, the normative tradition commonly known as Islamic law, is much

²³ See Kamran Hashemi, *The Right of Minorities to Identity and the Challenge of Non-discrimination: Study on the Effects of Traditional Muslims' Dhimmah on Current States Practices*, 13 *Journal of Minorities and Group Rights* 1 (2006).

²⁴ Geraldine Van Bueren, *The Best Interests of the Child - International Cooperation on Child Abduction*, Program on the International Rights of the Child (QMWC, London, 1993), 51.

²⁵ See Anver Giladi, *Concept of Childhood and Attitudes towards Children in Mediaeval Islam*, 32 *Journal of the Social and Economic History of the Orient* (1989).

²⁶ For study of other legal traditions such as Chthonic, Talmudic, common law and Hindu, see generally, Patrick Glenn H, *Legal Traditions of the World, Sustainable Diversity in Law* (Oxford University Press, 2000).

older"; although, even according to contemporary standards, most Muslim legal traditions are either consistent with or contribute to the development of human rights²⁷.

Islamic Core Principles/Values, Muslim Legal Traditions (Muslim Law), and Shariah.

As mentioned earlier, a special approach to human rights in the developing world, which includes Muslim and Arab states, is the "cultural-religious oriented approach". In the "Islam and human rights discourse", different terms have been referred to as Islamic terms, such as *Shariah*, Muslim law, religious traditions, principles of *Shariah*, principles of Islam, Islamic criteria and Islamic values. For a better understanding of the relevance of Islam to human rights, a distinction should be made among the core principles/values of Islam, Muslim law and *Shariah*.

Shestack states: "[H]uman rights are a set of moral principles and their justification lies in the province of moral philosophy²⁸". Thus the principles of religion and of human rights could both be considered as eternal and in no need of reconciliation; they need only to be identified. The major common principle between human rights and Islam, as well as other monotheist religions, is human dignity. Shestack states:

If one accepts the premise of the Old Testament that Adam was created in the 'image of God', this implies that the divine stamp gives human beings a high value of worth²⁹. In a similar

²⁷ See generally Kamran Hashemi, *Religious Legal Traditions, International Human Rights Law, and Muslim States*, (Martinus Nijhoff Publishers, 2008) and Mashood A Baderin, *Establishing Areas of Common Ground between Islamic Law and International Human Rights*, 5 the International Journal of Human Right 2 (2001).

²⁸ Jerome J Shestack, 'The Philosophic Foundations of Human Rights' 20 Human Rights Quarterly 2(1998) p.202.

²⁹ An appealing expression of this comes from the Talmud: "A man may coin several coins with the same matrix and all will be similar, but the King of Kings, the Almighty, has coined every man with the same matrix of Adam and no one is similar to the

vein the Quran says: 'Surely we have accorded dignity to the sons of man'.... In a religious context every human being is considered sacred. Accepting a universal common father gives rise to a common humanity, and from this flows a universality of certain rights. Because rights stem from a divine source, they are inalienable by mortal authority. This concept is found not only in the Judeo-Christian tradition, but also in Islam and other religions with a deistic base³⁰.

According to McDougal, Lasswell, and Chen:

The contemporary image of man as capable of respecting himself and others, and of constructively participating in the shaping and sharing of all human dignity values, is the culmination of many different trends in thought, secular as well as religious, with origins extending far back into antiquity and coming down through the centuries with vast cultural and geographic reach³¹.

By searching the Quran and *Sunnah* many scholars have tried to extract other divine principles of Islam relevant to human rights. According to Baderin:

Major moral principles that serve as basic postulates for the concept of human rights can be listed as "dignity (*karamah*), freedom (*hurriyah*), humaneness (*insaniyah*), equality

other. Therefore, every man ought to say the whole world has been created for me."
See Sanhedrin 38:1 (Adin Steinsaltz ed., Random House 1989).

³⁰ Shestack, (note 29), p.205.

³¹ See Myres S. McDougal & Harold D. Lasswell, & Lung-Chu Chen, *Human Rights and the World Public Order* (New Haven, Yale University Press, 1980), pp 376-377, quoted in Baderin, (note18), p.90.

(*musawah*), beneficence (*ihsan*), responsibility (*masuliyyah*), co-operation (*ta'awun*) and justice (*adalah*). [They] evolved, and were embodied in the general doctrine of Islamic theology, law and governance³².

Bassiouni has also referred to some relevant Islamic principles for human rights including "brotherhood, mercy and compassion³³". In the same sense, Khadduri has listed the five principles of Islamic human rights as, "(1) dignity and brotherhood; (2) equality among members of the community, without distinction on the basis of race, colour or class; (3) respect for the honour, reputation and family of everyone; (4) the presumption of innocence; and (5) individual freedom³⁴".

For the purpose of this study, when a reference to early (classical, historical or traditional) Muslim law is made, the terms "Muslim law", "Islamic law" or "Muslim legal traditions" all have a similar meaning. "Legal traditions" or "religious legal traditions" are more familiar terms for non-Muslim readers, because other religions and civilizations have such traditions as well³⁵. Furthermore, by using the term 'traditions' it is easier to remember that, when comparing Muslim legal traditions with modern human rights norms, the former date from before the tenth century, while the latter are the achievement of the last six decades of modernity and post-modernity. As Bielefeldt states: "the emancipatory principle has been articulated only in the modern era. By comparison, the Islamic

³² Baderin, (note18), 86. There are some other principles mentioned by Baderin: cooperation for goodness and seek knowledge. *Ibid*, p.82. He also names the fundamental principles underlying the *Sharia* as: (i)the removal of difficulties (ii) the realization of welfare and (iii) the realization of universal justice, which are all relevant postulates of international human rights. See *Ibid*, p.100.

³³ M Cherif Bassiouni, 'Sources of Islamic Law, and the Protection of Human Rights In the Islamic Criminal Justice System' in , M Cherif Bassiouni (ed.) *The Islamic Criminal Justice System* (Oceana Publications, inc, London, Rome, New York, 1982), p.13.

³⁴ Majid Khadduri, *The Islamic Conception of Justice* (Johns Hopkins University Press. U. S. A, 1984), pp. 236-37.

³⁵ For study of other legal traditions such as Chthonic, Talmudic, common law and Hindu, see generally, Patrick Glenn H, *Legal Traditions of the World, Sustainable Diversity in Law* (Oxford University Press, 2000).

Shariah, the normative tradition commonly known as Islamic law, is much older"; although, even according to contemporary standards, most Muslim legal traditions are either consistent with or contribute to the development of human rights³⁶.

Considering the above, this study does introduce a new conception of *Shariah* in addition to what already has been comprehended as a legal system; this new conception is the one being understood by Muslim public opinion or ordinary Muslims. In the view of ordinary Muslims, *Shariah* constitutes a main part of their identity, is known as the whole religion or way of life, a combination of the Quran, their beliefs, their traditions of worship, their moral values, along with part of their customs concerning their personal status, as of inheritance and the family relations. Vessey-Fitzgerald has a similar reference to this broader conception of *Shariah*:

Law, then, in any sense in which a Western lawyer would recognize the term, is but a part of the whole Islamic system, or rather, it is not even a part but one of several inextricably combined elements thereof. '*Shariah*', the Islamic term which is commonly rendered in English by 'law', is rather, the 'Whole Duty of Man'. Moral and pastoral theology and ethics; high spiritual aspiration, and the detailed ritualistic and formal observance which to some minds is a vehicle for such aspiration and to others a substitute for it; all aspects of law; public and private hygiene, and even courtesy and good manners are all part and parcel of the *Shariah*, a system which sometimes appears to be rigid and inflexible; at others to be

³⁶ See generally Hashemi (note26) and Baderin (note18).

imbued with that dislike of extremes, that spirit of reasonable compromise, which was part of the Prophet's own character³⁷.

Likewise Baderin states: "*Shariah* broadly covers the moral, legal, social and spiritual aspects of the Muslims' life³⁸." In short, as Muslim public opinion does not make any distinction between the different aspects of the religion, for them '*Shariah*' means 'Islam'

The Cairo Declaration on Human Rights in Islam

Having the above mentioned distinctions among Islamic principles/values, law/traditions, and *Shariah* in mind the paper will conduct a short survey on the CDHR. The Declaration was adopted on 5 August 1990 by 45 foreign ministers of the OIC. It was indeed not a product of merely the OIC meetings but was based on previous documents and discussions on the issue within and outside the OIC, including "Dhaka Declaration on Human Rights in Islam³⁹" and several meetings of renowned Muslim religious scholars from different Muslim countries, the last of which was held on 26-28 December 1989 in Tehran.

The reason that CDHR has drawn more attention in the Islam and human rights discourse in comparison with other Islamic sources is that both its Arab and English versions were submitted to the UN by the OIC prior to the World Conference on Human Rights in Vienna in 1993⁴⁰. As will be discussed further, CDHR has also been recalled in consequent human rights documents, in the OIC and in the Arab League documents. Also according to a resolution which was adopted in June 2008, by OIC Thirty-

³⁷ S.G. Vessey-Fitzgerald, 'Nature and Sources of the *Sharia*' in Majid Khadduri. & Herbert J Liebesny (eds.) *Law in the Middle East, Volume I, Origin and Development of Islamic Law* (The Middle East Institute, Washington, D.C, 1995), p.85.

³⁸ Mashood A Baderin, *International Human Rights and Islamic Law* (Oxford University Press, U.S.A, New York, 2003), p.34.

³⁹ Adopted by the 14th ICFM in December 1983.

⁴⁰ CDHR, (note 2).

Fifth Session of the Council of Foreign Ministers, the 5th of August of every year, which is coincident with adoption of the CDHR, was designated the "Islamic Human Rights and Human Dignity Day"⁴¹.

The CDHR declares its purpose to be "general guidance for member states [of the OIC] in the field of human rights" and is not a binding instrument. It starts in its preamble with some Islamic principles, considering freedoms and fundamental rights as integral part of Islamic belief:

"Believing that fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as they are binding divine commands.... and that safeguarding those fundamental rights and freedoms is an act of worship whereas the neglect or violation thereof is an abominable sin, and that the safeguarding of those fundamental rights and freedoms is an individual responsibility of every person and a collective responsibility of the entire *Ummah* (trans-national Muslim community) ⁴²."

Based on the Islamic principles provided in the preamble, the CDHR in its 23 following articles provides a long list of human rights principles and rules endorsed by "Islamic *Shariah*". Finally, Article 24 declares that "all the rights and freedoms stipulated in the Declaration are subject to the Islamic *Shariah*; and the concluding Article 25 reaffirms that: "The Islamic *Shariah* is the only source of reference for the explanation or clarification of any of the articles of this Declaration."

⁴¹ OIC/CFM-35/2008/POL/RES/FINAL, The 35th Session of the Council of Foreign Ministers (Session of Prosperity and Development), held in Kampala, Uganda, 18-20 June 2008.

⁴² CDHR, (note 2).

The CDHR has met increasing criticism mainly by non-Muslim observers because it falls short of international human rights standards particularly by distinguishing different fundamental equalities on grounds of sex and religion, and for failing to guarantee freedom of religion and conditioning all the rights to the *Shariah*⁴³. CDHR, however, from a positive historical perspective, can be evaluated as an invaluable compromise of Muslim scholars from different Islamic sects on the minimum achievements of Muslim civilizations in the early centuries of Islam on the concept of rights. From this historical perspective Muslims can be proud of their progressive ancient law that for a long time provided grounds for equality and protection of fundamental rights. This Declaration can also be considered as clear evidence that, historically and culturally, human rights are a familiar concept for Muslims.

Considering the above, if the CDHR is counted as the minimum basis for further promotion of human rights in Muslim societies, it has a positive function. Yet, if it is considered as an "Islamic alternative to the UDHR⁴⁴" or as the final word of Muslims in response to the temporary human rights questions it is a restricting and even destructive document. As will be discussed further, the OIC and the Arab League in their further human rights documents stressed that the CDHR is a base that should be expanded and explored and is not the final word. The OIC Secretary General, Ihsanoglu, indicates:

"Human rights and man's dignity are an integral part of Islam and core components of Islamic culture and heritage...international interest in the issue of human rights has spawned exponentially over the past two decades, [and] the

⁴³ Also see generally Anne Elizabeth Mayer, *Islam and Human Rights, Tradition and Politics*, Third Edition (Westview Press, London, 1999).

⁴⁴ See Mayer (note 43), p.23.

complexity of the fields of human rights inevitably call for the need to refine the 1990 Cairo Declaration on Human Rights in keeping with the current global human rights discourse. Such an approach would open up new horizons and avenues for human rights in the Muslim world⁴⁵."

The Arab League and the New Arab Charter on Human Rights (ACHR)

The history of human rights in the Arab League has had three peaking points. First, the Council of the League of Arab States (The Council) on the 20th anniversary of UDHR, on 3 September 1968, established its Permanent Arab Human Rights Commission. The Secretariat of the League also convened the first Arab human rights conference in Beirut on 2–10 December 1968. The conference called for Arab cooperation in the protection of human rights at the regional and international level, urged the implementation of the UDHR, and recommended the establishment of national human rights committees to cooperate with the League's Permanent Arab Commission for Human Rights⁴⁶. The Commission however remained fully inactive for most of its life. Second, the old ACHR was adopted by the Council on 15 September 1994⁴⁷. However, no single Arab state ratified the ACHR and the Charter remained silent for more than one decade. Third, as will be discussed in more detail in this part, the new ACHR was adopted in May 2004 and entered into force in March 2008⁴⁸.

In 2002 the Council adopted a resolution "encouraging the modernization of the ACHR to correspond with international human

⁴⁵ OIC discusses set-up of an independent and permanent human rights commission , 12 April 2009 , available at the website of Parliamentary Union of OIC Member States (PUIC): http://www.puic.org/english/index.php?option=com_content&task=view&id=320&Itemid=145.

⁴⁶ On the activities of the Commission and the related events see An-Na'im (note10).

⁴⁷. (The old) ACHR, (note 3).

⁴⁸. (The new) ACHR,(note 5).

rights standards⁴⁹". "The revision of the ACHR was part of an overall modernization package suggested by the Secretary-General (SG) and the Council to reform existing institutions. These included an Arab Parliament, which would have competence to further human rights, as well as to review legislation in Arab countries; and a regional Security Council. The package also included the establishment of an Arab Court of Justice which will have competence on human rights issues as well as disputes related to principles of international law⁵⁰.

In April 2002, the Office of the High Commissioner for Human Rights officially approached the SG to form a working group of Arab independent experts working in the UN human rights bodies, with the aim of revising the ACHR in order to be consistent with international human rights standards. After about two years the new ACHR was adopted by the 16th Arab Summit, hosted in Tunis in May 2004.

The new ACHR entered into force on 16 March 2008, 60 days after ratification of the seventh member state of the League, including two African states: Algeria and Libya, and five Asian states: Bahrain, the United Arab Emirates, Jordan, Palestine and Syria. While the ratification of the ACHR should be easier for the African Arab States which already have experienced being parties to the African system of human rights, surprisingly the five Asian states have preceded the Africans in ratification of the ACHR.

The new ACHR consists of a long list of rights including civil, political, economic, social and cultural rights. Considering the human rights realities in many countries of the region some rights and principles of more importance have been included in the Charter, such as: non-discrimination on grounds of religion (Articles 1 and 34), non-

⁴⁹ Rishmawi (note 4), 362.

⁵⁰ See *Ibid.*

discrimination on grounds of sex and religion (Articles 3, 4 and 34), equality and non-discrimination between men and women (Articles 3 and 34(4)), rights to political participation (Article 24), prohibition of slavery and servitude under any circumstances (Article 10), freedom of religion (Article 30), protection of minorities (Article 25), prohibition of all forms of violence or abuse against women and children (Article 33), human rights in the educational programs (Article 41(4)) compensations for victims of torture (Article 8(2)), compensation for victims of arbitrary arrest or detention (Article 14(7)), and protection of privacy, family, home or correspondence (Article 21).

Article 45 of the new ACHR establishes the "Arab Human Rights Committee" (AHRC) which consists of seven members. In the old ACHR the Committee was called "Committee of Experts on Human Rights" and apparently replaced the "Permanent Arab Commission for Human Rights", mentioned above. The only duty of the Committees in the new and old ACHR is the consideration of the periodic reports of states parties. According to Article 48 of the new ACHR, each state party shall submit an initial report to the Committee within one year from the date on which the Charter enters into force and a periodic report every three years thereafter. The Committee's reports, concluding observations and recommendations, shall be public documents which the Committee shall disseminate widely.

Interestingly while the new ACHR was adopted only four years after the adoption of the CDHR, it has no reference to *Shariah* or Muslim law as a pretext for limiting the rights. This means that the Arab states, who had a central role in the adoption of the CDHR, didn't consider it as a model for the consequent binding instruments. The old ACHR has just one reference to the Islamic principles in the preamble: "Pursuant to the eternal principles of brotherhood and equality among all human beings

which were firmly established by the Islamic *Shariah* and the other divinely-revealed religions". A similar reference exists in the new ACHR as well: "In furtherance of the eternal principles of fraternity, equality and tolerance among human beings consecrated by the noble Islamic religion and the other divinely-revealed religions."

The preamble in the new ACHR affirms the preceding international human rights instruments. Yet, unlike the preamble in the old ACHR⁵¹, considers a lower level of regard for the CDHR:

"[R]eaffirming the principles of the Charter of the United Nations, the Universal Declaration of Human Rights and the provisions of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and having regard to the Cairo Declaration on Human Rights in Islam."

The new ACHR has also a reference to *Shariah* in its Article 3, which unlike usual references to *Shariah* does not imply a restrictive purpose on human rights but rather emphasizes a positive contributing role to developments of human rights. It considers a specific function for *Shariah* for the first time, i.e. positive discrimination in favor of women:

"Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favor of women by the Islamic *Shariah*, other divine laws and by applicable laws and legal instruments. Accordingly, each state party pledges to take all the requisite measures to guarantee equal opportunities and

⁵¹ It reads as follows: "Reaffirming the principles of the Charter of the United Nations and the Universal Declaration of Human Rights, as well as the provisions of the United Nations International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the Cairo Declaration on Human Rights in Islam."

effective equality between men and women in the enjoyment of all the rights set out in this Charter."

The new version correctly avoids recourse to religion to justify the restricting purposes, yet, in some of its provisions, problematic traditions have restricting effects on related human rights. According to Article 7(1) "[s]entence of death shall not be imposed on persons under 18 years of age, unless otherwise stipulated in the laws in force at the time of the commission of the crime." In the legislation of some Muslim states that penalize murder and sexual offences under traditional criminal codes, though no specific instances are reported, in theory their application can lead to the execution of children even under the age of fifteen⁵². Interestingly the equivalent Article 12 of the old ACHR was much more in conformity with international standards as it explicitly prohibited the death penalty under the age of 18: "The death penalty shall not be inflicted on a person under 18 years of age, on a pregnant woman prior to her delivery or on a nursing mother within two years from the date on which she gave birth."

There are also cases of punishment of offenders less than 18 years of age, in which the punishment is postponed until such time as the offender reaches the age of eighteen. This means it is possible that the crime took place before the child had reached the age of majority, but the trial and consequent punishment would be postponed until the age of majority. Instead, all regional and international instruments on punishment of juveniles should follow up the model of Article 37(a) of the Convention on the Rights of the Child⁵³ (CRC) which refers to the "age of committing the offence" and not the "age of imposing the punishment". The Article requires states parties to ensure that, "no child shall be

⁵² See Hashemi (note 46), 206.

⁵³ G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), entered into force, 2 Sept. 1990.

subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age⁵⁴." Interestingly, not a single Muslim state has had a specific reservation to Article 37 of the CRC⁵⁵.

According to Article 8(1) of the new ACHR, "no one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment." Similar to the equivalent Article 13 (a) of the old ACHR, this article is not in line with international standards as stipulated in the aforementioned Article 37(a) of CRC, as they don't include cruel, degrading, humiliating or inhuman 'punishment' as well. This is because some traditional punishments such as flogging which are applied in some Muslim countries might be considered as torture based on international human rights standards⁵⁶.

Article 33 (1) of the new ACHR is the only Article whose provisions overlap with Muslim family law. The rights and duties of the man and woman as to marriage, during marriage and as to its dissolution are not conditioned to Muslim law or *Shariah*, but alternatively to national laws in force:

"The family is the natural and fundamental group unit of society; it is based on marriage between a man and a woman. Men and women of marrying age have the right to marry and

⁵⁴ CRC, (note 54, Art. 37(a). Also see William A Schabas & Helmut Sax, Article 37, Prohibition of Torture, Prohibition of Death Penalty and Life Imprisonment and the Deprivation of Liberty, in: André Alen, Johan Vande Lanotte, Eugeen Verhellen, Fiona Ang, Eva Berghmans & Mieke Verheyde (eds.), A Commentary on the United Nations Convention on the Rights of the Child (Martinus Nijhoff Publishers, 2006).

⁵⁵ See Hashemi (note 46),198-199.

⁵⁶ See for example General Comment No. 20 of Human Rights Committee concerning prohibition of torture and cruel treatment or punishment (Art. 7) , Human Rights Committee, General Comment 20, Article 7 (Forty-fourth session, 1992), Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, U.N. Doc. HRI/GEN/1/Rev.1 at 30 (1994).

to found a family according to the rules and conditions of marriage. No marriage can take place without the full and free consent of both parties. The laws in force regulate the rights and duties of the man and woman as to marriage, during marriage and at its dissolution."

However, while most criticism against the current application of problematic Muslim legal traditions is for restrictions of the rights of women, children and minorities, the Charter in its Article 43 tries to close the door on any justification on this ground by resorting to national law:

"Nothing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the states parties or those set force in the international and regional human rights instruments which the states parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities."

The OIC's New Internal Approach towards Promotion and Protection of Human Rights

The establishment of the OIC is linked to the occupation of Palestine and violations of human rights of Palestinians by Israel. In the same vein the OIC's approach towards human rights has been mainly an external one, which is directed towards the human rights of Muslim minorities in other non-Muslim countries on issues such as defamation of religion and Islamophobia. The situation of human rights within the member states has not been on the agenda of OIC programs for long time. As a result Viljoen correctly argues that "As with the Arab League, membership of the OIC has not contributed in any significant sense to the improvement

of human rights in these countries⁵⁷". Unlike the Arab League which established a permanent human rights commission back in 1968, the history of the OIC's internal approach towards promotion and protection of human rights in Muslim countries started as recently as 2005.

In 2005, the OIC faced two new initiatives towards internal development of human rights inside the member states. First, the Covenant on the Rights of the Child in Islam⁵⁸ (The OIC Covenant on Children) was adopted in June 2005. Second, the OIC "Ten-Years Program of Action to meet the Challenges Facing the Muslim *Ummah* in the 21st Century⁵⁹" (The OIC Ten-Years Program), which was approved in December 2005, brought into focus for the first time in the history of the OIC the issue of human rights and good governance. The two initiatives however have had two different destinies. The OIC Covenant on Children failed because of its several omissions in meeting the minimum requirements of a binding treaty. Yet, the initiatives on human rights and good governance have continued to progress in the consequent activities of the Organization.

Covenant on the Rights of the Child in Islam

The Covenant consists of 26 articles with an insufficient list of children's rights. Furthermore, even the shortened list of rights enumerated has been limited by resorting to *Shariah* and domestic legislation. The Covenant in its preamble has not affirmed the principles stipulated in international human instruments but instead relied on the principles stipulated in OIC documents, i.e. Dhaka Declaration on Human Rights in

⁵⁷ Frans Viljoen, *International Human Rights Law in Africa* (Oxford University Press, 2007), 15.

⁵⁸ Adopted June 2005, OIC/9-IGGE/HRI/2004/Rep. Final, Adopted by the 32nd Islamic Conference of Foreign Ministers in Sana'a, Yemen, in June 2005.

⁵⁹ Approved by the Third Extraordinary Session of the Islamic Summit, held in Mecca, 5-7 December 2005, available at the official website of the OIC : <<http://www.oic-oci.org/ex-summit/english/10-years-plan.htm>> .

Islam⁶⁰, the CDHR, and the Declaration on the Rights and Care of the Child in Islam⁶¹.

When the Covenant tries to ignore areas of inconsistency between problematic traditions and human rights standards it refers them to the domain of *Shariah* or national legislation. This approach can be seen in Article 1 on the definition of the child, Article 5 on equality, Article 9 on personal freedom, Article 12 on education and culture, Article 13 on rest and activity times, and Article 20 on parents' responsibilities and protection from detrimental practices. Also the scopes of some other child rights that do not necessarily overlap with problematic traditions, such as Article 14(1) on right to social security and Article 21 on the child refugee, have been left to the domain of national legislation.

Some provisions, however, are of a progressive nature in addressing the problems of children in developing countries. For example, Article 18 (2) on child labor considers sanctions against states that do not change their legislation: "Domestic regulations of every state shall fix a minimum working age as well as working conditions and hours. Sanctions shall be imposed against those who contravene these regulations" Also article 4(3) obliges states to "end action based on customs, traditions or practices that are in conflict with the rights and duties stipulated in this covenant."

As the first experience of the OIC in establishing a monitoring human rights body, the Covenant in its Article 25, though in a sketchy way, predicts the establishment of an "Islamic Committee on the Rights of the Child". According to this article "the Committee shall be composed of the representatives of all the states parties to the present Covenant and

⁶⁰ Dhaka Declaration, (note 47).

⁶¹ The Declaration on the Rights and Care of the Child in Islam, adopted by the Seventh Islamic Summit Conference under resolution No. 16/7-C (1994).

shall meet every two years, starting from the date of entry into force of this Covenant, to examine the progress made in the implementation of this Covenant."

Interestingly "the Rabat Declaration on Issues of Children in the Muslim World" (The Rabat Declaration), which was adopted in November 2005, a few months after the adoption of the OIC Covenant on Children, is a far more progressive and comprehensive document about children⁶². The Declaration expresses a shared sense of alarm over the dire situation for children in many Muslim countries and the need for an urgent collective response commensurate with the challenges. The reference of the Rabat Declaration to the relevance of Islam and human rights is in its consideration of Islamic values and principles and not to the controversial problematic traditions:

"To preserve and enhance our common Islamic heritage to increase the awareness of the Muslim Youth on the values of Islam, and instill into them a sense of pride in the achievements of the glorious Islamic civilization; and to contribute to more understanding and tolerance among peoples and religions".

Also, when the Declaration speaks about problematic traditions it denies the relation of those traditions to Islam and calls for "overcoming difficult challenges, including many of the harmful traditional practices that are often falsely associated with Islam, including child marriage, female genital mutilation/cutting and gender discrimination in education."

⁶² It was the outcome of the 1st Session of the Islamic Conference of Ministers in charge of Children's Affairs (ICMC), held in Rabat from 7 to 9 November 2005, which was co-organized by the Islamic Educational, Scientific and Cultural Organization (ISESCO), UNICEF and the OIC.

The OIC Covenant on Children is open to ratification and will enter into force upon 20 ratifications, though; no single state has ratified it as yet. In fact more than being complimentary to the CRC, the OIC Covenant on Children is restricting children's rights and its several failures have made it an impractical instrument.

On the other hand, the deficient Covenant reveals that a compromise on sensitive and controversial issues such as conflicting matters between problematic religious traditions and human rights within the OIC meetings is not an easy task. However, the compromise of the OIC members evident for the first time in agreeing to a binding human rights instrument and particularly a first human rights monitoring body within the Organization, can be evaluated as a step forward.

The New Vision of the OIC

The New Vision of the OIC (The New Vision)⁶³ is the new strategy of the OIC which came into life with the adoption of *Makkah-Al-Mukarramah* (The Holy Mecca) Declaration during the Third Extraordinary Session of the Islamic Summit Conference in December 2005⁶⁴ and is the result of a high-level advisory panel led by the OIC Secretary General. The Declaration reiterates the need for "a forward-looking vision that enables the Muslim world to tackle the challenges of the twenty-first century".

For the first time in the history of the OIC, the New Vision brings the issue of "human rights and good governance" as one of the main issues of focus by the Organization. The principal action areas of the New Vision are categorized into 12 thematic groups including among others, promoting good governance and human rights, empowerment of

⁶³ Available at the website of the Permanent Mission of the OIC to the UN : <<http://www.oicun.org/articles/37/1/New-Vision-of-the-OIC/1.html>>.

⁶⁴ Available at the OIC website :< <http://www.oic-oci.org/ex-summit/english/Makka-dec-en.htm>>.

women and children, education reform, and poverty alleviation in least developed countries. On the issue of promotion of good governance and human rights, the New Vision reiterates the particular challenges faced by the OIC member states in this regard, and places great emphasis on “broadening the scope of political participation, ensuring access to civil liberties and social justice, reducing socio-economic inequality, promoting transparency and accountability and reducing corruption.”

The New Vision also raises for the first time the issue of a regional human rights system within the OIC, when it mandates the ICFM to work towards the elaboration of an "OIC Charter on Human Rights" and the establishment of "the Permanent Commission on Human Rights"(OIC HRC). According to the New Vision, the ICFM will also work with member states to introduce changes to their national laws and regulations in order to guarantee respect for human rights. Additionally, member states will review their educational curriculum to include the subject of human rights with the purpose of emphasizing the cultural component of the issue. Apart from the "OIC Charter of Human Rights", the New Vision refers to drafting of two other new human rights treaties, namely "the OIC Covenant against Racial Discrimination" and "International Convention on Respect towards Religions".

The OIC Ten-Years Program of Action

Based on the New Vision, the OIC Ten-Years Program of Action was adopted by the Third Extraordinary Session of the Islamic Summit Conference mentioned above. In line with the New Vision, the Ten-Years Program has specific references to good governance, democracy and promotion and protection of human rights. In Part 7 of the Program, one of the ten issues of focus under the title of “intellectual and political issues” is "good governance and human rights". Also one of the six areas

of focus under the title of “development, socio-economic and scientific issues” is “rights of women, youth, children, and the family in the Muslim world.”

It is interesting that just a few months after the adoption of the OIC Covenant on Children, unlike the provisions of that convention, and in line with the Rabat Declaration, the Ten–Years Program has progressive references to controversial issues of women and children based on Islamic values of justice and equality, in areas such as education, discrimination, and violence. It links Islamic values to the provisions of CEDAW:

“Strengthen laws aimed at enhancing the advancement of women in Muslim societies in economic, cultural, social, and political fields, in accordance with Islamic values of justice and equality; and aimed also at protecting women from all forms of violence and discrimination and adhering to the provisions of the Convention on the Elimination of all Forms of Discrimination Against Women, in line with the Islamic values of justice and equality.”

The Program also calls upon the OIC to contribute towards projecting Islam as a religion that guarantees full protection of women's rights and encourages their participation in all areas of public and private life. On the basis of Islamic values, it requires member states to “...exert all possible efforts, at all levels, to face up to the contemporary social challenges confronting the Muslim family and affecting its cohesion”.

Similar to the New Vision, the Program signals the development of “the Covenant on the Rights of Women in Islam”. It invites member states to join the Covenant on the Rights of the Child in Islam, the CRC and

CEDAW. Furthermore, it proposes establishing a division responsible for family affairs within the framework of the restructuring of the General Secretariat.

In its 8th chapter, under the title of "human rights and good governance", the Program affirms serious endeavor to enlarge the scope of political participation and ensure equality, civil liberties and social justice, and promote transparency and accountability through the elimination of corruption in the OIC member states. Similar to the New Vision, it asks the ICFM to consider the possibility of establishing an independent permanent body to promote human rights in the member states and the elaboration of an OIC Charter for Human Rights.

The New OIC Charter

The OIC, during its 11th Summit on 14 March 2008 in Dakar, adopted a new Charter aimed at reforming the Organization. The new Charter will replace the 1972 OIC Charter (the old Charter) upon ratification by member states. The New Charter has not yet come into force, although in new documentation of the OIC⁶⁵, it is referred to as the enforced Charter⁶⁶.

Continuing the provisions of the New Vision and the Ten-Years Program, the New Charter envisions greater respect of human rights as well as women's and children's rights. In comparison, the old Charter, besides referring to some principal objectives that can be linked to human rights such as the eradication of racial discrimination and colonialism, and the liberation of Palestine, had only one explicit reference to human rights in the preamble, in which member states reaffirmed "their commitment to the United Nations Charter and fundamental human rights, the purposes

⁶⁵ Already Senegal, Saudi Arabia, Malaysia and Bangladesh have ratified the Charter.

⁶⁶ See for example.

and principles of which provide the basis for fruitful cooperation among all people".

Chapter 1 of the new Charter has listed 20 objectives for the OIC, one of which in Paragraph 14 is "to promote and to protect human rights and fundamental freedoms including the rights of women, children, youth, elderly and people with special needs as well as the preservation of Islamic family values". Article 5 lists 11 main organs of the OIC, one of which is "the Independent Permanent Commission of Human Rights⁶⁷". Article 15 describes the responsibilities of the Commission as "to 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."

Apart from the above mentioned reference to "Islamic values" in Article 15, the new Charter in three different paragraphs of the preamble lists Islamic values including, unity and fraternity, peace, compassion, tolerance, equality, justice, human dignity, and other Islamic values concerning moderation and respect for diversity. Also, in the chapter on objective and principles of the Charter, two similar references to "Islamic values and teachings" are made in Article 1(11) and in Article 2. In fact, only those Islamic terms that contribute to the concept of human rights are referred to in the Charter and no reference is made to multifaceted terms such as *Shariah* or Islamic law.

⁶⁷ The other ten OIC organs are as follows: Islamic Summit, Council of Foreign Ministers, Standing Committees, Executive Committee, International Islamic Court of Justice, Committee of Permanent Representatives, General Secretariat, Subsidiary Organs, Specialized Institutions, and Affiliated Institutions. Already the OIC is composed of three main bodies, namely, Islamic Summit, Council of Foreign Ministers, and General Secretariat, along with the following organs: Subsidiary Organs, Specialized Institutions and Organs, Affiliated Institutions and Standing Committees.

Initial Steps to Form the OIC Permanent Human Rights Commission

As mentioned above, under the Ten-Years Program, and Article 5 of the new OIC Charter, the ICFM is mandated to consider establishing the OICHR and drafting its Statute. Since early 2009 different meetings have been held by the OIC on the issue. First, an Informal Consultative Meeting of an advisory panel was held at the headquarters of the OIC General Secretariat in Jeddah on 15 February 2009, under the chairmanship of the OIC Secretary-General, Ihsanoglu. Subsequently, the Official Expert Group for the drafting of the Statute of OICHR met in Jeddah on 12-13 April 2009, and finally on 23-25 May 2009, the 36th meeting of ICFM in Damascus discussed the creation of the Commission and its draft Statute. Ihsanoglu, in a speech to the above mentioned Official Expert Group in Jeddah in April 2009, refers to the OICHR as an idealistic institution within the Organization which addresses the particular human rights needs of Muslim states:

"establishing an OIC Human Rights Commission would pave the way to broad intellectual and political reform across the OIC member states and deeper cooperation that would contribute to a larger promotion of the values of tolerance and fundamental freedoms, good governance, the rule of law, accountability, openness, dialogue with other religions and civilizations, the rejection of extremism and fanaticism, and the strengthening of the sense of pride in the Islamic identity⁶⁸."

The draft Statute for the OICHR tabled in the 36th meeting of ICFM in Damascus (the draft Statute)⁶⁹, consists of 33 articles which contain the components of the planned Commission, a description of the nature of its work, its appellation, principles, objectives and functions, members

⁶⁸ OIC discusses set-up of an independent and permanent human rights commission (note 46).

⁶⁹ OIC/IPCHR/2009/DR.STATUTE,ANNEX TO: OIC/IGGE-IPCHR/2009/REP.FINAL.

and experts, recommendations and quorum, and other aspects bearing on the activities and responsibilities to be entrusted to the Commission.

Under Article 2 of the draft Statute, the Commission consists of 19 members⁷⁰, of whom shall perform an advisory function under the aegis of the Council of Foreign Ministers. The first objective of the Commission, according to Article 10, is the promotion and protection of human rights in member states: "The Commission shall seek to ensure the promotion and protection of the civil, political, economic, social and cultural rights in the member states." Article 11 considers an unusual second objective for the Commission apart from the domain of protection and promotion, namely supporting "the OIC position on human rights at the international level". This objective, however, is not further elaborated in the following articles.

The instances of promoting function of OICHR are listed in Articles 12-17 of the draft Statute, which are similar to the promoting functions of the African Commission on Human and Peoples' Rights (ACHPR) as stipulated in Article 45(1) of the African [Banjul] Charter on Human and Peoples' Rights (the African Charter). In comparison, the ACHR does not consider such functions for the AHRC. The promoting functions of the OICHR are as follow:

- Promoting the laws and policies aimed at promoting the status of women and vulnerable sections of society and in the member states in the economic, social, political and cultural fields in consistence with the provisions of the OIC Charter, and protecting them from all forms of discrimination and violence. (Article 12)

⁷⁰ The ACHR has seven members and the African Commission on Human and Peoples' rights 11 members.

- Promoting the role of the national human rights institutions and civil society organizations in the member states. (Article 13)

- Supporting capacities and providing technical cooperation in the field of human rights and raising awareness about these rights in the member states, and advising member states on human rights issues upon their request. (Article 14)

- Promoting cooperation with the national human rights institutions, non-governmental organizations and civil society to defend and protect human rights; also strengthening cooperation in the area of human rights between the OIC and the other international and regional human rights organizations. (Article 16)

- Conducting studies and research on important human rights issues and acting as information exchange channel on human rights issues.(Article 17)

- Overseeing the drafting of any instruments to promote human rights in the OIC member states, propose the revision and improvement of OIC declarations and covenants on human rights in harmony with international standards and Islamic values; and encouraging the member states to ratify human rights treaties and covenants. (Article 18)

Article 20, as the only principal provision on human rights protection of the draft Statute, outlines a monitoring function of the OICHR. The Article reads: "The Commission shall investigate any possible human rights violations by the OIC member states in accordance with its rules of procedure, and shall submit reports thereon to the Council of Foreign

Ministers for appropriate decision." While the OICHRC is not yet based on a Human Rights Charter or Covenant, the proposed Article 20 has been an issue of disagreement in related OIC meetings and it was decided to be put between brackets and referred to in further meetings. Apparently for the same reason, no function on considering states reports is predicted for the Commission in the draft Statute.

A similar article on the investigating function of the Commission is not included in the ACHR and, in comparison to the African Charter; the scope of the proposed Article 20 in the draft Statute is much more narrow. According to Article 46 of the African Charter, the Commission may resort to any appropriate method of investigation and it may hear from the Secretary General of the AU or any other person capable of enlightening it. Also, the Commission has the authority to examine states complaints against another state (Article 47) and individual complaints (Article 48). The ACHPR, similar to the AHRC, has the responsibility of considering the periodic reports of states parties. Furthermore it has some other responsibilities which are not taken into account in the subsequent similar Arab and OIC related human rights organs including interpretation of all the provisions of the African Charter, and any other tasks which may be entrusted to it by the Assembly of Heads of States and Governments.

The OIC has already signed a Memorandum of Understanding with the UN Office of the High Commissioner on Human Rights (OCHCR) in July 2006 and the two bodies are jointly working for an OIC draft Charter on Human Rights. Irrespective of questions of nomenclature, the proposed OICHRC, without the support of a binding instrument, will not be able to work effectively and its activities will be focused on non-binding promotion rather than binding protection of human rights.

Finally, there are two minor references to Islamic values in the draft Statute, the one in Article 18 quoted above, and the other in Article 4 which reads: "The Commission shall add value in serving the interests of the Muslim *Ummah* in the domain of human rights and encourage respect for languages, cultures and the tolerant Islamic values..." In these two articles, human rights and Islamic values are considered to be the same. Also similar to the recent OIC and the Arab League human rights documents, no reference is made to *Shariah*, Muslim law or other Islamic terms that might imply areas of inconsistency between problematic traditions and human rights.

Concluding Remarks

A special approach in the developing world towards human rights fulfillment is the "cultural-religious oriented approach". For Muslims this multifaceted approach is discussed in the "Islam and human rights" discourse. For a better understanding of the relevance of Islam to human rights this paper made a distinction among the core principles/values of Islam, Muslim law and *Shariah*.

Having this distinction in mind the paper argued that after two decades since the adoption of the CDHR, and following a long running debate on Islam and human rights, the related human rights documents in the Arab League and the OIC in recent years tend to avoid referring to the controversial or ambiguous areas between religious legal traditions and human rights and leave them to be resolved in the process of time within more progressive endeavors of related states. Instead references to Islam in these documents have been limited to contributing areas of the religion to human rights, i.e. to "Islamic principles and values". The related Muslim states, therefore, should ignore these controversial issues and leave it to be resolved in the process of time within more progressive interpretations of religion and state practices.