

Article

The Organisation of Islamic Cooperation and Regional Challenges to International Law and Security

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Abstract

The return of religion as a major player in legal context over the last three decades of the 20th century found expression not only in some domestic legal systems but also as a force behind public international law. This article explores the latter phenomenon by outlining the parallel existence and development of general international law on and of regional international law based on politicised Islam by specifically looking at some of the instruments of the Organisation of Islamic Cooperation. What challenges are represented by international law based on Islamic ideology and how does this form of international law fit within the broader landscape of international law?

Introduction

That the last half of the 20th century would see a resurgence of religion and religious discourse in society, politics and consequently also in law was not an unexpected turn in history given the Cold War strategy of putting into action an effective countermeasure against communism. What might have been less expected, however, was that this development would continue on a large scale even after the fall of the Berlin Wall. As a phenomenon, the return of religion has been present in a number of countries across the globe, regardless of the particular religious garb.¹

What these movements often have in common is a rejection of both the erosion of traditional certainties and the changes resulting from modernity. Even so, the new role of religion is not a theological phenomenon but instead part of a broader political agenda. The incorporation of religion into politics and law is not done out of love for religion, but as a legitimising ground to conduct certain politics. One could, as some do, argue that politicised religion is not true religion and what we see happening in the name of religion is nothing more than religious discourse being used to disguise policy choices that in fact contradict 'true' religion.² This opens up to the bigger question as to who has the authority to decide what

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¹ For a comprehensive discussion on the resurgence of religion in law, please see R. Hirschl, *Constitutional Theocracy*, Cambridge Massachusetts: Harvard University Press 2010; G. Kepel, *The Revenge of God: The Resurgence of Islam, Christianity and Judaism in the Modern World*, Cambridge: Polity 1994. Also, J. Casanova, *Public Religions in the Modern World*, Chicago: Chicago University Press 1994.

² This is argued by amongst others A.A. An-Na'im, *Islam and the Secular State: Negotiating the Future of Sharia*, Cambridge MA, and London: Harvard University Press 2008.

true religion is, which is a discussion that does not fall within the purposes of this article. The point at this stage is rather to highlight that religion and religious discourse, as well as religion and politicised religion, are not necessarily overlapping concepts.

Despite the global appeal, politicised religion has led to major changes in the domestic *legal system* primarily in Muslim majority countries. The religious counter-reactions in these countries were raised against what were often secular but authoritarian governments. The influence of religion on the domestic legal system has played out in different forms and to different degrees, but one of the most significant of the legal changes is represented by constitutional shifts from popular sovereignty to divine sovereignty as the foundation for the state's legitimacy and legislation.³

Concurrent with the domestic re-establishment of Islam⁴, a pan-Islamic international project emerged, using the contemporary tools of international law. Thus, politicised religion found expression on two levels: domestic and international. On the international level, the main institution for the development of international law based on politicised Islam is the Organisation of Islamic Cooperation (OIC), formerly the Organisation of Islamic Conference. Behind the OIC's development of Islamic international law lies the argument that general international law has not taken account of Islamic values and traditions and that Islam is not accommodated in the practice of international law. This argument corresponds with parts of the criticisms under the third world approaches to international law (TWAIL), which particularly criticise the political use and abuse of international law by countries in the west.⁵ However, as this article argues, the OIC faces difficulties when it comes to presenting an alternative approach to international law that can accommodate the pluralistic needs in the societies to which the OIC law is intended to apply. This article gives an overview of the regional law created by the OIC and the way in which this law corresponds with general international law. As the issue directs itself at the OIC as a law-producing forum, the background of the OIC will form the starting point. Understanding this background is essential in understanding the OIC's legal instruments and law-making agenda. Next, the article explores Islamic international law by examining a few of the main instruments of the OIC to highlight some of the ways in which this type of law diverges from the development of general international law.

I. What is the OIC?

The reason for the creation of the OIC is often explained by pointing to the need for Muslim solidarity following two events in recent history: the Arab loss of the Six Day War in 1967, and the 1969 arson attack against the Al-Aqsa Mosque, a holy site in Sunni Islam.⁶ As a result of these two incidents the OIC, we learn, was created to safeguard the interests of the Muslim world.

³ An analysis of this development can be found in A.Tadjdini, 'Constitutionalization of Islam in Afghanistan, Iran and Iraq- A Step Back for the Position of Human Rights?' *Nordic Journal of Human Rights*, 2011-04, pp. 353-369.

⁴ As indicated above, "Islam" when used in this article, refers not to Islamic doctrine, but to the political use of Islam and Islamic rhetoric.

⁵ See for example, M. Mutua, 'What is TWAIL?' *Proceedings of the Annual Meeting -American Society of International Law*, 2000-94. Also, D.Fidler, 'Revolt Against or From Within the West? TWAIL, the Developing World and the Future Direction of International Law', *Chinese Journal of International Law* 2003-1, pp. 29-76.

⁶ This is how for example the OIC itself explains the background for its creation, see OIC website: www.oic-oci.org.

However, looking at the history of turmoil in the Middle East and its surroundings, an additional and more central driving force becomes apparent: the Saudi Arabian policy of containment against the wave of secular nationalism mixed with socialism, emerging in a number of the countries in the region. In the period following the end of the Second World War up to the 1960s, the principal organisation of the region - the League of Arab States - was dominated by pan-Arab and secular-nationalist regimes, and had, as an institution, proved insusceptible to the influence of Saudi Arabia.⁷ In an effort to countermeasures this development, pan-Islamic conservatism became the discourse to fight pan-Arabism. The first attempt to institutionalise this agenda resulted in the Muslim World League, which supported the Muslim Brotherhood of Egypt as an anti-Nasser and anti-radical force. Succeeding this, the Organisation of Islamic Conference⁸ was established in 1969 as a less influence resistant framework for international cooperation. The objective behind the creation of the OIC has to a large extent been successful, much by the aid of major financial contributions from Saudi Arabia to the OIC budget since the organisation's inception.⁹ In addition, between 1970 and 1991, \$96 billion was awarded to the OIC countries in loans and grants by Saudi Arabia as a policy of cash for compliance. During this period, the country supported Iraq in the war with Iran, the Afghan mujahidin and the Islamic Salvation Front in Algeria.¹⁰ Furthermore, Saudi Arabia is the seat of many of the subsidiary organs, as well as specialised and affiliated institutions of the OIC.¹¹

I.1 The OIC as an Institution

With 57 member states across four continents, the OIC includes a diversity of cultural and socio-political systems with varying levels of economic and democratic development.¹² Decisions are made by the foreign ministers of the member states based on the policy framework called the Ten-Year Programme of Action, established by the Islamic Summit.¹³ Structurally, the OIC copies some of the institutional framework of the UN. The OIC Secretariat, responsible for the daily activities of the organisation, is currently under the leadership of the Turkish Ekmeleddin Ihsanoglu as Secretary General.¹⁴ With him, the OIC has developed a softer and more liberal profile compared to some of his predecessors' confrontational line, but as a secretary general he has no substantial impact on the OIC policies.

⁷ N. Sheikh, *The New Politics of Islam: Pan-Islam Foreign Policy in a World of States*, London: Routledge 2003, p. 34. See also, R. MacDonald, *The League of Arab States: a Study in the Dynamics of Regional Organization*, Princeton: Princeton University Press 1965; A. Gomaa, *The Foundation of the League of Arab States: War Time Diplomacy and Inter-Arab Politics, 1941-1945*, London: Longman 1977.

⁸ The Organisation of Islamic Conference changed name into the Organisation of Islamic Cooperation in June 2011, at the 38th session of the Council of Foreign Ministers. "OIC" as an acronym remains in use.

⁹ Montreal International Forum, see: http://www.fimcivilsociety.org/f/library/OIC_Overview_and_Analysis.pdf (accessed on 15 January 2012).

¹⁰ Sheikh 2003, supra note 7, p.55.

¹¹ For example the Islamic Fiqh Academy, the Executive Bureau of the Islamic Solidarity Fund and its Waqf, The Islamic Development Bank, the International Islamic News Agency, World Federation of International Arab-Islamic Schools, and the International Association of Islamic Banks, see www.oic-oci.org.

¹² See www.oic-oci.org. For a presentation of the structure and institutional functioning of the OIC see S. Khan, *Reasserting International Islam: a Focus on the Organisation of Islamic Conference and Other Islamic Institutions*, Oxford: Oxford University Press 2001.

¹³ OIC Charter, art. 10 and 6. The Islamic Summit is the main body of the OIC, composed of heads of states who meet every three years. The policy framework is established in a ten-year programme of action. The current programme is from 2005, available at: http://www.oicoci.org/page_detail.asp?p_id=228 (accessed on 2 February 2012).

¹⁴ It is interesting to note that Turkey, which due to its secular constitution has not ratified the OIC Charter and many of the other OIC conventions, holds the post of Secretary General.

Difficulties arise when trying to decipher the policy goals of the OIC, much because of its inherent contradictions, but also because of the contradictions between policy and practice. When analysing what is a variety of policy objectives an important focus appears to be social and economic development and cooperation.¹⁵ However, from its inception on 25 September 1969 and throughout its 43 years, the OIC has been a largely ineffective institution when it comes to inter-OIC trade and economic development despite the fact that the OIC countries possess 70% of the world crude oil reserves and 50% of world natural gas reserves. Economic development has mainly been limited to those countries that have oil and gas reserves, and even in many of these countries there is no even distribution of wealth. The gap between rich and poor in the OIC member states is substantial. The per capita GDP based on purchasing power parity in the richest member country was 17.1 times higher than the average of the OIC countries in 2010, and of the UN list of Least Developed Countries (LDCs), 21 out of 48 are OIC countries.¹⁶ The large imbalances among the OIC members suggest that economic development, although stated as an important objective under the OIC Charter, is a good mainly reserved for the oil-exporting countries, rather than being an overall policy goal for the whole community of OIC states.¹⁷ Instead, two other policy goals, namely the spread of Islamic influence and use of Islamic rhetoric, have been subject to a more even distribution and prioritised as relevant and important to all member states.¹⁸ That these are more central goals than economic development is also reflected in the budget. For example, while the Islamic Center for Development of Trade is allocated 1,500,000 USD, the Islamic Fiqh Academy on the other hand, an institute that issues conservative resolutions and recommendations of the teachings of Islam on contemporary society, is granted 2,100,000 USD.¹⁹

One can add the internal state of affairs of the member states to this picture of the OIC landscape. None of the member states are full democracies. Civil liberties are infringed upon and political pluralism is heavily circumscribed or absent in most member states.²⁰ Yet, improving rule of law, protecting civil liberties and political freedom have not been among the priorities of the organisation.

¹⁵ Economic development and cooperation is a policy goal that can be found amongst others in the OIC Charter, art. 1(5) (9) (10), 11(1)iii; the Ten-year Programme of Action, section 2; General Agreement for Economical, Technical and Commercial Cooperation Among the OIC Member States; Framework Agreement on Trade Preferential System Among the Member States of the OIC.

¹⁶ Annual Economic Report on the OIC Countries 2011, SESRIC. Available at:

<http://www.sesric.org/files/article/438.pdf#page=10> (accessed on 13 January 2012).

¹⁷ OIC Charter, art. 1(9) and 11(iii). This goal is also a primary focus in the Ten-Year Programme of Action, part 2. In addition, there are, as to date, eight agreements on trade and economic cooperation, the majority of which have been signed and ratified by most of the member states.

¹⁸ This policy goal is found in the OIC Charter for example, preamble and art.1 (1)(2)(11)(12), 2; the Ten-Year Programme of Action; the Cairo Declaration on Human Rights in Islam; Covenant on the Rights of the Child in Islam.

¹⁹ Res 1/33 AF On the Report of the 34th Session of the PFC and the Budgets of the General Secretariat and its Subsidiary Organs. A compilation of the resolutions and recommendations issued by the Islamic Fiqh Academy is available at: <http://www.scribd.com/doc/19237054/Resolutions-of-the-Council-of-the-Islamic-Fiqh-Academy>.

²⁰ Economist Intelligence Unit: Democracy Index Report 2011. Available at http://www.eiu.com/public/topical_report.aspx?campaignid=DemocracyIndex2011 (accessed on 10 March 2012). Among the OIC countries, five are characterised as “flawed democracies”, 16 are “hybrid” and the rest is “authoritarian”.

In addition to the above-mentioned aims, “liberating Jerusalem” remains a key focus of the OIC.²¹ As with economic and social development, the effectiveness in the pursuit of this aim has since the beginning of the organisation’s existence been constrained by the different political orientations of the member states. The conflicts between the various OIC countries have often been tenuous rather than the conflicts with the outside world. The countervailing diplomatic and military alignments have proven more decisive in practice than the professed Muslim fraternity.²² Nevertheless, religious discourse continues to play a central role to the OIC and its law-making to which attention is now turned.

II. OIC Regional Law and Other International Law

Law is concurrently developed on a multiplicity of layers. Member States of the OIC are bound by their domestic law, by OIC conventions, as well as by international law. While the various layers provide frameworks that respond to legal problems, at the same time they can be a source of confusion and complexity. This is especially the case with the fragmentation of international law which can exacerbate the complexity with unclear or conflicting rules, and with overlapping and competing jurisdiction.²³ Because of this complexity it is not always clear what follows from international legal obligations. The intention here is not to define or discuss the concept of international law, but rather to point out that within international law there are a variety of laws, and these laws are subject to different classifications. For the purposes of this article, international law that intends to bind all states is referred to as “general international law”. These are typically conventions of the United Nations. International law that on the other hand intends to bind only a limited number of states is often referred to as “regional law”, because it normally binds countries in a particular region. What is the place of OIC law in this broader landscape of international law?

Even if OIC law is not limited to a specific region, it still has some of the characteristics of regional law since it intends to bind only a limited number of states. Islamic ideology is the basis for OIC law, and thus for OIC the regionalisation takes the shape of Islamisation. That a group of countries that share an ideology enter into legal and political cooperation is by itself nothing extraordinary. Parties to the European Convention on Human Rights (ECHR), for example, the success story of a regional human rights regime, share the idea of democracy and individual liberties. This can also be classified as an ideology. Regional approaches can and do (as we see in Europe) contribute to economic and democratic development and can also be used to enact norms that respond to specific regional needs, in harmony with general international law. While regional regimes can be, and often are, used to advance the effectiveness of general international law, regional institutions and norm-making organs can also act in discriminatory or sectarian manners that demolish the accomplishments of general international law. Regional regimes with the latter character challenge the direction and content of general international law and do as well represent a threat to international security. In this regard, the OIC differs from many other regional systems in two distinct ways. The first is the OIC’s sectarian character, and the second is its disharmony with general international law.

²¹ Expressed by the OIC Secretary General in his speech at the last session of the Council of Foreign Ministers. This aim, with great popular appeal, is furthermore reflected in the OIC Charter, preamble and art. 1(8) and 18(1).

²² Particularly interesting is the Saudi-Iranian rivalry, and the various alliances with the USA and Israel. For more on the relationship between geopolitical interests and the OIC, see Sheikh 2003, *supra* note 7, pp. 60-100.

²³ OIC and OIC law add to the question of fragmentation of law. For a general discussion on this issue, see ‘Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law’, Report of the Study Group of the International Law Commission, finalised by M.Koskenniemi, A/CN.4/L.682.

II.1 OIC Law as Sectarian Law in Pluralistic States

The legally binding agreements of the OIC cover a broad area. At the outset, the OIC instruments do not seem to diverge much from general international law, apart from adding an “Islamic” criterion to the norms. The OIC Charter expressly pledges respect to universal rights, the UN Charter and international law.²⁴ Even so, there has been an on-going effort by the OIC to influence general international law, and in particular human rights law, to become shaped in accordance with Islam. One example of this is the OIC sponsored resolution on the ‘defamation of religions’, brought before the UN Human Rights Council from 1999 to 2011.²⁵ These resolutions urged all states to, amongst other measures, strengthen domestic anti-blasphemy laws. In addition to the attempts to influence international law, the OIC has developed internal parallel instruments to those of general international law. Among these is the Cairo Declaration of Human Rights in Islam (CDHRI), the Covenant on the Rights of the Child in Islam (CRCI) and the OIC Convention to Combat Terrorism. On the institutional side, the OIC has reached agreement on the statutes of an International Islamic Court of Justice (IICJ), which is planned to become an Islamic alternative to the International Court of Justice, for the settlement of disputes between Islamic countries.²⁶

Under the OIC Charter, the aim of the organisation is to enhance and build up the Islamic character of its member states, including the spread of theocratic influence, as well as introducing Islam as a political player in the international field.²⁷ Regional law that is based on the supremacy of one particular religion completely disregards the fact that the world and the OIC member states consist of diverse and pluralistic societies, where Islam is one of many beliefs. This type of sectarianism is also reflected in the CDHRI which holds that the Islamic Ummah is “the best nation” which should “guide a humanity confused by competing trends and ideologies” and “provide solutions to the chronic problems of this materialistic civilisation”.²⁸ What further complicates the application of religion-based law is that there is no agreement among the member states or within each state as to what ‘true’ Islam is. Like any religion, Islam is open to interpretation. While there is nothing inherent in Islam that suggests that Islam is harmful to human rights or to general international law, the practice of the OIC states have proven that it is not the liberal interpretation of Islam that underlies the OIC framework but an undemocratic and sectarian interpretation.

In addition to giving rise to sectarianism and exceptionalism, placing Islam in the centre for the policies of the member states is also problematic with regard to the secular constitutions of many of the member states, such as Turkey, Indonesia and Lebanon.²⁹ As a consequence, there is no uniformity among the member states when it comes to the domestic force of the OIC legal documents. In addition, a number of the OIC countries do not have a Muslim majority population, such as Gabon (99% non-Muslims), Uganda (85% non-Muslims) and

²⁴ OIC Charter, preamble and art. 1(7) and 2(1)(5).

²⁵ The resolution was finally dropped in 2011, after criticism that it went against international law. The OIC insists that the former resolutions are still valid.

²⁶ Under Article 11 of the OIC Charter, 2/3 of the member states must ratify the statutes in order for the court to become operative. So far, the statutes have been ratified by only a few member states. For an analysis of the IICJ, see M.Lombardini, ‘The International Islamic Court of Justice: Towards an International Islamic Legal System?’ *Leiden Journal of International Law*, 2001-14, pp.665-680.

²⁷ OIC Charter, preamble and art.1, 2 and 15.

²⁸ Preamble of the CDHRI.

²⁹ As a result of the conflict between the objectives in the OIC Charter and the secular Turkish Constitution, particularly Articles 2,13 and 90, Turkey has not ratified the OIC Charter.

Benin (80% non-Muslims), yet are bound by this programme.³⁰ On the other hand, India, with a Muslim population of around 160 million, is not a member state.³¹ Specially for these countries, but also for the OIC countries as a whole, it is problematic that in an increasingly interconnected and diverse reality, the OIC as a law-making institution continues to insist on Islam as a criterion for its norms and policies.

II.2 Disharmony with General International Law

The starting point for the OIC's view of international law is based on two contradictory perspectives: sovereignty and the Islamic Ummah. To begin with sovereignty, this is a notion that is strongly emphasised in all OIC documents, often in connection with the obligation of the state to respect and ensure rights. For example, under the OIC Charter, member states must promote human rights "in accordance with their constitutional and legal systems".³² This interpretation of sovereignty is connected to the cultural relativist argument advanced by, amongst others, the OIC, which in practice has allowed for human rights violations in the name of "legal tradition", "culture" or "preservation of religion". This is also reflected in Resolution 41/21-p on Coordination Among Member States in the Field of Human Rights, Article 5, which states that "while human rights are universal in nature, they must be considered in the context of a dynamic and evolving process of international norm-setting, taking into account the various historical, cultural and religious backgrounds and the principal legal systems". An illustration of the interpretation of this by one of the member states of the OIC is the statement given by the permanent representative of Iran to the UN in 1984 in response to criticism on the Iranian regime's human rights violations:

Iran recognised no authority [...] apart from Islamic law. [...] Conventions, declarations and resolutions or decisions of international organizations which were contradictory to Islam, had no validity in the Islamic Republic of Iran. [...] The Universal Declaration of Human Rights which represented secular understanding of the Judaeo-Christian tradition, could not be implemented by Muslims and did not accord with the system of values recognised by the Islamic Republic of Iran; this country would therefore not hesitate to violate its provisions.³³

Sovereignty, as it contextually appears in the OIC documents and is applied by the OIC states is thus a notion that is used to reject and undermine the general applicability of international law, and in particular the universality of human rights.

The understanding of sovereignty is, however, contradicted by the OIC's second perspective on international law: the Islamic Ummah. This central notion of Islamic law and history refers to the community of Muslims as a supranational entity.³⁴ The Islamic Ummah constitutes not only a form of identification based on religion, creating a Muslim versus non-Muslim divide, but also integrates faith and policy. Today, this form of identification comes in conflict with the concept of sovereign territorial states. A universal divide based on religion is clearly alien in a world of territorial states, because the politics of territorial states

³⁰ Data from www.nationmaster.com. The criteria for membership under the OIC Charter, Article 3(2), are that a country has a "Muslim majority" and that the Council of foreign ministers approve the new member by consensus. The membership of Gabon, Uganda and Benin, that are countries without a Muslim majority, is therefore not in accordance with the provisions on membership of the OIC Charter.

³¹ India's entry into the OIC is blocked by Pakistan as part of Pakistan's broader interest in using the OIC as an anti-Indian instrument. See Sheikh 2003, supra note 7, pp. 87-88.

³² Preamble of the OIC Charter.

³³ UN Doc. A/C.3/39/SR.65 (1984).

³⁴ On the Islamic Ummah in its historical context, see for example W. Hallaq, *The Origins and Evolution of Islamic Law*, Cambridge: Cambridge University Press 2005. A different perspective is given by N. Sheikh, *The New Politics of Islam: Pan-Islamic Foreign Policy in a World of States*, London: Routledge 2003.

only take into account the interests of the state, not the interest of a cross-border religious community. In the OIC context, the interests of the Islamic Ummah become the glue of international Islam. The interests of the Islamic Ummah override the interests of the sovereign territorial states, in that the Islamic Ummah knows no borders. The rights and duties of the Ummah therefore apply to all Muslims, regardless of their country of residence or citizenship. The importance of the Islamic Ummah is particularly enhanced in the Ten-Year Programme of Action, which amongst others sees it as imperative to “revive the Muslim Ummah’s pioneering role”, and calls on commitment to Islamic solidarity towards the “challenges and threats faced or experienced by the Muslim Ummah”.³⁵

The notion of Islamic Ummah applies extra-territorially to every Muslim all over the world. In a number of provisions, the OIC instruments emphasise the duty to safeguard the rights of Muslim communities and minorities in non-member states. This opens up for the OIC and its member states to interfere in the sovereignty of other states, the same sovereignty that the OIC members themselves claim to be protected by.³⁶ One illustration of how the concept of the Islamic Ummah is used to interfere with state sovereignty is found in the OIC Charter, Article 1(9). In this provision, the OIC gives weight to the duty to establish a sovereign state for the Palestinian people, while safeguarding its ‘Islamic character’. The insistence that the Palestinian state must have an ‘Islamic character’, regardless of the decision and determination of the Palestinian people itself as to what kind of state it intends to have represents a collision with the very same sovereignty that the OIC initially regards as non-negotiable. The interest that the Muslim community (the Islamic Ummah) has in the ‘Islamic character’ of a Palestinian state is thus more important than whether the Palestinian people find it in their interest to have an Islamic state.

These two mutually exclusive points; the notion of sovereignty, and the Islamic Ummah, permeate all OIC documents, law-making and contractual alike, and have caused a fogginess of the law both as to its underlying objective and to its application. In practice we have seen that the concept of state sovereignty, among the OIC states, has disabled the ability of large parts of general international law to function effectively in carrying out their purposes. In the following, the article will point to two areas of law where the use of these concepts have led to the OIC law becoming in complete disharmony with general international law.

II.3 Conflicting Human Rights

While human rights activists from Muslim countries [...] were drawing attention to the severe violations of human rights in their own countries [...], ministers of foreign affairs from the very same states convening in the higher floors of the Vienna Center were emphasising the specific character of their culture against the claim of the universality of human rights.³⁷

When the Universal Declaration of Human Rights (UNDHR) was adopted in 1948, most states acknowledged its universality.³⁸ Among the Muslim countries, the only one to not sign the UDHR was Saudi Arabia, who argued that the declaration violated Islamic law.³⁹ In the

³⁵ Ten-Year Programme of Action, preamble and section 1, art.II(2).

³⁶ See for example, OIC Charter, preamble and art. 1(16); Ten-Year Programme of Action, preamble and art. 1(II); CDHRI preamble.

³⁷ Observation by B.Tibi during the 1993 UN Human Rights Conference in Vienna; B.Tibi, Islamic Law/Shari’a, Human Rights, Universal Morality and International Relations, *Human Rights Quarterly* 1994-2, pp. 277-299.

³⁸ Most of these states had secular-nationalist governments at the time.

³⁹ M.A.Sheldon, *A World Made New- Eleanor Roosevelt and the Universal Declaration of Human Rights*, New York: Random House 2002, p.186.

decades that followed, a number of Muslim majority states moved towards the Saudi Arabian position, and in 1990 the Cairo Declaration on Human Rights in Islam (CDHRI) was adopted by the OIC as an Islamic counter model to the UDHR. This declaration was the first step in the OIC's development of an alternative human rights regime. Following its adoption, the CDHRI was presented to the UN Commission on Human Rights in 1992 where it was condemned by the International Commission of Jurists. The CDHRI uses much of the language from the 1948 Declaration, but diverges from the older document in key respect by stating that "all the rights and freedoms in this declaration are subject to the Islamic Sharia" and that "the Islamic Sharia is the only source of reference for the explanation or clarification of any of the articles of this declaration".⁴⁰ In addition, a number of the rights stated in the UDHR are absent in the CDHRI or they are stated in a less clear language than that of the UDHR, particularly rights relating to religious freedom and equality.⁴¹ Under Article 6 of the CDHRI, "woman is equal to man in human dignity", but not equal in rights. Another example is the contrast between the provisions on equality before the law in the ICCPR and CDHRI. Article 26 of the ICCPR provides that:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.⁴²

The parallel provision in the CDHRI, in contrast, holds that: "all individuals are equal before the law, without distinction between the ruler and the ruled."⁴³ Strictly speaking, by omitting the categories upon which discrimination cannot be based, this provision only requires that there is no favouritism in the law for rulers.

Another important departure from the UDHR relates to freedom of religion, where the CDHRI explicitly prohibits forced conversion from Islam in Article 10 by stating that "Islam is the religion of unspoiled nature. It is prohibited to exercise any form of compulsion on man or to exploit his poverty or ignorance in order to convert him to another religion or to atheism."

In addition to endorsing the UDHR, 47 out of 57 OIC member states are signatories to the ICCPR and ICESCR. Nevertheless, the adoption of the CDHRI clearly conflicts with the obligations under these international human rights instruments and have in practice led to constraining the rights under these conventions. For those OIC countries that are also members of the Council of Europe, namely Albania and Turkey, the CDHRI also conflicts with their obligations under the ECHR.

A second step in the development of an alternative human rights regime came in 2011 when the OIC finalised the statute of the OIC Independent Permanent Human Rights Commission (IPHRC).⁴⁴ The IPHRC aims to ensure the observance of the rights under the CDHRI by the member states.⁴⁵ The creation of the IPHRC was intended as a response to the criticisms that were raised against the lack of attention to human rights among the OIC member states.

⁴⁰ CDHRI, art. 24 and 25.

⁴¹ A comprehensive comparative analysis of the CDHRI and universal rights is given by A.E.Mayer, 'Universal versus Islamic Human Rights: A Clash of Cultures or a Clash with a Construct?' *Michigan Journal of International Law* 1993/1994-307, pp.308-402.

⁴² ICCPR, art.26.

⁴³ CDHRI, art.19(a).

⁴⁴ OIC/IPHRC/2010/DR.STATUTE, adopted in resolution OIC/CFM-38/2011/LEG/RES/FINAL.

⁴⁵ IPHRC Statutes, art.13.

However, it is unlikely that the new Commission will have any substantial influence on improving the human rights situation in the OIC countries. First, its mandate is already limited by the rights under the CDHRI, which as stated above do not hold the same standard as the rights under general international law. Second, under the IPHRC statutes, the Commission has been given limited powers to actually have an impact on the human rights practices of the member states. The Commission can only issue non-binding recommendations and has no power to address human rights violations.⁴⁶ In its first session which took place in February 2012 in Jakarta, the IPHRC issued three recommendations concerning the upholding of law in government agencies, the efforts to prioritise the issues relating to women and children, and the compilation of guides for the countries that had exercised human rights.⁴⁷

The rationale behind the human rights regime developed by the OIC differs from the rationale behind the post Second World War development of human rights. The international human rights regime arose as an attempt to redress the balance between the power of the state to impose duties on individuals and the powerlessness of individuals to ensure respect for their rights. While the individual and individual liberties are placed at the foremost centre under the UDHR, the CDHRI places restrictions on these freedoms and makes the state the ultimate right-holder. The obligation is instead placed on the individual who obligates himself not to infringe upon the sacred religion. The jurisdiction over what is decided by religion as well as what limit it creates is held by the state. What religion says, and moreover when religion counts, is equally determined by the state. As religion is unable to defend itself or claim its rights, the state becomes the ultimate holder of rights. This system essentially facilitates the rights of the state and limits the rights of the individual. Unlike the UDHR which does not refer to any single religion but rather places the superiority on the individual, the CDHRI asserts the superiority on Islam. All the rights in the CDHRI are subject to the Sharia, which is held to be the only source of reference for the clarification of the articles in the declaration.⁴⁸

There is thus a tension between the states' obligations under OIC law and under general international law. Under instruments developed by the OIC, rights are viewed as subject to religious (read *state*) control, while the prevalent ideology under international law views human rights as a secular matter where individual freedom is the subject of protection. Sovereignty is applied as a shield against the various UN treaties that contain constraints on the ability of states to use certain policies or directs which policies must be pursued.

While regionalism as developed in Europe under the ECHR provides a higher standard than that under general international law, the situation is, as we have seen, different when it comes to the regional development of human rights under the OIC. The development of universal human rights norms was to prevent culture, religion and traditions from standing in the way of the enjoyment of rights. Through the use of culturally and religiously founded norms the OIC documents reverse the post-Second World War development.

II.4 Terrorism Combat

Today there are fourteen international treaties on the combat of terrorism as well as a number of regional treaties. The problem of terrorism has been the subject of a number of actions by the UN in its development of international law. The International Law Commission dealt with terrorism in the 1954 Draft Code of Offences Against the Peace and

⁴⁶ IPHRC Statutes, art 13-17.

⁴⁷ <http://oichumanrights.wordpress.com/> (accessed on 28 March 2012).

⁴⁸ CDHRI, art.24 and 25.

Security of Mankind. Likewise, a number of UN General Assembly resolutions addressed the issue, especially from the 1970s and onwards.⁴⁹

In addition to the work at the UN level, international law in the area of terrorism has developed on the regional level, such as the Inter-American Convention Against Terrorism by the Organization of American States (2002); the Convention on the Suppression of Terrorism by the South Asian Association for Regional Cooperation (1987); the Council of Europe Convention on the Prevention of Terrorism (2006); the Treaty on Cooperation among the States Members of the Commonwealth of Independent States in Combating Terrorism (1999); the Organization of African Unity Convention on the Preventing and Combating of Terrorism (1998); and the Arab Convention for the Suppression of Terrorism (1998).

In 1999, the OIC adopted “the Convention of the Organisation of the Islamic Conference on Combating International Terrorism” (hereafter, “the OIC Convention”). The convention entered into force in 2002 after the deposit of the seventh instrument of ratification in accordance with Article 40 of the convention. The Convention contains two particular points of friction with general international law on terrorism. One is the broad definition of terrorism and the second is the exemption of certain causes for terrorism which the OIC endorses.

The principal obligation in international treaties against terrorism is to incorporate the crimes defined in the treaty into the domestic criminal law and further to make them punishable with sentences that reflect the gravity of the offence. State parties also agree to participate in the construction of “universal jurisdiction” over these offences. Partly because of the lack of political will among a number of states to support the international cooperation against terrorism, and partly because of the belief that terrorism is a notion dependent on an individual’s political belief, it has so far been impossible to achieve a universal consensus on a comprehensive anti-terrorism convention and on a universal definition of terrorism. However, some regional treaties contain a definition. The OIC Convention gives a definition of terrorism in Article 1 (2):

Any act of violence or threat thereof notwithstanding its motives or intentions perpetrated to carry out an individual or collective criminal plan with the aim of terrorizing people or threatening to harm them or imperilling their lives, honors, freedoms, security or rights or exposing the environment or any facility or private property to hazards or occupying or seizing them, or endangering a national resource, or international facilities, or threatening the stability, territorial integrity, political unity or sovereignty of independent States.

In Article 2, the Convention exempts acts that are committed in “people’s struggle including armed struggle against foreign occupation, aggression, colonialism, and hegemony, aimed at liberation and self-determination” from terrorism. The OIC has pushed for this exemption to be included in the international conventions against terrorism.⁵⁰

⁴⁹ For example, GA Res 2625 (XXV) of 24 October 1970; Res 2734 (XXV) of 16 December 1970; Res 48/122 of 20 December 1993; Res 49 /185 of 23 December 1994; Res 50/186 of 22 December 1995; Res 54/164 of 17 December 1999; Res 56/160 of 19 December 2001; Res 59/195 of 20 December 2004; Security Council Res 1535(2004), Res 1373 (2001) and Res 1540 (2004).

⁵⁰ During rounds of talks in the UN General Assembly on a convention on terrorism, proposed by India, the OIC pushed for an amendment in line with Article 2 of the OIC Convention. Through this exemption the OIC was pushing the Pakistan line on Kashmir, and the Pakistani president referred to the fighters in Kashmir as “freedom fighters”, while the same fighters were referred to by India as “terrorists”.

Human Rights Watch (HRW), noting that international law prohibits attacks against civilians no matter the circumstances, asked the OIC to amend its definition “to clarify that its condemnation of terrorism makes no exemptions, even if in the name of causes that OIC member states endorse”.⁵¹ The OIC Convention is also criticised for using vague language which has led the definition to go beyond the generally accepted understandings of the concept of terrorism. HRW also suggested that the definition is amended to cover only those acts committed with the intention of causing death or serious bodily injury, or the taking of hostages, which is in line with the statements by the UN Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism.⁵²

On the prosecution side, the OIC Convention provides for a general obligation on the member states to prosecute or extradite, however without requiring the states to establish the terrorist act as a crime under national law or subject to criminal jurisdiction.⁵³ This has legal implications for cooperation and extradition processes, especially when viewed in light of the definition of terrorism in Article 1 which may be subject to states’ different interpretations.⁵⁴ For example, under Article 6, the only situation where a state is legally compelled to extradite is when the crime has been committed in the requesting state’s territory by a person who is not a national of the requested state. The lack of effective law enforcement instruments can allow perpetrators of terrorist acts to escape punishment and prevent a state from exercising national jurisdiction on a terrorist crime it may consider within its competence.

Conclusion

The lack of a hierarchical structure in the international legal system gives space for various actors to leave their mark on international law. Given its broad membership, the OIC can potentially play an influential role. However, there are aspects of OIC law which are detrimental to the progress of international law.

This article has tried to point to the conceptual difference between OIC law and general international law. The use of religious discourse and reference to religious sources has led to a religionisation of the political landscape, and this has had broad impacts considering the large number of states that are part of the organisation. In its rejection of international law, by pointing to the supremacy of one religion, the OIC disregards the actual pluralism that exists both within and between its member states. This gives the OIC law and institutions a sectarian character which in itself is in disaccord with general international law. To this one can add the problem of defining Islam unambiguously. In practice, we see that instead of states that serve the ultimate ideals of Islam, Islam has come to serve the immediate objectives of the state.

In addition to the differences that stem from the use of religious discourse, the law of the OIC contains important substantial differences. These substantive differences have led the OIC law to constitute a radical departure from the current process of law formation within the international community. The orientation of this departure undermines certainty and stability, and leaves the way open for the progressive degradation of the standards under

⁵¹ Letter from HRW to the OIC Secretary General, 12 March 2008. Available at: <http://www.hrw.org/news/2008/03/11/organisation-islamic-conference-improve-and-strengthen-1999-oic-convention-combating> (accessed on 20 January).

⁵² The OIC Convention remains unchanged.

⁵³ See M. Hmoud in G.Nesi (ed.) *International Cooperation in Counter-terrorism*, Ashgate 2006, pp.160-169.

⁵⁴ *Idem*, p.167.

general international law. Particularly the fields of human rights and terrorism combat this departure from general international law and represent a serious threat to both individual and international security. The poor democratic state of affairs of the OIC countries gives reason to ask whether the OIC framework instead facilitates policies that help deteriorate democratic development. Two of the most pressing challenges posed by the OIC regime are that the organisation has become an obstruction for the OIC member states to meet their obligations under general international law, as well as an obstruction for the OIC member states to fully implement general international law.