

# Journal du Droit Transnational



Directeurs:  
Ilias Bantekas  
Catherine Maia  
Tarcisio Gazzini  
Francesco Seatzu

[www.journaldroittransnational.it](http://www.journaldroittransnational.it)

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

**The Independent Permanent Human Rights Commission of the Organization of  
Islamic Cooperation: 'Independency' is a relevant feature but what if  
'independency' is coupled with the limitation of its mandate? An honest  
assessment**

Gino Naldi\* & Cristiano d'Orsi†

## 1. Introduction

The Organization of Islamic Cooperation (OIC), based in Jeddah, Saudi Arabia, is an intergovernmental, transnational organization with a current membership of 57 states, including the State of Palestine, making it the second largest intergovernmental organization after the United Nations.<sup>1</sup> As such an international organization, the OIC comes within the scope of a regional arrangement or agency relating to international peace and security under Chapter VIII of the UN Charter.<sup>2</sup> The OIC is distinctive in that it is defined not by geography, although most member states are from the MENA (Middle East and North Africa) region, sub-Saharan Africa and Asia, or shared political values but by religious affiliation,<sup>3</sup> accordingly described as 'the principal organization representing the Islamic world', membership of which is 'exclusively Islamic'.<sup>4</sup> Thus, according to Article 3(2) of the OIC Charter, in order to become a member a state must have a Muslim majority population,<sup>5</sup> but this does not appear to be a rigid condition given that not all the member states satisfy this requirement.<sup>6</sup> This is also evident from the stipulation in

\* Former university senior lecturer in Law, United Kingdom.

† Part-time Lecturer, Centre for Human Rights, University of Pretoria and Senior **Research Fellow** and Lecturer at the South African Research Chair in International Law (SARCIL), Faculty of Law, University of Johannesburg. Senior Consultant in African Refugee Law at Witness Experts, London.

<sup>1</sup> Art. 3(1), Charter of the Organization of Islamic Cooperation 2008, available at [https://www.oic-oci.org/upload/documents/charter/en/oic\\_charter\\_2018\\_en.pdf](https://www.oic-oci.org/upload/documents/charter/en/oic_charter_2018_en.pdf) (OIC Charter). There are a number of states with significant Muslim populations that have observer status, e.g., Bosnia and Herzegovina, Russian Federation and Thailand, while the UN, the African Union and the League of Arab States also have observer status.

<sup>2</sup> Art. 52, UN Charter. See e.g., GA Res. 79/9, 18 November 2024; GA, SC, Report of the Secretary-General, 'Cooperation between the United Nations and regional and other organizations, UN Doc. A/79/302-S/2024/600, 8 August 2024, §§ 146-156.

<sup>3</sup> T. Kayaoglu, *The Organization of Islamic Cooperation: Politics, Problems, and Potential* (2015); P. Sands and P. Klein, *Bowett's Law of International Institutions* (6th ed., 2009), at 148-149.

<sup>4</sup> J. Rehman, *International Human Rights Law* (2003), at 456.

<sup>5</sup> See further Art. 2, Rule of Procedure for Obtaining Full Membership in the Organization of the Islamic Conference (OIC), adopted by Res. 2/36-ORG, Thirty-Sixth Session of the Council of Foreign Ministers, 23-25 May 2009. The wording of Art. 3(2), OIC Charter overcomes any difficulties relating to the fact that some states may be constitutionally secular, see Bacik, 'The Genesis, History, and Functioning of the Organization of Islamic Cooperation (OIC): A Formal-Institutional Analysis', 31 *Journal of Muslim Minority Affairs* (2011) 594, at 603-604.

<sup>6</sup> For example, CERD, Guyana, Committee on the Elimination of Racial Discrimination, Initial to the fourteenth periodic reports of Guyana, CERD/C/472/Add.1, 4 April 2006, § 12; and Suriname, CERD,

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY' IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

Article 3(2) of the OIC Charter that the applicant state be a UN member, which Palestine is not, but this particular instance should be considered an exceptional case.<sup>7</sup> The OIC views itself as 'the collective voice of the Muslim world',<sup>8</sup> but its claims to speak for Islam and the *Ummah*, the worldwide Muslim community, and not simply on behalf of its member states, is controversial.<sup>9</sup> Founded in 1969,<sup>10</sup> the OIC Charter was first adopted in 1972<sup>11</sup> and later revised in 2008.<sup>12</sup> It endeavours to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among the various peoples and religions of the world.<sup>13</sup> Countering Islamophobia is an important *raison d'être*,<sup>14</sup> as is supporting the Palestinian struggle for self-determination and statehood.<sup>15</sup> Its objectives centre on the promotion of Islamic solidarity and include enhanced co-operation in the economic, social and cultural fields.<sup>16</sup> The promotion of

---

Initial to the tenth periodic reports of Suriname, CERD/C/446/Add.1, 1 October 2003, § 4. See Gunn and Lagresa, 'The Organisation of Islamic Cooperation: Universal Human Rights, Islamic Values, or Raisons d'Etat', 10 *Human Rights & International Legal Discourse* (2016) 248, at 249, who express the view that the criteria for membership 'are not entirely clear.'

<sup>7</sup> See Art. 1(8), OIC Charter. The same permissive approach is apparent in relation to observer status; Art. 4(1), OIC Charter specifies that the applicant must be a UN member state but the Turkish Cypriot State, **recognized** only by Türkiye, has that status.

<sup>8</sup> Organization of Islamic Cooperation, *History*, available at [https://www.oic-oci.org/page/?p\\_id=52&p\\_ref=26&lan=en](https://www.oic-oci.org/page/?p_id=52&p_ref=26&lan=en). See Bacik, *supra* note 5, at 597-598.

<sup>9</sup> Gunn and Lagresa, *supra* note 6, at 258.

<sup>10</sup> Formerly known as the Organization of the Islamic Conference. The change in name was adopted at the Thirty-Eighth Session of the Council of Foreign Ministers in accordance with Res. 4/38-ORG, 26-28 June 2011. See generally Bacik, *supra* note 5, at 599; Kayaoglu, *supra* note 3, at 13-22; Oxford Public International Law, 'Charter of the Organisation of Islamic Cooperation', available at <https://opil.ouplaw.com/display/10.1093/law-oxio/e662.013.1/law-oxio-e662>.

<sup>11</sup> Charter of Islamic Conference 1972, 914 UNTS 111.

<sup>12</sup> OIC, Res. 2/11-ORG (IS), Eleventh Session of the Islamic Summit Conference, 13-14 March 2008. See further Art. 39(3), OIC Charter. See Cavalli, 'The New Organization of Islamic Conference Charter', 1 *Perspectives on Federalism* (2009), N- 29.

<sup>13</sup> Art. 1(6), OIC Charter. However, it has been argued that the view that Islam heavily influences the OIC Charter is overstated, Farrar, 'The Organisation of Islamic Cooperation: Forever on the Periphery of Public International Law?' 13 *Chinese Journal of International Law* (2014) 787, at 792-793.

<sup>14</sup> Art. 1(11), (12), OIC Charter. See Ali and Sultan, 'Emerging role of the Organization of Islamic Cooperation in the global governance since 1969', 10 *Cogent Arts & Humanities* (2023) 1, at 8-9. In 2022 the UN General Assembly adopted Resolution 76/254 sponsored by the OIC designating 15 March as the International Day to Combat Islamophobia. Islamophobia constitutes a form of hate speech and as such is not protected by human rights, see Art. 20(2) International Covenant on Civil and Political Rights 1966, 999 UNTS 171; Arts. 10(2), 17 European Convention on Human Rights (ECHR) 1950, ETS 5 (as amended by Protocol 15 2013, CETS 213, and ECtHR, *Norwood v. United Kingdom*, Appl. no. 23131/03, Decision on Admissibility of 16 November 2004. All ECtHR decisions are available at <http://hudoc.echr.coe.int/>.

<sup>15</sup> Art. 1(8), OIC Charter. See Ali and Sultan, *supra* note 14, at 8.

<sup>16</sup> Art. 1(9), (20), OIC Charter.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

human rights in member states is one of the objectives of the OIC,<sup>17</sup> and member states have accordingly undertaken a binding commitment to safeguard human rights.<sup>18</sup> It has therefore been said that, 'The OIC...repeatedly articulated three of its guiding principles as including (a) human rights, (b) the sovereignty of OIC member states, and (c) the "noble values of Islam" and the importance of the Muslim *Ummah* (worldwide Muslim community).'<sup>19</sup> With respect to human rights, the original Charter of Islamic Conference contained only a brief reference and that in the preamble. In 1990 though, the Cairo Declaration on Human Rights in Islam,<sup>20</sup> and in 2020 a revised version, the Cairo Declaration of the Organization of Islamic Cooperation on Human Rights, were adopted by the OIC.<sup>21</sup> The amended document seeks to address criticisms that the Cairo Declaration 1990 was religiously driven and did not therefore appear to meet fully the standards of universality as set out in the Universal Declaration of Human Rights (UDHR) and other international instruments.<sup>22</sup> Nevertheless, it is important to note that these documents have no formal legal force, although as hortatory texts they do demand a certain level of compliance and could be compared as regional versions of the UDHR, or

<sup>17</sup> Preamble, OIC Charter. On the OIC's human rights agenda generally see Kayaoglu, 'The OIC's Human Rights Regime', in M. J. Petersen and T. Kayaoglu (eds), *The Organization of Islamic Cooperation and Human Rights* (2019) 65.

<sup>18</sup> Art. 2(7), OIC Charter proclaims that, 'Member States *shall* uphold and promote, at the national and international levels, good governance, democracy, human rights and fundamental freedoms, and the rule of law' (emphasis added). Regard for human rights has frequently featured in the final statements of the Council of Foreign Ministers' sessions.

<sup>19</sup> Gunn and Lagresa, *supra* note 6, at 253.

<sup>20</sup> Islamic Conference of Foreign Ministers, Cairo Declaration on Human Rights in Islam, 5 August 1990, available at <https://www.refworld.org/legal/resolution/oic/1990/en/13797>, reprinted in United Nations, *Human Rights: A Compilation of International Instruments, vol II: Regional Instruments* (1997) 478.

<sup>21</sup> OIC Council of Foreign Ministers, Cairo Declaration of the Organization of Islamic Cooperation on Human Rights, adopted at the 47th Session of the Council of Foreign Ministers, 27-28 November 2020, available at [https://www.oic-oci.org/upload/pages/conventions/en/CDHRI\\_2021\\_ENG.pdf](https://www.oic-oci.org/upload/pages/conventions/en/CDHRI_2021_ENG.pdf).

<sup>22</sup> GA, Universal Declaration of Human Rights, GA Res. 217 A(III), 10 December 1948. See Mayer, 'Universal Versus Islamic Rights: A Clash of Cultures or a Clash With a Construct?', 15 *Michigan Journal of International Law* (1994) 307, at 327-329, 347-350; Schirmacher, 'Islamic human rights declarations and their critics: Muslim and non-Muslim objections to the universal validity of the Sharia', 4 *International Journal for Religious Freedom* (2011) 37; Kayaoğlu, *A Rights Agenda for the Muslim World?: The Organization of Islamic Cooperation's Evolving Human Rights Framework* (2013), available at <https://www.brookings.edu/wp-content/uploads/2016/06/Turan-Kayaoglu-English.pdf>, at 9-10; Kayaoglu, *The Organization of Islamic Cooperation's Declaration on Human Rights: Promises and Pitfalls* (2020), available at <https://www.brookings.edu/wp-content/uploads/2020/09/The-Organization-of-Islamic-Cooperations-declaration-on-human-rights-promises-and-pitfalls.pdf>. In Res. 2253 (2019) the Parliamentary Assembly of the Council of Europe determined that Islamic declarations on human rights, including the 1990 Cairo Declaration, 'while being more religious than legal, fail to reconcile Islam with universal human rights, especially insofar as Sharia is their unique source of reference' and thus incompatible with the European Convention on Human Rights. For a sympathetic assessment of the Cairo Declaration, considered as complementary to the UDHR, see Farrar, *supra* note 13, at 798-804.



THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY' IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

the American Declaration of the Right of Man.<sup>23</sup> However, any impression that the OIC acts in the field of human rights exclusively through soft law documents would be a false one as it has adopted a treaty on children's rights.<sup>24</sup> Nonetheless, given that this is the only treaty in this field there is much that could be done in this regard. The revised OIC Charter does make a welcome commitment to the principles of democratization, and the promotion and protection of human rights and fundamental freedoms, including 'the rights of women, children, youth, elderly and people with special needs'.<sup>25</sup> The evolution

<sup>23</sup> OAS, American Declaration of the Rights and Duties of Man 1948, available at [https://www.oas.org/dil/access\\_to\\_information\\_human\\_right\\_American\\_Declaration\\_of\\_the\\_Rights\\_and\\_Duties\\_of\\_Man.pdf](https://www.oas.org/dil/access_to_information_human_right_American_Declaration_of_the_Rights_and_Duties_of_Man.pdf), reprinted in United Nations, *supra* note 20, at 5. The Cairo Declaration 1990 has been described as 'a general guidance for Member States in the field of human rights', OIC Res. No. 49/19-P on the Cairo Declaration on Human Rights in Islam, reprinted in United Nations, *supra* note 20, at 477. It is important to note that both the UDHR and the American Declaration of Rights are deemed to have evolved and acquired normative status, *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, Advisory Opinion, 21 June 1971, ICJ Reports (1971) 16, Separate Opinion of Judge Ammoun, at 76; IACtHR, *Interpretation of the American Declaration of the Rights and Duties of Man Within the Framework of Art. 64 of the American Convention on Human Rights*, Advisory Opinion OC-10/89, Series A No. 10, 14 July 1989, §§ 43-45; IACtHR, *Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States*, Advisory Opinion OC-26/20, Series A No. 26, 9 November 2020, §§ 95-97; ACtHPR, *Omary and Others v. Tanzania*, Ruling, App. no. 001/2012, 28 March 2014, § 73, decision available at <https://www.african-court.org/cpmt/storage/app/uploads/public/62b2ad0a4/62b2ad0a4d2ab004569380.pdf>. Similar considerations appear applicable to the Cairo Declaration and the Cairo Declaration of the Organization of Islamic Cooperation on Human Rights. All IACtHR decisions are available at <http://www.corteidh.or.cr/index.php/en/jurisprudencia>.

<sup>24</sup> OIC Covenant on the Rights of the Child in Islam 2005, OIC/9-IGGE/HRI/2004/Rep.Final 2005, available at <https://www.refworld.org/legal/agreements/oic/2005/en/19313>. See Farrar, *supra* note 13, at 806-810; Monshipouri and Kayaoğlu, 'The OIC and Children's Rights', in Petersen and Kayaoglu, *supra* note 13, at 198.

<sup>25</sup> Art. 1(14), OIC Charter. Under Art. 2(7), OIC Charter member states commit themselves to uphold and promote, at the national and international levels, good governance, democracy, human rights and fundamental freedoms, and the rule of law. The OIC renewed its commitment to human rights and good governance in 2016, OIC, The OIC – 2025 Programme of Action, available at <https://www.oic-oci.org/docdown/?docID=16&refID=5>. It is worth emphasising the fact that the UN has declared that democracy fosters the full realization of human rights, World Conference on Human Rights, Vienna Declaration and Programme of Action (1993) 32 ILM 1661, Part I, § 8; GA, 2005 World Summit Outcome GA Res. 60/1, 24 October 2005, §§ 11-12, 135. See also ECtHR, *United Communist Party of Turkey and Others v. Turkey* [GC], Appl. no. 133/1996/752/951, Judgment of 30 January 1998, § 45; IACtHR, *Obligations in Matters of Human Rights of a State that has Denounced the American Convention on Human Rights and the Charter of the Organization of American States*, Advisory Opinion OC-26/20, Series A No. 26, 9 November 2020, §§ 53, 72; IACtHR, *The word "Laws" in Article 30 of the American Convention on Human Rights*, Advisory Opinion OC-6/86, Series A No. 6, 9 May 1986, § 34. One distinguished jurist considers that the Vienna Declaration laid the foundations for a democratic global public order, Buergethal, 'International Human Rights in an Historical Perspective' in J.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

of international law has established that commitments undertaken in such an instrument go beyond rhetoric or a mere statement of lofty ideals but rather that the member states have assumed binding legal obligations in this regard.<sup>26</sup> Regardless of the degree to which OIC member states may accept this proposition, the fact is that striving to achieve the end of fulfilling its human rights pledge the OIC Charter makes provision for the establishment of a dedicated human rights body, the Independent Permanent Human Rights Commission (IPHRC), which is designated as an organ of the OIC.<sup>27</sup> Its remit in general terms is to promote human rights as elaborated in the OIC system and universal human rights instruments in conformity with Islamic values but its precise mandate remained to be determined at a future stage.<sup>28</sup> Various reasons have been given for the establishment of the IPHRC, including the OIC's intention to play an enhanced role in the international community since the rise of Islamic fundamentalist terrorism and the responses thereto and the growing influence of several moderate member states.<sup>29</sup> In fact, the OIC has become more assertive on the international stage in seeking to protect Muslims from human rights violations. In November 2019, Gambia, on behalf of the OIC, instituted proceedings against Myanmar at the International Court of Justice (ICJ) under the Genocide Convention.<sup>30</sup> And in 2025 the OIC was authorized to participate in advisory proceedings before the ICJ on the *Obligations of Israel in relation to the Presence and Activities of the United Nations, Other International Organizations and Third States in and in relation to the Occupied Palestinian Territory*.<sup>31</sup>

---

Symonides (ed), *Human Rights: Concepts and Standards* (2000) 3, at 18. However, recent years have witnessed a pushback against this order, see e.g., Carothers, 'Closing Space for International Democracy and Human Rights Support', 8 *Journal of Human Rights Practice* (2016) 358; Kutlay and Öniş, 'Liberal Democracy on the Edge? Anxieties in a Shifting Global (dis)order', 48 *Alternatives* (2023) 20.

<sup>26</sup> In *Legal Consequences for States of the Continued Presence of South Africa in Namibia*, Advisory Opinion, 21 June 1971, ICJ Reports (1971) 16, at 57, the International Court of Justice found that the UN Charter had imposed binding obligations on South Africa to promote and respect human rights in relation to Namibia. See Schwelb, 'The International Court of Justice and the Human Rights Clause of the Charter', 66 *AJIL* (1972) 337. This approach has been followed by African sub-regional courts, see generally Ebobrah, 'Litigating Human Rights before Sub-Regional Courts in Africa: Prospects and Challenges', 17 *African Journal of International and Comparative Law* (2009) 79.

<sup>27</sup> Art. 5(6), OIC Charter. The possibility of establishing a human rights body was proposed in the OIC Ten-Year Programme of Action to Meet the Challenges Facing the Muslim Ummah in the 21<sup>st</sup> Century, Third Extraordinary Islamic Summit Conference, 7-8 December 2005, available at [https://www.schnellmann.org/OIC\\_Summit\\_Ten-year\\_strategic\\_action\\_plan\\_2005.pdf](https://www.schnellmann.org/OIC_Summit_Ten-year_strategic_action_plan_2005.pdf).

<sup>28</sup> Art. 15, OIC Charter. See also Preamble, OIC Charter.

<sup>29</sup> See Petersen, *Islamic or Universal Human Rights? The OIC's Independent Permanent Human Rights Commission* (2012), at 6, 14-18, available at [https://pure.diis.dk/ws/files/66504/RP2012\\_03\\_Islamic\\_human\\_rights\\_web.pdf](https://pure.diis.dk/ws/files/66504/RP2012_03_Islamic_human_rights_web.pdf).

<sup>30</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)* (Application Instituting Proceedings and Request for Provisional Measures), General List No. 178 (2019), available at <https://icj-cij.org/sites/default/files/case-related/178/178-20191111-APP-01-00-EN.pdf>.

<sup>31</sup> ICJ press release No. 2025/7, 'The Court authorizes the Organisation of Islamic Cooperation to participate in the proceedings', 4 February 2025.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

In 2011 the Statute of the IPHRC (Statute) was adopted,<sup>32</sup> and its Rules of Procedure (Rules) were adopted in 2012.<sup>33</sup> This article examines the role of this relatively unknown and underexplored body and the conclusion reached is a guarded one. Despite the models of oversight mechanisms provided by other systems, such as the UN Human Rights Committee or the African Commission on Human and Peoples' Rights (African Commission),<sup>34</sup> the stance adopted by OIC is a cautious and timid one, in keeping not only with a state-centred conception of human rights but the fact that many of its member states do not share the values of liberal representative and pluralist democracy.<sup>35</sup> Indeed, the view has been expressed that the central purpose of the OIC is to buttress the sovereignty of its member states.<sup>36</sup> In addition, the central tension that exists in the Islamic states' worldview of human rights must not be overlooked, based on a communitarian perspective as opposed to the Western emphasis on liberal

<sup>32</sup> 'The Statute of the OIC Independent Permanent Human Rights Commission', (2011) 50 ILM 1152. For comment see Cismas, 'Introductory Note to the Statute of the OIC Independent Permanent Human Rights Commission', (2011) 50 ILM 1148.

<sup>33</sup> Rules of Procedure finalized by IPHRC 31 August 2012, adopted by the Council of Foreign Ministers, Thirty-Ninth Session, Djibouti, 15-17 November 2012, Res. No. 2/39-LEG on Matters Pertaining to the Work of the (IPHRC), OIC/CFM-39/2012/LEG/RES, available at [https://www.oic-iphrc.org/en/data/docs/legal\\_instruments/OIC\\_HRRIT/111912.pdf](https://www.oic-iphrc.org/en/data/docs/legal_instruments/OIC_HRRIT/111912.pdf) (Rules).

<sup>34</sup> It should be noted that the African OIC member states are all parties to the African Charter on Human and Peoples' Rights 1981, 1520 UNTS 217, and therefore subject to the jurisdiction of the African Commission. Furthermore, many of the MENA states are also members of the League of Arab States which in 2004 adopted the revised Arab Charter on Human Rights, (2005) 12 IHRR 893, and which has set up the Arab Court of Human Rights, although its Statute has not yet come into force, Statute of the Arab Court of Human Rights (2014). See Rishmawi, 'The Arab Charter on Human Rights and the Arab League of States: An Update', 10 *Human Rights Law Review* (2010) 169; Magliveras and Naldi, 'The Arab Court of Human Rights: A Study in Impotence', 29(2) *Revue Québécoise de droit international* (2016) 147.

<sup>35</sup> Mayer, *supra* note 22, at 337-339; Kayaoglu, *The OIC's Independent Permanent Human Rights Commission: An Early Assessment* (2015), at 14-15, available at [https://www.humanrights.dk/files/media/dokumenter/udgivelser/research/matters\\_of\\_concern\\_series/matters\\_of\\_concern\\_kayaoglu\\_2015.pdf](https://www.humanrights.dk/files/media/dokumenter/udgivelser/research/matters_of_concern_series/matters_of_concern_kayaoglu_2015.pdf). See also EU High Representative for Foreign Affairs and Security Policy, EU Annual Report on Human Rights and Democracy in the World 2023 Country Updates, available at [https://www.eeas.europa.eu/eeas/2023-human-rights-and-democracy-world-annual-report-report-eu-high-representative-foreign-affairs\\_en](https://www.eeas.europa.eu/eeas/2023-human-rights-and-democracy-world-annual-report-report-eu-high-representative-foreign-affairs_en). According to Freedom House, the overwhelming majority of the OIC member states are classified as 'Not Free' or 'Partly Free', with only Guyana and Suriname classified as 'Free', available at [freedomhouse.org/countries/freedom-world/scores](https://freedomhouse.org/countries/freedom-world/scores). Political repression appears to have returned to the MENA region fifteen years after the popular uprisings known as the Arab Spring occurred, frustrating expectations of democratization, see Al-Muslimi, *The end of the Arab Spring and there is a price to pay* (2023) <https://www.chathamhouse.org/2023/05/end-arab-spring-and-there-price-pay>. It should be observed that the IPHRC can act as an *election* observation mission but only with the consent of the member state in question, Rule 65.

<sup>36</sup> Gunn and Lagresa, *supra* note 6, at 253, 257-58, 269, 271.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY' IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

individualism,<sup>37</sup> especially the assertion that primacy must be given to *Shari'a* (religious law, divinely authoritative) even if it is in conflict with contemporary human rights standards.<sup>38</sup> It has been observed that traditional views of *Shari'a* remain popular among Muslims but that the Muslim world must nevertheless make serious efforts to enhance human rights, especially in the contentious areas of freedom of speech, women's rights, sexual orientation, and freedom of religion.<sup>39</sup> But it would be a fundamental mistake to

<sup>37</sup> Tibi, 'The European Tradition of Human Rights and the Culture of Islam', in A. A. An-Na'im and F. M. Deng (eds), *Human Rights in Africa: Cross-Cultural Perspectives* (1990) 104; Mayer, 'Current Muslim Thinking on Human Rights', *ibid.*, 133; J. Donnelly, *International Human Rights in Theory and Practice* (3rd ed., 2013), at 79-81; An-Na'im, 'Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives - A Preliminary Inquiry', 3 *Harvard Human Rights Law Journal* (1990) 13.

<sup>38</sup> Rehman, *supra* note 4, at 5. Note Art. 24, Cairo Declaration on Human Rights in Islam which declares that, 'All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.' See also Art. 25. Saudi Arabia exemplifies this stance. Regarding the protection of human rights in general, Art. 26 of the Basic Law stipulates that, 'The State shall protect human rights in accordance with the Islamic Shariah', CEDAW Committee, Report Submitted by Saudi Arabia, UN Doc. CERD/C/370/Add.1, 20 September 2001, § 2. However, the view of the CEDAW Committee is that it 'notes with concern that the State party continues to maintain its broad reservation with respect to implementing the provisions of the Convention [on the Elimination of All Forms of Racial Discrimination] provided they do not conflict with sharia', CEDAW Committee, Concluding observations on the combined fourth to ninth periodic reports of Saudi Arabia, UN Doc. CERD/C/SAU/CO/4-9, 8 June 2018, § 5. See also the reservations entered by, e.g., Brunei Darussalam, Egypt and Saudi Arabia to the Convention on the Elimination of All Forms of Discrimination against Women 1979, 1249 UNTS 13, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&clang=en). The European Court of Human Rights (ECtHR) has held that *Shari'a* is 'incompatible with the fundamental principles of democracy', ECtHR, *Refah Partisi (Welfare Party) v. Turkey* [GC], Appl. nos. 41340/98, 41342/98, 41343/98 and 41344/98, Judgment of 13 February 2003, §§ 123-125. This conclusion has attracted considerable criticism, see e.g., Boyle, 'Human Rights, Religion and Democracy: The Refah Party Case', 1 *Essex Human Rights Review* (2004) 1. On these tensions generally see further An-Na'im, *supra* note 37. There is a body of opinion that Islam and human rights are perfectly compatible, see e.g., M. A. Baderin, *International Human Rights and Islamic Law* (2005); A. Saeed, *Human Rights and Islam: An Introduction to Key Debates between Islamic Law and International Human Rights Law* (2018). See more generally Donnelly, *supra* note 37, at 79; Almahfali and Avery, 'Human Rights from an Islamic Perspective: A Critical Review of Arabic Peer-Reviewed Articles', 12 *Social Sciences* (2023) 106.

<sup>39</sup> Kayaoğlu, *supra* note 22, at 19. See further Mayer, *The OIC's Human Rights Policies in the UN: A Problem of Coherence* (2015), available at [https://www.humanrights.dk/files/media/migrated/2015%20matters\\_of\\_concern\\_mayer\\_2015.pdf](https://www.humanrights.dk/files/media/migrated/2015%20matters_of_concern_mayer_2015.pdf); Tadjini, 'The Organisation of Islamic Cooperation and Regional Challenges to International Law and Security', 4 *Amsterdam Law Forum* (2012) 36, at 43-44; Blitt, 'Equality and Non-discrimination Through the Eyes of an International Religious Organization: The Organization of Islamic Cooperation's (OIC) Response to Women's Rights', 34 *Wisconsin International Law Journal* (2017) 755; Blitt, 'The Organization of Islamic Cooperation's (OIC) Response to Sexual Orientation and Gender Identity Rights: A Challenge to Equality and Non-discrimination Under International Law', 28 *Transnational Law & Contemporary Problems* (2018) 89. The conservative attitude towards women's rights is



THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

attribute uniform views to the OIC member states on the issues of human rights and democracy; differing approaches exist among the member states.<sup>40</sup> Nevertheless, the IPHRC operates within the established religious ethos and cultural context. Hence, the Islamic philosophies of law and religion, likely including the influence of the concept of cultural relativism,<sup>41</sup> which many Islamic states endorse,<sup>42</sup> will of necessity exert substantial weight.<sup>43</sup>

exemplified by Türkiye's withdrawal from the European Convention on Preventing and Combating Violence against Women and Domestic Violence 2011, 3010 UNTS 107 (Istanbul Convention), on the grounds that it undermines traditional family values, BBC News, 'Domestic violence: Turkey pulls out of Istanbul convention', (20 March 2021), available at <https://www.bbc.co.uk/news/world-europe-56467689>. See Council of Europe Newsroom, 'Secretary General responds to Turkey's announced withdrawal from the Istanbul Convention' (21 March 2021), available at <https://www.coe.int/en/web/istanbul-convention/-/secretary-general-responds-to-turkey-s-announced-withdrawal-from-the-istanbul-convention>. The Istanbul Convention has been described as 'a potentially powerful tool in the elimination of violence against women', Grans, 'The Istanbul Convention and the Positive Obligation to Prevent Violence', 18 *Human Rights Law Review* (2018) 133, at 136.

<sup>40</sup> Mayer, *supra* note 22, at 379-388.

<sup>41</sup> Defined as 'the position according to which local cultural traditions...properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society. The central tenet of relativism is that no transboundary legal or moral standards exist against which human rights practices may be judged acceptable or unacceptable', Tesón, 'International Human Rights and Cultural Relativism', 25 *Virginia Journal International Law* (1984-85) 869, at 870. See generally Shestack, 'The Philosophical Foundations of Human Rights', 20 *Human Rights Quarterly* (1998) 201; P. Alston and R. Goodman, *International Human Rights* (2013), at 531. The IPHRC has given its backing to acceptance and respect for the characteristic of cultural diversity, i.e., the right of plural societies to their different cultural identities, IPHRC, Outcome document of thematic debate on Importance of Cultural Diversity in the promotion and protection of human rights, 23 November 2017, available at [https://oic-iphrc.org/en/data/docs/session\\_reports/12th/12th%20Session%20Outcome%20Document%20Final.pdf](https://oic-iphrc.org/en/data/docs/session_reports/12th/12th%20Session%20Outcome%20Document%20Final.pdf). While human diversity may necessitate that rights be interpreted and applied in a culturally sensitive way that permits 'justifiable modifications', African Commission on Human and Peoples' Rights, *Constitutional Rights Project and Civil Liberties Organization v. Nigeria*, Comm. nos 143/95, 150/96, 5 November 1999, 8 IHRR (2001) 224, § 26, see Vienna Declaration and Programme of Action, Part I, § 5, the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, the danger is that cultural relativism can provide a pretext for undermining both the universality of human rights and of specific rights, Donnelly, *supra* note 37, at 108-118; J.P. Grant and J.C. Barker, *Encyclopaedic Dictionary of International Law* (2009), at 136. States cannot thereby be released from complying with basic universal human rights standards, Vienna Declaration and Programme of Action, *ibid*. The African Commission, notwithstanding the 'uniqueness' of the African situation and the 'special qualities' of the African Charter, which obliges international human rights to be responsive to African needs, shares this stance, *Constitutional Rights Project and Civil Liberties Organization v. Nigeria*, *ibid*.

<sup>42</sup> Mayer, *supra* note 22, at 371-379; El Fegier, 'Competing Perceptions: Traditional Values and Human Rights', in Petersen and Kayaoglu, *supra* note 17, 142.

<sup>43</sup> Thus Rule 2(2) directs the IPHRC to advance human rights and fundamental freedoms 'with the added value of Islamic principles of justice and equality.'

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

The critical point that must be borne in mind from the outset is that the IPHRC is for the most part a consultative, advisory and promotional body, its powers of oversight are slight, there is no state reporting procedure, it does not entertain complaints and has no powers of enforcement; it is most categorically not a court or tribunal, neither does it have a quasi-judicial function such as that exercised by the UN Human Rights Committee or the African Commission. Its mandate and functions, as will be seen, are modest and limited in the extreme.

## 2. The structure and composition of the IPHRC

The IPHRC, an integral part of the OIC's institutional structure, is the principal human rights organ of the OIC.<sup>44</sup> It has been described by the OIC itself 'as an independent advisory body to the OIC for the advancement of human rights and fundamental freedoms in Member States; consolidating respect for the Islamic culture and noble values and promoting inter-civilizational dialogue, consistent with the OIC Charter.'<sup>45</sup> It consists of eighteen 'experts of established distinction in the area of human rights' nominated by the member states<sup>46</sup> but elected by the Council of Foreign Ministers<sup>47</sup> who serve in a personal capacity for a term of three years renewable for one further term only.<sup>48</sup> No two nationals of the same state may be elected at the same time.<sup>49</sup> Consideration must be given to equitable geographical distribution of the member states in the elections, that is, **six each from the three principal regions of Africa, Arabia and Asia**.<sup>50</sup> The members of the IPHRC must be experts in human rights, independent and impartial and be persons of good character.<sup>51</sup> An OIC staff member is said to have described the first group of experts as 'a mixed bag' because they had different human rights backgrounds;<sup>52</sup> it appears that several experts had been supportive of the agenda of conservative OIC member states

<sup>44</sup> Rule 2(1). See generally Petersen, *supra* note 29; Kayaoglu, *supra* note 35. It may be that the International Islamic Court of Justice, discussed further below, will play a residual role in this field.

<sup>45</sup> OIC 2025 Programme of Action, *supra* note 25, § 49.

<sup>46</sup> Art. 3, Statute. See also Rule 3(1). On this question it seems that Iran had advocated the appointment of government officials directly accountable to their home States whereas moderate States argued for independent experts. The eventual compromise in Rule 3(3) specified the independence of its members, but with no restrictions on the nomination of government officials. In this regard, see Petersen, *supra* note 29, at 17.

<sup>47</sup> This body oversees the implementation of the OIC's policies, see Art. 10, OIC Charter.

<sup>48</sup> Art. 3, Statute; Rule 4(1). See also Art. 4, Statute. In 2023, nine members were elected starting from February 2024, Resolution 1/49-IPHRC (Annex I), available at <https://oic-oci.org/docdown/?docID=9802&refID=4271>. The current list of IPHRC members is available at <https://www.oic-iphrc.org/home/post/3>.

<sup>49</sup> Rule 3(2). Neither the Statute nor the Rules expressly state that only nationals of member states may be nominated for election.

<sup>50</sup> Art. 7, Statute.

<sup>51</sup> Art. 3, Statute; Rule 3(3).

<sup>52</sup> Petersen, *supra* note 29, at 23.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

regarding women's and sexual orientation rights.<sup>53</sup> In a modestly progressive move, the nomination of women is encouraged.<sup>54</sup> In the event of a vacancy, a national of the same state will fill the post for the remaining term of office.<sup>55</sup> In addition to death or resignation, a vacancy may arise because of either incapacity for health or 'other valid reason',<sup>56</sup> or through absence without justification.<sup>57</sup> While the IPHRC is depicted as an autonomous body, the Statute is in fact silent on the issue of the independence or impartiality of the members of the IPHRC. However, this important matter is addressed by the Rules.

Commissioners act impartially in the discharge of their duties in an individual capacity, and must not take instruction from any state or third party.<sup>58</sup> It might have been useful to reinforce the fact that the Commissioners should be allowed to work in a politically neutral environment by adding a provision to the effect that they are free to act without being subjected to extraneous inducements, threats or other interference. Such a contingency becomes evident in light of the fact that member states and OIC Observers may participate, as observers without a vote, and make proposals in the IPHRC's public meetings.<sup>59</sup> This could exert an influence, even if subconsciously, on Commissioners. However, a measure of protection is afforded in that the IPHRC enjoys privileges and immunities.<sup>60</sup> The IPHRC meets twice a year,<sup>61</sup> but whenever necessary extraordinary meetings can be held at the behest of any member state or the OIC Secretary-General if approved by the member states.<sup>62</sup> In addition, the IPHRC's Chairperson can also convene emergency sessions.<sup>63</sup>

A positive feature that takes advantage of communications technology is the fact that the IPHRC is authorized to take decisions during inter-sessional periods through electronic communication.<sup>64</sup> A quorum of two-thirds of the IPHRC's members, or twelve, is specified.<sup>65</sup> Meetings are held in public unless the IPHRC determines otherwise.<sup>66</sup> It seems that the IPHRC has a total discretion on this matter as no grounds are provided on which the decision may be based. Regarding the important question of decision-making, 'recommendations' are adopted by consensus or, if not possible, by a two-thirds majority of the IPHRC's members present voting on substantive matters, in fact, a minimum of ten

<sup>53</sup> *Ibid.*, at 34; Kayaoğlu, *supra* note 22, at 13-14.

<sup>54</sup> Art. 6, Statute. The current membership of the IPHRC includes at least one woman, available at [oic-iphrc.org/En/web/index.php/site/view\\_post/?id=3](http://oic-iphrc.org/En/web/index.php/site/view_post/?id=3). A number of former IPHRC members have also been women, available at [oic-iphrc.org/web/index.php/site/view\\_post/?id=28](http://oic-iphrc.org/web/index.php/site/view_post/?id=28).

<sup>55</sup> Rule 5(4).

<sup>56</sup> Rule 5(1).

<sup>57</sup> Rule 5(2).

<sup>58</sup> Rule 6.

<sup>59</sup> Art. 21, Statute; Rule 44(1).

<sup>60</sup> Art. 26, Statute.

<sup>61</sup> Art. 18, Statute; Rule 14.

<sup>62</sup> Art. 18, Statute; Rule 17.

<sup>63</sup> Rule 18.

<sup>64</sup> Rule 37.

<sup>65</sup> Art. 19, Statute; Rule 19.

<sup>66</sup> Rule 20.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

affirmative votes is specified,<sup>67</sup> and a simple majority on procedural matters.<sup>68</sup> Each Commissioner has a vote, with the Chairperson having the casting vote in the event of a tie. Brief comments seem necessary.<sup>69</sup> Ten affirmative votes, which is a sensible number in itself since it constitutes a simple majority of the total number of Commissioners, can result in a very high threshold if only the minimum quorum of twelve is present. The use of the noun 'recommendations' is revealing because it indicates outcomes that are advisory, hortatory, suggestions, in any event, non-binding. This is in keeping with the, in the main, consultative nature of the IPHRC. Decision-making by consensus may seem appropriate in the context of the IPHRC's actual mandate and powers although it may result in the sidestepping of difficult decisions and may lead to the adoption of bland or vague positions.<sup>70</sup>

The IPHRC, which is subdivided into Bureaux consisting of three Commissioners each<sup>71</sup> to deal with procedural, organizational and representational matters,<sup>72</sup> is supported by a Secretariat<sup>73</sup> headed by a Director.<sup>74</sup> Working groups may be established to facilitate the performance of its functions.<sup>75</sup>

A typical feature of human rights systems is the participation of civil society organizations and associated entities, such as non-governmental agencies and intergovernmental organizations, along with national human rights institutions, frequently providing the treaty organs with expertise, a differing outlook on issues and raising concerns.<sup>76</sup>

The Statute is atypical in this respect by affording civil society an extremely limited input.<sup>77</sup> Consequently, such entities may be invited as guests to the IPHRC's meetings subject to the host state's consent and the unanimous approval of the IPHRC's members.<sup>78</sup>

The Statute does not elaborate on what further contribution, if any, civil society would be allowed to make. However, the Rules do seem to allow civil society to have more of a say. Hence, accredited IGOs, NGOs with consultative status, and national human rights institutions may propose items to be included in the IPHRC's provisional agenda.<sup>79</sup> They, along with international organizations, may be invited to its sessions.<sup>80</sup> Furthermore,

<sup>67</sup> Rule 34(2).

<sup>68</sup> Art. 20, Statute; Rule 34(1).

<sup>69</sup> Rule 32.

<sup>70</sup> J. Klabbbers, *An Introduction to International Institutional Law* (2009), at 207-208.

<sup>71</sup> Rule 8.

<sup>72</sup> Rule 10(1).

<sup>73</sup> Art. 22, Statute; Rules 11-12. The Secretariat has its headquarters in Jeddah.

<sup>74</sup> Rule 13.

<sup>75</sup> Rule 41.

<sup>76</sup> Steiner and Alston, *supra* note 35, at 938-941; Wiseberg, 'The Role of Non-Governmental Organizations (NGOs) in the Protection and Enforcement of Human Rights', in J. Symonides (ed.), *Human Rights: International Protection, Monitoring, Enforcement* (2003) 347. The important contribution made by civil society with respect to human rights has been acknowledged by the UN, see e.g., Vienna Declaration and Programme of Action, Part I, § 38; World Summit Outcome, §§ 172-173.

<sup>77</sup> Petersen, *supra* note 24, at 26-28.

<sup>78</sup> Art. 21, Statute.

<sup>79</sup> Rule 21(2).

<sup>80</sup> Rule 44(2). No provision is made either in the Statute or the Rules for observer status with the IPHRC although observer status to the OIC is possible, Art. 25, OIC Charter, see *supra* note 1.



THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

individuals, organizations and relevant entities may be invited for an 'exchange of views' or consulted on human rights issues.<sup>81</sup> It is also plain that the unsatisfactory situation could transpire where the host state could interfere with the work of the IPHRC by refusing entry to NGOs or human rights defenders.<sup>82</sup>

### 3. Objectives of the IPHRC

The IPHRC is guided in its work by a number of fundamental tenets set out in Articles 8-11 of the Statute, reinforced by the Rules. Its overarching function, inter alia, is 'to advance human rights and serve the interests of the Islamic Ummah' (Muslim community).<sup>83</sup> The Islamic *Ummah* is not limited to Muslim countries but extends to Muslim minorities and communities in third states and this is made clear by Rule 2(2). A dual dimensional task, international and domestic, is thus proposed. The international dimension to the IPHRC's remit is supported by the fact that one of the IPHRC's missions is expressly to promote 'inter-civilizational dialogue' viewed in the context of ensuring 'respect for...Islamic cultures'. Moreover, the IPHRC is instructed 'to monitor...the human rights of Muslim communities and minorities'.<sup>84</sup> The IPHRC has thus sought to intercede on behalf of Muslims with third states where Muslims or Islamic values are perceived to be under threat, as in Indian Kashmir where the IPHRC carried out a fact-finding mission (to neighbouring Pakistan in the absence of permission from the Indian Government to visit Indian Kashmir).<sup>85</sup> Apart from the obligation *erga omnes* to uphold human rights, the precise legal basis on which the OIC claims to speak on behalf of Muslims in third states has been questioned, especially given that these Muslim minorities have no representation in the OIC.<sup>86</sup> In requiring the IPHRC to monitor the human rights of Muslim minorities in non-member states whilst at the same time preventing it from performing similar functions with regard to OIC member states has given rise to accusations of a lack of good faith on the OIC's part.<sup>87</sup> The IPHRC also issues public statements on a variety of controversial issues in defence of Islamic rights primarily, such

<sup>81</sup> Rules 45-46.

<sup>82</sup> Rule 44(2) requires the IPHRC to obtain the host state's approval before inviting such bodies.

<sup>83</sup> Art. 8, Statute. In this regard see Gunn and Lagresa, *supra* note 2, at 253. Rule 2(2) adopts slightly different wording, referring, inter alia, to the advancement of human rights and fundamental freedoms in member states.

<sup>84</sup> Art. 10, Statute. Rule 21(2) requires the IPHRC to the fundamental rights of Muslim minorities and communities in non-member states.

<sup>85</sup> OIC-IPHRC, Report of the OIC-IPHRC Fact-Finding Visit to the State of Azad Jammu and Kashmir to Assess Human Rights Situation in the Indian Occupied Kashmir, March 2017, 1 *OIC-IPHRC Journal* (2018) 141 available at [https://oic-iphrc.org/pdf/Journal/IPHRC%20Journal%202018\\_EV.pdf](https://oic-iphrc.org/pdf/Journal/IPHRC%20Journal%202018_EV.pdf).

<sup>86</sup> Kayaoglu, *supra* note 17, at 19.

<sup>87</sup> Kayaoglu, *supra* note 28, at 7-8.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

as the violence in Gaza,<sup>88</sup> the plight of Rohingya Muslims in Myanmar,<sup>89</sup> the proposed French laws on secularism,<sup>90</sup> the referendum in Switzerland approving a ban on facial coverings,<sup>91</sup> or the treatment of Muslims in India.<sup>92</sup> An essential duty of the IPHRC is to be cooperative and supportive of member states' efforts to consolidate human rights,<sup>93</sup>

<sup>88</sup> See e.g., OIC-IPHRC press release, 'OIC-IPHRC strongly condemns the ongoing violence against innocent Palestinians by the Israeli occupation forces and illegal settlers and denounces any proposal for mass displacement of Palestinians from Gaza as a gross violation of international human rights and humanitarian law', **6 February 2025**, available at <https://oic-iphrc.org/home/article/586>.

<sup>89</sup> OIC-IPHRC press release, 'OIC-IPHRC supports international efforts to protect the rights and fundamental freedoms of Rohingya Muslims within Myanmar and calls for the mobilization of resources to mitigate the humanitarian challenge of refugees in the neighbouring countries', **27 October 2022**, available at <https://oic-iphrc.org/home/article/537>.

<sup>90</sup> OIC-IPHRC press release, 'OIC-IPHRC expresses concerns over the enactment of proposed French laws to 'reinforce secularism' and address perceived 'separatism,' which could limit the freedom of religion and belief guaranteed under international human rights law', 8 October 2020, available at <[oic-iphrc.org/web/index.php/site/view\\_news/?id=462](https://oic-iphrc.org/web/index.php/site/view_news/?id=462)>. The law enacted in 2021 seeks to protect French values, including secularism, Loi n° 2021-1109 du 24 août 2021 confortant le respect des principes de la République (Act No. 2021-1109 of 24 August 2021 reinforcing respect of the principles of the Republic), available at <https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000043964778>.

<sup>91</sup> OIC-IPHRC press release, 'OIC-IPHRC strongly condemns the proposed Swiss blanket ban on facial veils as grossly discriminatory, disproportionate, contrary to the ideals of pluralism and tolerance, and violative of Switzerland's international and regional human rights obligations, 10 March 2021, available at <https://oic-iphrc.org/home/article/483>. See Loi fédérale sur l'interdiction de se dissimuler le visage (LIDV) du 29 septembre 2023 (Federal Act on the Ban on Covering the Face (BCFA) of 29 September 2023, amending Art. 10a Federal Constitution), available at <https://www.fedlex.admin.ch/eli/cc/2024/620/en>. Note the decisions ECtHR, *Dogru v. France*, Appl. no. 27058/05, Judgment of 4 December 2008, and *Kervanci v. France*, Appl. no. 31645/04, Judgment of 4 December 2008, that the disciplinary measure of expulsion from school for refusal by students to remove the hijab (headscarf) did not breach Art. 9 ECHR; and ECtHR, *S.A.S. v. France [GC]*, Appl. no. 43835/11, Judgment of 1 July 2014, that a prohibition by law on the wearing of the niqab (the full-face veil) in public did not breach the ECHR. Cf HRC, *Bikramjit Singh v. France*, Comm. no. 1852/2008 Decision of 4 February 2013, UN Doc. CCPR/C/106/D/1852/2008, where the UN Human Rights Committee concluded that expulsion from school for wearing the *keski* (turban) was incompatible with the right to freedom of religion guaranteed by Art. 18, International Covenant on Civil and Political Rights.

<sup>92</sup> OIC-IPHRC press release, 'OIC-IPHRC strongly condemns lack of accountability against increasing systematic and targeted violence and mob attacks against Muslims in India and calls on the Indian government to protect its Muslim minority in line with its obligations under international human rights law', 13<sup>th</sup> October 2021, available at <https://oic-iphrc.org/home/article/511>.

<sup>93</sup> Arts 9-10, 13 Statute, both at international and national levels. See also Rule 39(c). According to the African Commission the obligation to promote requires states to ensure an environment of tolerance and awareness that allows individuals to exercise their rights and freedoms, African Commission on Human and Peoples' Rights, *Social and Economic Rights Action Center (SERAC) and the Center for Economic and Social Rights (CESR) v. Nigeria*, **Comm. no. 155/96**, Decision of 27 October 2001, 10 IHRR (2003) 282, § 46.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

including those advancing the rights of women,<sup>94</sup> the young<sup>95</sup> and those with special needs<sup>96</sup> as well as eliminating all forms of violence and discrimination. This prescription can be especially problematic in relation to the rights of women who are often disadvantaged in terms of marriage, family law and succession.<sup>97</sup> A close reading of the text in question raises doubts as to how far the rights of women and others are meant to be secured. It is interesting that their rights are qualified to the 'economic, social, political and cultural fields' and that reference to the civil field is omitted. Nevertheless, the IPHRC has published an explanatory report on the inheritance rights of women in *Shari'a*, refuting common misconceptions about Islamic inheritance laws and clarifying that *Shari'a* does not distinguish between male and female in inheritance.<sup>98</sup> However, it has been suggested that the IPHRC could avoid discussing *Shari'a* and ignore references or justifications based on Islamic law or alternatively attempt to interpret *Shari'a* consistent with human rights law.<sup>99</sup> Furthermore, the OIC has been taking steps on the advancement

<sup>94</sup> Türkiye's denunciation of the Council of Europe's Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) in 2021, European Convention on preventing and combating violence against women and domestic violence 2011, CETS No. 210, on the basis that it is 'incompatible with Türkiye's social and family values', seems a retrograde step in this regard, available at <https://www.coe.int/en/web/conventions/full-list?module=declarations-by-treaty&numSte=210&codeNature=0>.

<sup>95</sup> See OIC-IPHRC, Outcome Document of the 6th IPHRC International Seminar of Tashkent Declaration on Importance of Promoting and Protecting the Rights of Youth for Building Peaceful Democratic Societies and Sustainable Development, 2 *OIC-IPHRC Journal* (2022) 33, available at <https://oic-iphrc.org/pdf/Journal/2022/IPHRC-Journal-Volume-2022.pdf>. In this respect note should also be taken of the Covenant on the Rights of the Child in Islam 2005. A revised text of this treaty has been finalized and is being considered for adoption, Resolution No. 1/47-IPHRC, § 13, available at <https://www.oic-oci.org/docdown/?docID=6638&refID=3255>.

<sup>96</sup> OIC-IPHRC, Promotion and Protection of Rights of Persons with Disabilities, 2 *OIC-IPHRC Journal* (2022) 21, which, inter alia, stressed that persons with disabilities have equal rights, urged states to adopt measures of social inclusion and social protection, and establish a robust legislative framework for persons with disabilities, especially women and girls, to ensure their full and effective participation in and contribution to the development of their societies as equal and dignified citizens, including measures on positive discrimination for their benefit, and urged states to ratify the UN Convention on the Rights of Persons with Disabilities 2006, 2515 UNTS 3, which most have done, and fulfil their obligations thereunder.

<sup>97</sup> Rehman, *supra* note 3, at 360-362; An-Na'im, *supra* note 30, at 36-46. In *ACtHPR, Association pour le Progrès et la Défense des Droits des Femmes Maliennes (APDF) and the Institute for Human Rights and Development in Africa (IHRDA) v. Mali*, Appl. no. 046/ 2016, Judgment of 11 May 2018, §§ 114–115, the African Court of Human and Peoples' Rights held that Islamic inheritance laws contained in Mali's Family Code were discriminatory and in breach of the Protocol on the Rights of Women in Africa 2003, the African Charter on the Rights and Welfare of the Child 1990 and the UN Convention on the Elimination of All Forms of Discrimination Against Women 1979.

<sup>98</sup> OIC-IPHRC, *Study on Jurisprudential leaflet on the divine justice on women and men's inheritance in Islamic Sharia*, available at <https://oic-iphrc.org/en/data/docs/studies/416234.pdf>.

<sup>99</sup> Kayaoğlu, *supra* note 17, at 21.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

of women and the reduction of inequalities between men and women. A concrete result of this policy has been the establishment of the OIC Women Development Organization 'concerned with the development and promotion of the role of women in the OIC Member States'.<sup>100</sup> It has already been mentioned that one of the IPHRC's objectives is to 'monitor observance of the human rights of...minorities.'<sup>101</sup> Sensitive issues are again at stake since religious minorities are often in an inferior position in some Muslim-majority states.<sup>102</sup> While this provision invites questions as to its precise scope and meaning, the IPHRC does appear to have construed it as a reference to ethnic, religious or other minorities within member states.<sup>103</sup>

#### 4. Mandate of the IPHRC

<sup>100</sup> Art. 2, Statute of the OIC Women Development Organization 2009, available at [https://www.oic-iphrc.org/en/data/docs/legal\\_instruments/OIC\\_HRRIT/385106.pdf](https://www.oic-iphrc.org/en/data/docs/legal_instruments/OIC_HRRIT/385106.pdf).

<sup>101</sup> Art. 10, Statute.

<sup>102</sup> I.M. Lapidus, *A History of Islamic Societies* (3rd ed., 2014), at 153–166; A.A. An-Na'im, 'Religious Minorities under Islamic Law Human Rights and the Limits of Cultural Relativism', 9 *Human Rights Quarterly* (1987) 1. See generally J. Castellino and K.A. Cavanaugh, *Minority Rights in the Middle East* (2013). While protected religions, Christianity and Judaism mainly, enjoy certain rights (although persecution of these faiths seems to have increased in recent years, H. Haider, *The persecution of Christians in the Middle East* (2017), other religious faiths, Baha'is (systematically persecuted in Iran, OHCHR press release, Iran: UN experts alarmed by escalating religious persecution, 22 August 2022, available at <https://www.ohchr.org/en/press-releases/2022/08/iran-un-experts-alarmed-escalating-religious-persecution>, Yazidis (S.M. Usman, 'History of Yazidi Genocides, Mass Atrocities, Forced Conversions and Persecutions in the Middle East', *Journal of Kurdistan for Strategic Studies* (2022)), are not recognized in some countries and are therefore devoid of rights and subjected to persecution and harassment, United Kingdom Foreign & Commonwealth Office, *Human Rights and Democracy: The 2019 Foreign & Commonwealth Office Report*, section 3.6, available at <https://www.gov.uk/government/publications/human-rights-and-democracy-report-2019/human-rights-and-democracy-the-2019-foreign-and-commonwealth-office-report>. It should be observed that discrimination can also extend to different denominations within Islam which constitute a religious minority within a country, *ibid.* at 254, 308. Human rights experts have expressed concern over serious human rights violations perpetrated against the Ahmadi Muslims in various countries, OHCHR press release, International Community must pay attention to the persecution of Ahmadi Muslims worldwide, 13 July 2021, available at <https://www.ohchr.org/en/press-releases/2021/07/international-community-must-pay-attention-persecution-ahmadi-muslims>. The hostility in current times in parts of the Middle East between followers of Shia Islam and those of the Sunni tradition is common knowledge, S. Pruitt, *Islam's Sunni-Shia Divide, Explained*, available at <https://www.history.com/news/sunni-shia-divide-islam-muslim>. In 2016 Sunni and Shia Muslim scholars drafted and adopted the Marrakesh Declaration on the rights of Religious Minorities in Predominantly Muslim Majority Communities which calls for religious freedom for minority faith communities in majority-Muslim countries, available at <https://www.abc-usa.org/wp-content/uploads/2021/05/Marrakesh-Final-04-12-18.pdf>. See A.S. Garba, 'The Prospects and Problems of the Marrakesh Declaration on the Rights of Religious Minorities in Muslim Majority Communities', 16 *The Review of Faith & International Affairs* (2018) 47.

<sup>103</sup> See OIC-IPHRC, *Study on Rights of Minorities in Islam*, available at <https://oic-iphrc.org/en/data/docs/studies/851193.pdf>.



THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

The founding of the IPHRC was intended as a response to the criticisms that were raised against the lack of attention paid to human rights among the OIC member states.<sup>104</sup> However, its creation also poses concerns. For example, the choice of location of the Secretariat (in Jeddah) is one such. While OIC staff stress the importance of distinguishing between the OIC and Saudi Arabia the location of the OIC in a country with one of the world's worst human rights records nevertheless does little to enhance the reputation of the IPHRC.<sup>105</sup> Additionally, the IPHRC has shown a marked reluctance to condemn egregious human rights violations by member states, including atrocities in Syria and the wave of repressive and extrajudicial measures pursued by the Turkish Government following a failed coup in 2016.<sup>106</sup> Based on a constructive, supportive and non-confrontational approach the IPHRC is entrusted with creating and facilitating an environment where rights and freedoms may be realized through dialogue and co-operation. Thus, one of its primary roles is stated expressly to act as a consultative body to the Council of Foreign Ministers.<sup>107</sup> Nevertheless, it can perform its consultative function in several other ways. First, by conducting research and studies, either at the request of the Council of Foreign Ministers or at its own initiative, and organize workshops and seminars.<sup>108</sup> The IPHRC has therefore produced a number of thematic reports on a variety of subjects, such as promoting good governance, freedom of expression and hate speech, and protecting the rights of refugees and migrants.<sup>109</sup> Secondly, it can provide technical assistance to member states and offer consultancy services to member states upon request.<sup>110</sup> Thirdly, it is responsible for raising awareness about human rights in member states.<sup>111</sup>

The IPHRC's promotional activities include supporting civil society organizations and national human rights institutions, and enhancing co-operation between the OIC and international and regional human rights organizations.<sup>112</sup> Furthermore, it is to encourage member states to consider ratifying human rights instruments within the OIC framework.<sup>113</sup> This may necessitate encouraging capacity building for the effective implementation of human rights treaty obligations assumed by the member states.

<sup>104</sup> Tadjdini, *supra* note 33, at 44.

<sup>105</sup> Petersen, *supra* note 24, at 34. See Amnesty International, *Saudi Arabia 2023*, available at <https://www.amnesty.org/en/location/middle-east-and-north-africa/middle-east/saudi-arabia/report-saudi-arabia/>; Human Rights Watch, *Saudi Arabia: Events of 2023*, available at <https://www.hrw.org/world-report/2024/country-chapters/saudi-arabia>.

<sup>106</sup> Gunn and Lagresa, *supra* note 2, at 269. See e.g., ECtHR, *Deniz and Others v. Türkiye*, Appl. nos. 43382/19 and 236 others, Judgment of 17 December 2024; ECtHR, *Taş and Others v. Türkiye*, Appl. nos. 41527/17 and 212 others, Judgment of 17 December 2024.

<sup>107</sup> Art. 12, Statute.

<sup>108</sup> Art. 16, Statute; Rules 55(2), 56(1).

<sup>109</sup> See <https://www.oic-iphrc.org/home/post/38>.

<sup>110</sup> Art. 14, Statute. See also Rules 39(e), 57.

<sup>111</sup> Art. 14, Statute. See also Rule 55(2).

<sup>112</sup> Art. 15, Statute. See also Rule 39(f).

<sup>113</sup> Art. 17, Statute.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

However, according to one jurist the IPHRC's main endeavour is to help member states comply with their international human rights obligations and in making national laws conform to international human rights standards.<sup>114</sup> It could be that the IPHRC will develop a quasi-legislative function in time since it has been assigned the task of adopting an evolutionary approach to the development of OIC human rights norms and standards. It is given co-responsibility for elaborating a normative framework in the form of human rights instruments with member states at their request.<sup>115</sup> It can also submit recommendations on the refinement of OIC human rights instruments.<sup>116</sup> The IPHRC has in fact been instrumental in revising an updated text of the Cairo Declaration.<sup>117</sup> The IPHRC could take the opportunity to hold member states to account by setting standards compatible with international principles. If the IPHRC were prepared to act boldly, aspects of its responsibilities possess the potential of providing it with the opportunity to develop powers of investigation and procedures of a supervisory nature that could make a significant impact on the protection of human rights. As has been seen, the IPHRC is authorized to conduct studies on priority human rights issues and is mandated with cooperating with member states in consolidating human rights domestically. Furthermore, it needs to be recalled that monitoring the human rights of Muslim communities is an additional function of the IPHRC. Interpreting its mandate creatively the IPHRC could over time evolve methods establishing thematic procedures setting up Working Groups and special rapporteurs, and appointing country-specific rapporteurs. In either scenario, possible violations of human rights could be investigated by the special rapporteurs; as previously stated, the IPHRC has sent missions to conduct on-site investigations. It could adopt resolutions on general human rights concerns or specific problems and countries. It could put in place a procedure establishing a State reporting system requiring member states to submit reports on a periodic basis on the steps taken to implement human rights. However, the OIC's preference seems to be for thematic rather than country-specific reports.<sup>118</sup> None of these developments would be new or radical. They are well-established elements of the laws and practices of international and regional human rights systems. It is a well-known fact that UN human rights organs have interpreted their terms of reference broadly and over time have developed specific procedures to deal with different aspects of human rights issues.<sup>119</sup> Likewise with the example provided by the American and African human rights systems.<sup>120</sup> The IPHRC could therefore be inspired and guided by such precedent.

## 5. Is the Statute fundamentally flawed?

<sup>114</sup> Petersen, *supra* note 24, at 21.

<sup>115</sup> Art. 17, Statute.

<sup>116</sup> *Ibid.*

<sup>117</sup> Kayaoglu, *supra* note 17, at 5.

<sup>118</sup> *Ibid.*, at 15.

<sup>119</sup> A.H. Robertson and J.G. Merrills, *Human Rights in the World* (4<sup>th</sup> ed., 1996), at 77-119.

<sup>120</sup> T. Buergenthal *et al.*, *International Human Rights in a Nutshell* (West Publishing, St. Paul, 2002) pp. 288-303. The African Commission also has promotional functions and has established a State reporting system, Evans and Murray, 'The State reporting Mechanism of the African Charter' in M. Evans and R. Murray (eds.), *The African Charter on Human and Peoples' Rights* (2<sup>nd</sup> ed., 2008) 49.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

There are notable omissions in the Statute regarding the IPHRC's mandate; its flaws are manifold. It has few powers and in the field of investigation, its powers are limited. It is not a supervisory body as such. Nowhere in the Statute, the Rules or the OIC Charter is the concept of 'protection' or of a protective body to be found; they are conspicuous by their absence. No form of control machinery is provided or envisaged. No quasi-judicial competence to consider individual petitions is made available. The IPHRC has no powers of enforcement. It is therefore quite incapable of providing the merest modicum of restraint upon member states or of acting as a guardian of rights. Given the egregious abuses of human rights committed by the repressive governments in question, the absence of some form of control mechanism may be considered a fundamental failing.

However, the IPHRC may be able to raise the profile of human rights issues by bringing them before the Islamic International Court of Justice in appropriate circumstances should the Court become functional.<sup>121</sup> Whereas only states may submit cases to the Court,<sup>122</sup> the Court also has an advisory jurisdiction and any organ 'so authorized by the Conference of Foreign Ministers' may request an advisory opinion.<sup>123</sup> There seems to be no reason why the IPHRC should not be one such body to have standing.

It is apparent from a reading of the Statute that the IPHRC is in a subordinate role both to the governing organs of the OIC and, what is deeply regrettable, to the member states. As has previously been indicated, in many instances the IPHRC's involvement is dependent on a member state's prior consent. Doubts may therefore be expressed as to its capacity for independent action.

Whereas it is true that aspects of both the UN and African human rights control machinery evolved autonomously and gradually it is unlikely that a similar scenario will be repeated in this instance. The mandate conferred on the IPHRC is limited to a loose, facilitative role and there is no specific authorization, even implicit, for the development of some form of control machinery or of a quasi-judicial role in the IPHRC's governing instruments. This deliberate omission constitutes a significant hurdle for the IPHRC to overcome, even if it desired to do so.<sup>124</sup> Moreover, the fundamental beliefs of the OIC member states, based on a state-centred, collectivist, non-confrontational approach, eschews an individualistic, rights-based system which is perceived as alien. The IPHRC is thus envisaged as an institution with a 'light touch', a weak organ with no powers of enforcement. It may play an important promotional and co-operative role but under present circumstances, it is unlikely that the IPHRC will make any meaningful contribution towards the *tangible protection* of the rights of the individual (emphasis added).

On occasion other OIC bodies, in particular the Council of Foreign Ministers, have taken

<sup>121</sup> Statute of the Islamic International Court of Justice 1987 (Court Statute), reprinted in M. Cherif Bassiouni, *The Shari'a and Islamic Criminal Justice in Time of War and Peace* (2013) Appendix C, 305. See generally M. Lombardini, 'The International Islamic Court of Justice: Towards an International Islamic Legal System?' 14 *Leiden Journal of International Law* (2001) 665.

<sup>122</sup> Art. 21, Court Statute.

<sup>123</sup> Art. 42, Court Statute.

<sup>124</sup> It seems some IPHRC members criticized the Statute for focusing on a promotional, rather than protective, role, Kayaoğlu, *supra* note 17, at 16.

THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

the lead on human rights issues rather than the IPHRC which may raise questions about its capacity for initiative. This has happened, for example, on the ill-treatment of the Rohingya ethnic and Muslim minority in Myanmar where the Council of Foreign Ministers set up an OIC Ad Hoc Ministerial Committee on Accountability for Human Rights Violations against the Rohingya.<sup>125</sup> This situation is understandable in its context. For instance, it is the OIC, and not the IPHRC, that is authorized to participate in advisory proceedings before the ICJ.<sup>126</sup>

## 6. Conclusion

The adoption by the OIC of the Statute and the founding of the IPHRC may have given rise to expectations that human rights in Islamic countries would be put on a firmer footing. The acceptance of human rights as an essential value is an encouraging and significant step forward but, by itself, it is inadequate. There is no question that considerable scope for constructing an effective human rights structure exists, since many member states lack strong democratic foundations and their human rights records are generally poor. However, welcome such progress it must be accepted that it is modest, essentially limited to promotional activities and fact-finding missions, and both the Statute and the IPHRC give cause for concern and may be considered flawed. This reflects in part the political value systems of many of the OIC member states, which adhere to repressive governance. While the IPHRC's thematic reports play a useful role, what is clear, nonetheless, is that the IPHRC's human rights mandate at present is unambitious, lacking an express mandate to investigate human rights violations in member states, dependent to a large degree on the goodwill of states, and that its approach has to date been cautious. Particularly problematic in this regard is the outdated statist-orientated outlook and the concept of cultural relativism which could have a potentially fatally detrimental effect on guaranteeing fundamental rights and freedoms. It has been suggested that the IPHRC could sidestep such a minefield by adhering to the 'margin of appreciation' doctrine developed by the European Court of Human Rights.<sup>127</sup> This doctrine could afford the IPHRC the flexibility to accommodate cultural and religious differences with human rights standards.<sup>128</sup> Another disquieting issue is the, possibly pernicious, political influence that states may exercise, even indirectly, over the members of the IPHRC, the independence of which is limited. The exclusion of civil society from much of the IPHRC's work is also disappointing.<sup>129</sup> Moreover, the 'evolutionary approach' should not serve as a pretext to make little or no progress on realizing human rights in the region.

<sup>125</sup> Resolution No. 60/46-POL on The Establishment of an OIC Ad Hoc Ministerial Committee on Accountability for Human Rights Violations Against the Rohingyas, 46th Session of the Council of Foreign Ministers, Abu Dhabi, United Arab Emirates, 1-2 March 2019.

<sup>126</sup> See *supra* note 31. It should be noted that the IPHRC may assist the OIC representation at international fora, Rule 56(4).

<sup>127</sup> See A. Legg, *The Margin of Appreciation in International Human Rights Law: Deference and Proportionality* (2012).

<sup>128</sup> Kayaoğlu, *supra* note 17, at 20.

<sup>129</sup> *Ibid.*, at 17-18.



THE INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION OF THE ORGANIZATION OF  
ISLAMIC COOPERATION: 'INDEPENDENCY' IS A RELEVANT FEATURE BUT WHAT IF 'INDEPENDENCY'  
IS COUPLED WITH THE LIMITATION OF ITS MANDATE? AN HONEST ASSESSMENT

Vol. 1 – 2025

However, probably the largest single deficiency with the IPHRC is the lack of any monitoring or enforcement machinery, which inevitably raises serious questions about the credibility of the system as compatible with the protection of human rights. Any human rights system with serious claims to promoting human rights and ensuring their protection would seek to put in place machinery to hold states to account and to provide effective and enforceable remedies. This limitation becomes all too apparent when compared to other similar bodies. The evolutionary approach does not seem defensible when inspiration can be derived from different systems and a wealth of experience exists. It seems unlikely that the IPHRC will develop a bold approach. The view has been expressed that, 'OIC members have carefully guarded their sovereignty and denied their Commission any significant independent authority'.<sup>130</sup> Of course, it could be pointed out that many OIC member states may be held to account under other universal or regional human rights mechanisms and that it therefore does not much matter whether or not the OIC has a robust system in place. That seems a cynical outlook. At the very least the IPHRC seems to be contributing towards enhancing a human rights sensitive culture, raising awareness of the need to cherish the rights of individuals. The optimistic view is that the IPHRC does not represent a rejection of the international human rights system but that it can work with it, adapt it and interpret it in a culturally aware way responsive to Islamic sensitivities.<sup>131</sup>

---

<sup>130</sup> *Ibid*, at 17.

<sup>131</sup> Farrar, *supra* note 9, at 813.