

## From Separation to Re-Engagement: The OIC Revised Declaration on Human<sup>1</sup>

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### Abstract

Since the adoption of the Cairo Declaration of Human Rights in Islam (CDHRI) in 1990, there was an ongoing debate between Western and Muslim states regarding the compatibility of its provisions with human rights standards. The adoption of Ten-Year Program of Action in 2005 was a turning point in the OIC human rights agenda. The establishment of the Independent Permanent Human Rights Commission (IPHRC) paved the way for the revision of the CDHRI in 2020 and it was described as a monumental success. This article shall review the in which the OIC has re-engaged to human rights after 30 years of controversies with a descriptive and analytical method. First, we will study the general framework of the revised Declaration and the challenges of the adoption process, and then we will evaluate the changes made in its content by comparing the two declarations. The paper concludes that the revised declaration may bring OIC human rights rhetoric in alignment with UN human rights language, nevertheless, the IPHRC failed to carry out its mandated task in bringing human rights standards in harmony with Islamic teachings and values, especially where it simply

1. This paper is a revised and abridged version of an essay under the title "The OIC Declaration on Human Rights, Changing the Name or a Paradigm Change?" that was accomplished before the adoption of CDOHR. As the research work exceeded the words limit of the Human Rights Journal, it was divided into two separate papers. Thus, it is highly recommended to consult the twin of this paper: Mozaffari, Mohammad Hossein; The Success of Failure: The Cairo Declaration of the Organization of Islamic Cooperation on Human Rights. I thank Professor Radu Mars, Acting Research Director, and Head of Economic Globalization and Human Rights Thematic Area at RAOUL WALLENBERG INSTITUTE FOR HUMAN RIGHTS AND HUMANITARIAN LAW for his comments on the earlier draft of this article. However, the responsibility of the claims, arguments, and theories advanced in this paper rests on the author's shoulder.

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copied and pasted the text of international human rights instruments.

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## I. Introduction

In the early 1980s, the Organization of the Islamic Conference (Organization of the Islamic Cooperation) decided to establish “Islamic International Law Commission” and it was mandated, *inter alia*, to draft a document on “Human Rights in Islam”<sup>2</sup> and it was confirmed at the Third Islamic Summit in 1981.<sup>3</sup> The OIC succeeded to establish separate human rights system in parallel to the international human rights system by adopting the Declaration of Human Rights in Islam (CDHRI). Since the adoption of CDHRI in 1990, there has been an ongoing debate between the Western and Muslim states regarding the compatibility of provisions outlined in the CDHRI with human rights standards. The adoption of the Ten-Year Program of Action<sup>4</sup> (TYPoA-2005) was a turning point in the OIC human rights policies. Unlike the CDHRI which deliberately avoided making any reference to the Universal Declaration of Human Rights (UDHR)<sup>5</sup>, the TYPoA-2005 ironically focused much of its attention on international human rights language. As a result, the promotion of human rights increased significantly in the OIC programs and activities.

According to the TYPoA-2005, the Charter of the Islamic Conference (1972) was amended in 2008, and therein, the promotion of human rights and protection of fundamental freedoms were incorporated into its objectives. It laid the ground for more major reforms especially when an Independent Permanent Human Rights Commission (IPHRC)<sup>6</sup> was established in 2011 and paved the way for the revision of CDHRI. On the 30<sup>th</sup> anniversary of the CDHRI, the CDHRI was revised by the IPHRC and submitted to the Council of Foreign Ministers (CFM). The OIC, consequently, abandoned the parallel arrangement to the UN human rights system and defined a complementary function for the OIC human rights arrangement which might lead to the coexistence of regional and international systems.

This article is an attempt to analyze the ways in which the OIC has re-engaged to human rights after 30 years of controversies. There can be no doubt that the position of some Muslim states toward human rights was a matter of

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2. The 11th Sess. Of CFM, Islamabad, Islamic Republic of Pakistan, (17-22 May, 1980) at: 108.

3. THIRD ISLAMIC SUMMIT CONFERENCE (MECCA AL MUKARRAMAH, 25-28 JANUARY 1981).

4. Ten-year Programme of Action, 7–8 December 2005 available at (accessed on 20/2/2021): <https://ww1.oic-oci.org/ex-summit/english/10-years-plan.htm>

5. Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. GAOR Res. 71, U.N.Doc. A18 10.

6. THE ESTABLISHMENT OF THE OIC INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION (IPHRC) adopted by the 38th Sess. of CFM, Astana, Republic Of Kazakhstan (28 – 30 June 2011 RESOLUTION No. 2/38-LEG).

dispute during the drafting of the international bill of human rights. The controversy has arisen when the OIC established a separate human rights system in parallel to the UN and therefore, its re-engagement reflects the process of constructive dialogue with the UN human rights system. This analysis in the first part of this paper will identify the general outline of the CDOHR that has plausibly shaped the framework of the new declaration. It will then examine the changes made in the content of CDHRI and its effects in terms of conformity with the international human rights and its practical results in terms of promotion of human rights in member states. The second part will examine certain controversial issues that were always the main source of dispute between Muslim and Western delegations in human rights matters, and finally concludes that even though the drastic paradigm change in the English version might terminate the parallel functions of the OIC human rights arrangements with the UN human rights system and reduce the normative conflicts between the OIC human rights instruments and international standards, it is difficult to expect that the controversies finally came to an end and the adoption of CDOHR will contribute to improving the human rights situation of the member states.

## II. The Complex Process of Re-Engagement

Since the adoption of UDHR, there have been suggestions for its revision on several occasions. However, due to the complexity of the process of the adoption of human rights instruments, it was not taken seriously enough to spur any action. Several delegations to the Tehran Conference (1968) called for the UDHR to be rewritten. For instance, Shah of Iran in his opening address expressed that “while we still revere the principles laid down in the Universal Declaration, it is still nevertheless necessary to adjust them to the requirement of our time.”<sup>7</sup> More interestingly, on the occasion of the golden jubilee celebration that was held on the 50<sup>th</sup> anniversary of the UDHR, *Sayed Kamal Kharrazi*, the then foreign minister of Iran called for a revision of the UDHR.<sup>8</sup>

The complex process of the adoption of human rights instruments makes the revision process more complicated. The requirement of time or specific consideration of certain states are taken into account in the process of the adoption of subsequent instruments and additional protocols. For example,

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7. Burke, Roland; *Decolonization and the Evolution of International Human Rights*, (University of Pennsylvania, 2010), p. 93

8. UN Summary Record, 1998/SR.2, para. 9.

Article 17 of UDHR recognizes the property right. But, the subsequent “core” human rights conventions failed to accept it. Therefore, that is not common practice within the human rights systems to revise the human rights instruments. The only exception might be the Arab Charter on Human Rights that was adopted in 1994 and was revised in 2004.<sup>9</sup>

It was noted that the OIC created a separate human rights framework in parallel to the UN human rights system, and should the OIC decide to re-engage with the UN human rights system, it was not required to revise its human rights instrument. Since that is not a simple and easy task to revise human rights instruments, it was possible to update the provisions of CDHRI in the form of a Human Rights Charter as it was envisioned in the TYPoA-2005. However, the Secretary-General believed that the revision of OIC human rights instruments is a required prerequisite for bringing them in alignment with the UN human rights system.

The compromise reflects the process of constructive dialogue with the UN human rights system. Even though there is some inconsistency between the provisions of the TYPoA-2005 and the Statute concerning the mandated tasks of the Commission, the IPHRC has been authorized by the Statute to review the OIC human rights instruments. Article 17 of the Statute stipulates that: “It may also submit recommendations on refinement of OIC human rights declarations and covenants.” It enabled the Commission to carry out the refinement of the CDHR and the Covenant on the Rights of Child in Islam (CRCI).<sup>10</sup> Needless to say that Western scholars directed the many varieties of criticism to the CDHRI, the OIC eventually admitted that “there are obvious legal, linguistic and perceptual gaps and inconsistencies in the CDHRI”<sup>11</sup> which must be reviewed and refined.

In the following, it will be illustrated that the drafters have adopted a variety of methods to review the CDHRI and carry out the mandated task, either by borrowing the text from international human rights instruments or by removing the undesired words, phrases, and even concepts from the CDHRI to meet the international standards. Even though the IPHRC has taken initiatives in merging certain articles or deleting a whole article, it appears that it refrained from

9. League of Arab States, Arab Charter on Human Rights, 15 September 1994.

10. Covenant on the Rights of the Child in Islam, Adopted at the 32nd CFM, 28- 30 June 2005.

11. Statistical, Economic and Social Research and Training Centre for Islamic Countries (SESRIC) and the OIC Independent Permanent Human Rights Commission (IPHRC), “Human Rights Standards and Institutions in OIC Member States”, September 16, 2019, 6. Available at: <https://www.sesric.org/files/article/674-.pdf>.

incorporating new notions and adding additional articles to the revised declaration. It was stuck in a theoretical framework that worked for its system with remarkable precision and it was not easy to move beyond the defined territories.

#### **A. Does Refinement Matter?**

The term “refinement” initially was expressed by Ihsanoglu in a conference in 2009. The Secretary-General stated that “the complexity of the fields of human rights inevitably call(s) for the need to refine the 1990 Cairo Declaration on Human Rights in keeping with the current global human rights discourse.”<sup>12</sup> Then, the term was incorporated in Article 17 of the Statute and resurfaced in the TYPoA-2025<sup>13</sup> which instructs that it will “Update and refine, in consultation with OIC Member States, the existing OIC human rights instruments vis-à-vis universal human rights instruments, as and where required.” Irrespective of the terminology discussions, it will be explained that the drafters failed to redesign the structure of CDHRI.

The term “refinement” that has been used in Article 17 implies that the IPHRC cannot change the general framework of the CDHRI by adding additional articles or incorporating the missing rights in the revised declaration. Since, the very meaning of the term “refinement” suggests that the Commission would have been allowed to correct the “obvious legal, linguistic, and perceptual gaps and inconsistencies”<sup>14</sup> by removing the undesired articles or unwanted concepts, norms and words, while the general framework of the CDHRI will be retained.

Furthermore, it is ironic that both the Statute of IPHRC and the TYPoA-2025 have employed the term “*refinement*” or “*tahsin*” (improve) in the Arabic version to provide the possibility of making some small changes to the CDHRI to improve the text of the Declaration. It is to be recalled that the English Dictionary mentions two meanings for the word “refine”: “to make something pure or improve something, especially by removing unwanted material” and “to improve an idea, method, system, etc. by making small changes.”<sup>15</sup> Now, we will look at both definitions to see to what extent each of the meaning may be appropriately fitting to the text of Article 17 of the Statute.

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12. Today's Zaman. 2009. OIC gears up to establish human rights commission, Today's Zaman, 13 April, found in: Petersen, Marie Juul; ISLAMIC OR UNIVERSAL HUMAN RIGHTS? THE OIC's INDEPENDENT PERMANENT HUMAN RIGHTS COMMISSION, DIIS REPORT 2012:03, 29.

13. Ten Year Programme of Action (TYPoA-2025) OIC/SUM-13/2016/POA-Final (accessed on 20/2/2021) available at <https://www.oic-oci.org/docdown/?docID=16&refID=5>

14. SESRIC and IPHRC, Human Rights Standards and Institutions in OIC Member States, 9.

15. The Cambridge Advanced Learner's Dictionary, (Cambridge University Press, reprinted in 2008), 1194.

If we take the first meaning of the term “*refinement*” into consideration, it would imply that the IPHRC had the right to delete some words or sentences to “refine” the declaration. On the other hand, if we take the second definition of the term “*refinement*”, Article 17 would permit the refinement of CDHRI by making small changes to its provisions to improve the text of the declaration. The very meaning of the term “*refinement*” would, thus, only authorize the IPHRC to improve the text of CDHRI, either by deleting the unwanted words, sentences, and even the norms and concepts or by making small changes in the text.

It is for this reason that the OIC researchers have also argued that there are various inconsistencies in the CDHRI in terms of legal, linguistic and conceptions that need to be reviewed and modified.<sup>16</sup> For instance, the term “*Islam*” in the title of the declaration, *Islamic Shari’a* or *Shari’a* related norms and religious concepts in the text was removed from the CDHRI to be congruent with human rights language. Should this be the case, the IPHRC has gone far beyond its mandated task where it simply copied and incorporated the parts of the revised declaration from international instruments. Because, not only the IPHRC was mandated to adjust the provisions of CDHRI with human rights standards, but also to harmonize human rights notions with Islamic values. Nonetheless, either for the lack of theoretical approach or for practical purposes, it failed to accomplish the latter mandate.

### **B. Structural and Textual Changes**

Although the process of revising the CDHRI began after the creation of the IPHRC, however the adoption of the TYPoA-2025 accelerated the process. In 2018, the CFM calls the Inter-Governmental Working Group “to discuss the revised draft of the Cairo Declaration of Human Rights in Islam, titled ‘The OIC Declaration of Human Rights.’”<sup>17</sup> Finally, the revised “OIC Declaration of Human Rights” was adopted by the 47<sup>th</sup> Session of the CFM and it is praised as “a monumental success for protection and promotion of human rights.”<sup>18</sup>

This has already been illustrated that most of the changes in the CHRD I were made through deleting the unwanted terms, notions, and provisions. It means that religious conceptions have been omitted and replaced by human rights

16. SESRIC and IPHRC, Human Rights Standards and Institutions in OIC Member States, 6.

17. Resolution No. 1/45-IPHRC, The 45th Session of CFM, 2018, available at (accessed on 20/2/2021): <https://www.oic-oci.org/docdown/?docID=1873&refID=1078>

18. Report of the IPHRC on the participation in the 47th Session of OIC Conference of Foreign Ministers in Niger, available at (accessed on 15/12/2020): [https://oic-iphrc.org/web/index.php/site/view\\_news/?id=472](https://oic-iphrc.org/web/index.php/site/view_news/?id=472)

notions and norms. For example, the word "Islam" has been removed from the title of the Declaration. The most significant change which is noticeable in the English version of CDOHR is the shift from *Islamic Shari'ah* to the *principles of Islam*. In comparison with CDHRI that mentioned *Islamic Shari'ah* as the "only source of reference for the explanation or clarification" of its provisions (CDHRI, art. 24), post-2005 instruments replaced it with Islamic values. For instance, Article 15 of the Charter-2008 recognized human rights as "enshrined in the organization's covenants and declarations and in universally agreed human rights instruments, in conformity with Islamic values." The CDOHR is considered as a further development when it shifted from Islamic values to the *principles of Islam*. However, the Arabic version of CDOHR is not identical with its English translation as it will be elucidated below.

Even though the Draft Declaration had replaced "*Islamic Shari'ah*" with the "*Principles of Islamic Shari'ah*" that was also present in Articles 16 and 22(a) of CDHRI, it was eventually substituted with the "*Principles of Islam*". The preamble of the CDOHR states that human rights are respected "*As Safeguarded by the Principles of Islam*". Article 25 (a) of the CDOHR (English text) stipulates that these rights shall be exercised "*without prejudice to the principles of Islam*". Although the shift of focus from Islamic Shari'a to the principles of Islam might obscure the intended meaning, it will be understandable in the context of the CDHRI and in alignment with the original Arabic version of CDOHR.

The CDHRI used a variety of terminology such as: Shari'a, Islamic Shari'a, tenets of Shari'a, framework of Shari'a, principles of Shari'a, provisions of Shari'a, norms of Islamic Shari'a and principles of Islamic Shari'a. Thus, using a variety of terms will not make a substantive difference and they all share the same meaning. The story becomes even more interesting when we consult the Arabic version of the revised declaration. It is interesting to note that in spite of the fact that the Arabic version of CDOHR used the "*provisions of Islamic Shari'a*" in Article 24(a), the English version refrained from using the term Shari'a and it was translated to "*the principles of Islam*".<sup>19</sup> Thus, "*the principles of Islam*" is not different from the "*provisions of Islamic Shari'a*" that were used in corresponding Article of its Arabic version.

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١٩. مع عدم الإخلال بأحكام الشريعة الإسلامية و القانون، فإن ممارسة الحقوق و الحريات المنصوص عليها بهذا الإعلان و التمتع بها حق لكل إنسان.



Most importantly, the IPHRC even ignored the criteria that have been defined in CDOHR and other OIC instruments concerning human rights. The preamble of CDOHR emphasized that human rights will be respected “*as safeguarded by the teachings of Islam*” and in “*accordance with the Islamic values and principles.*” Contrary to the above provisions, the IPHRC applied the formula in the opposite direction. While appreciating *the adoption of CDOHR*, the IPHRC celebrated “*the compatibility of the Islamic values and norms with the universal human rights standards.*”<sup>20</sup>

Concerning the changes that were made in the content and structure of the CDHRI, it has been highlighted that the English version of CDOHR is not equivalent with the original Arabic version (25 Articles vs. 24 Articles). In terms of structural amendments, Article 21 which forbids the act of taking hostage has been removed altogether, as it was considered irrelevant to the CDOHR. In addition, religious liberty has been moved from Article 10 to Article 20 and freedom of expression has been transferred from Article 22 to Article 21 (English version), while in the Arabic version they were remained in Articles 18 and 19 respectively as they had been conscripted in the final draft. Also, the provision on humanitarian law has been moved from Article 3 to Article 24. Articles 24 and 25 on limitation clauses have been merged into a single article after certain modifications.

Article 4 of the English translation of CDOHR is on the “*right to liberty and safety, and not to be subjected to torture*” that is found in Article 21 of the Arabic text. In the following, we will briefly refer to certain rights as they were drafted in the English translation of CDOHR.

### **Dignity and Equality**

Article 1 (a) reaffirms human dignity and the principles of freedom and equality. While Article 1 (a) of CDHRI emphasizes that “[A]ll men are equal in terms of basic human dignity and basic obligation and responsibilities”, the CDOHR states that “[T]hey are equal in dignity, rights, and obligations.” The original text states: “*They are equal in terms of basic obligation and responsibilities.*” Besides, the phrase “[T]rue faith is the guarantee for enhancing such dignity along the path to human perfection” (CDHRI, art. 1 a) and CDHRI art. 1 (b) which actually included religious concepts regarding acquired dignity, have been completely omitted. Also, Article 1 (b) of CDOHR

20. Report of the IPHRC on the participation in the 47th Session of OIC Conference of Foreign Ministers in Niger.

stipulates that “*Gross and systematic human rights violations, and also slavery, servitude, forced labor and trafficking in persons, shall be prohibited in all forms, and under any circumstances*”. The first phrase “*Gross and systematic human rights violations*” is not found in Arabic version.

### **Right to Life**

Concerning the right to life, the CDHRI emphasizes that “[L]ife is a God-given gift and the right is guaranteed to every human being” and “it is prohibited to take away life except for a Shari’ah prescribed reason” (art. 2 a). The corresponding article in the CDOHR emphasizes that “No one shall be arbitrarily deprived of this right” (art. 2 a). It goes on to say that “Sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime” (art. 2 b). Thus, the provisions that were rooted in the Islamic jurisprudence have been removed to comply with international standards.

### **Right to Education**

Contrary to the CDHRI which defines the right to education as “*an obligation*” and as an individual duty (art. 9 a), the CDOHR declares that “[E]ducation is a *fundamental human right*.” (art. 9 a). More importantly, the purpose of education in the CDHRI is defined to become “*acquainted with the religion of Islam and the facts of the universe for the benefit of mankind*” (art. 9 a). The CDOHR in a revolutionary fashion declares that the purpose of educational institutions is to “*promote respect for human rights, understanding, tolerance, and friendship among all nations and peoples. Human Rights Education is an integral part of the right to education.*” (English version: art. 9 a /Arabic version: art. 8 a).” This clause is borrowed from Article 13 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>21</sup> Then, Article 9 (b) assumes that “*The seeking of knowledge is a responsibility and the provision of education is the duty of society and the State.*” (Arabic version: art. 8 b).

### **Right to Self-Determination**

Article 11(a) of CDHRI is about the right to freedom from enslavement, exploitation, and subjugation, and Article 11(b) categorizes colonialism as an evil of enslavement, emphasizing the right of the people to self-determination.

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21. International Covenant on Economic, Social and Cultural Rights Adopted by General Assembly resolution 2200A (XXI) of 16 December 1966.

The revised declaration enshrines the right to liberty and security in the area of individual rights in Article 4 (Article 21, Arabic version), and the right to self-determination in Article 10.a (Article 9, Arabic version), in the category of collective rights:

Foreign occupation, subjugation, and colonialism of all types are totally prohibited. Peoples suffering from occupation, or colonialism have the full right to freedom and self-determination. It is the duty of all States and peoples to support the struggles for the elimination of all forms of colonialism and occupation.

### **Missing Rights**

It appears evident that the IPHRC was not willing to incorporate missing rights and freedoms into the CDOHR, or it might have inferred that the term "*refinement*" implies only minor changes are permitted, rather than adding some new notions or incorporating additional articles to the text which would go beyond the domain of "*refinement*". Even though the general framework of the CDHRI has been retained, redesigning its structure has made it more flexible for including certain missing rights. Article 12 deals with the rights of refugees and migrants who "*are entitled to the same universally recognized human rights and fundamental freedoms*". This Article is not found in the original text. Article 13 (Article 11, Arabic version) also deals with the right to nationality and Article 22 (Article 20, Arabic version) with the right to access to justice and fair trial. Even though the right to self-determination has been recognized in Article 19 of CDHRI, other collective rights such as freedom of assembly and association were missing. Article 14 (a) of CDOHR (Article 18, Arabic version) states that "*State and Society shall take all measures to guarantee the right to work for each person able to work*". Then, Article 14 (a) stipulates that "[E]veryone has the right to form with others and to join trade unions, in accordance with law and regulations in place, for the protection of his/her interests".

### **C. Limitation Clauses**

Human rights instruments have usually utilized two distinct techniques to strike a balance between human rights and fundamental freedoms and their limitations. The restrictions on rights and freedoms in the UDHR are provided for in Article 29(2) as a general limitation clause. On the other hand, the ICCPR utilized a specific limitation clause which is specifically defined in every article. As a result, human rights instruments in defining restriction clauses

either have followed a general or a specific restriction clause.<sup>22</sup> It must be borne in mind that the CDHRI has followed UDHR by imposing a general restriction clause in Article 24. The specific feature of its limitation clause lays in the fact that it has utilized the specific limitation clause only in Articles 20 and 21 on freedom of religion and expression respectively (Articles 18 and 19, Arabic text), while the remaining articles have followed the UDHR modality that applied a general limitation clause.

In contrast to Articles 24 and 25 of CDHRI, the content of the limitation clause in the English version has apparently made a departure from Islamic Sharia to the principles of Islam. It seems likely that the revised articles might facilitate the coexistence of the OIC human rights arrangement with the UN human rights system. While the CDOHR has attempted to reconcile the disputed areas with international human rights standards by avoiding the rhetoric of Islamic Sharia in the English translation, however, the Arabic version continued to refer to the provisions of Islamic Sharia. Although the general limitation clause in the English version has refrained from using the term "*Islamic Shari'a*" to limit the rights and freedoms, there appears to be a legal trick behind all this rhetoric which leaves us with an empty notion. On the other hand, Article 25.b of CDOHR (Article 24.b, Arabic version) has acknowledged that the interpretation of the provisions of the declaration should not undermine the rights and freedoms guaranteed by domestic legislation and human rights conventions:

Nothing in this declaration may be interpreted or amended in such a way as to undermine the rights and freedoms safeguarded by the internal legislations of Member States, and their obligations under international and regional human rights instruments.

Needless to say that Islamic Sharia is, in certain states, the main source of legislation or their ratification of human rights conventions are subject to Islamic Sharia and as a consequence, human rights will be subjected to Islamic Sharia in states where it is the main source of legislation. On the other hand, Article 25.b (Article 24.b, Arabic version) of CDOHR has properly guaranteed the rights and freedoms that might be in conflict with *Islamic Shari'a* in those member states that have recognized certain rights and freedoms in their domestic legislation in compliance with international human rights instruments. Consequently, it appears that the drafters were able to

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22. Mozaffari, Mohammad Hossein (1376 AH); Nobordbari Madhabi (Religious Intolerance). Tehran, Andisheh-e-Moaser: 111.

accommodate the diverse and differing opinions into different versions of the revised declaration to come to a compromise.

### III. Disputed Areas

There has always been a heated debate over certain issues of human rights in the UN between representatives of Islamic countries and Western delegations. This analysis was not projected to be a comprehensive review of all contentious topics and the changes that were made in the revised declaration, but rather to offer an overview of historical background of the debate to identify the topics that have been reconciled and the issues which continue to remain in the disputed area. There is irony in the fact that the IPHRC has strengthened its position on freedom of expression. However, when it comes to freedom of religion, not only did it abandon the areas that they struggled to acquire, it simply copied and imported the text from Article 18 of ICCPR. In the following, we provide a nuanced examination on the three contentious topics which deserve special consideration.

#### A. Freedom of Religion

Freedom of religion was the main source of controversy between the Muslim states and Western delegations during the drafting process of the UDHR. On several occasions, the representative of Saudi Arabia directed critical remarks to the members of the drafting Committee for including a contentious sentence in the text of Article 19 (18) of the draft declaration on freedom of religion: *'only the first sentence of article 19 (18) should be retained as it sufficiently safeguard freedom of thought, conscience and religion.'*<sup>23</sup> Thus, the article would be accepted, he expressed, when those words were omitted. Other delegations from Muslim states, Asia and Latin America believed that the second sentence was included to serve missionaries and in order to avoid and eliminate all doubts about the existence of a hidden agenda, it must be deleted. Even the Danish delegate abstained from voting on Article 18, as he believed that the adoption of the second sentence might prevent the representatives of the Muslim world to support the draft Declaration.<sup>24</sup> John P. Humphrey, the author of the initial draft of the Declaration also states:

‘Much thought and discussion was given at every stage of the drafting to Article 18, which recognizes and defines the right to freedom of thought, conscience, and religion. Predictably, the article gave rise to controversy. In

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23. Year Book of the United Nations 1948-49, 532.

24. Year Book of the United Nations 1948-49, 532

the Drafting Committee, Charles Malik- a citizen of a country the population of which was almost evenly divided between Christians and Moslems- had obtained the insertion in the article of the principle that freedom of religion includes the right to change one's religion or belief.<sup>25</sup>

The United States delegation had noted that in the final vote in the Third Committee on presenting the Declaration to the General Assembly, the delegates of four Muslim countries abstained. Because they believed that the article on freedom of religion was contrary to Qur'an. But, *'the speech of the Foreign Minister of Pakistan, the largest Muslim state at that time, before the General Assembly brought along to the affirmative side all Arab Muslim states except Yemen, which was absent.'*<sup>26</sup> Sir Mohammed Zafarullah Khan, argued that because of the misconduct of the missionaries, some delegations had expressed their concern over the text of Article 19 (18):

"Islam had proclaimed the right to freedom of conscience and had declared itself against any kind of compulsion in matters of faith and religious practices and his delegation, therefore vote for article 19 without any limitation on its provisions."<sup>27</sup>

But, it seems that all Arab Muslim states were not in favor of the UDHR. The Egyptian delegation pointed out that the "text of article 19 (18) did not confine itself to proclaiming freedom of thought and religion and the second sentence included to serve the efforts which try to convert the population of the Orient."<sup>28</sup> He concluded, however, if those "remarks were inserted in the summary record, his delegation would vote in favor."<sup>29</sup> As noted earlier, the Yemen delegation even did not take part in the voting and was absent in the final vote. This situation placed the representative of Saudi Arabia in a dire condition and he finally declared that Article 18 of UDHR is incompatible with Islamic law and abstained from voting, along with the Soviet bloc and the Union of South Africa.

Time and again, the unresolved dispute resurfaced during the drafting process of the International Covenant on Civil and Political Rights (ICCPR).<sup>30</sup>

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25. Humphrey, John P.; Human rights and the United Nations: A Great Adventure, (Transnational Pub Inc 1984), 67-68.

26. Roosevelt, Eleanor The Auto biography of Eleanor Roosevelt. (Curtis Publishing Co, Philadelphia, Pennsylvania 1958): 322.

27. Official Records of the General Assembly, Third session (part I) 1948, Third Committee 128th Meeting, 912.

28. Official Records of the General Assembly, Third session (part I) 1948, Third Committee 128th Meeting, 913.

29. Year Book of the United Nations (1948-49) New York United Nations, 532.

30. The International Covenant on Civil and Political Rights adopted by the resolution of General Assembly 2200A (XXI) on 16 December 1966.

The Secretary-General briefly referred to discussions on matters related to freedom of religion. He emphasized that much of the discussions involved on whether the article should contain explicit reference to change one's religion or belief or these words do not need to be specifically mentioned. It was argued that the right to change one's religion was already implicit in the concept of "*freedom of religion*" and the covenant should not support any religious body or encourage proselytizing and missionary campaigns. Furthermore, the provision would create uncertainty or difficulty for those States whose constitutions or basic laws are derived from religious norms.<sup>31</sup>

During the discussions in the Third Committee, the Saudi Arabia delegation reminded that article 18 of the draft Covenant had evolved from the corresponding article of the Universal Declaration that his delegation had opposed in 1948 because of the inclusion of a controversial sentence.<sup>32</sup> As his suggestion for omitting the disputed sentence had frequently failed, he proposed the addition of an independent clause to Article 18 to prevent coercive conversion. Again, other delegations supported the idea and advised that the question had arisen difficulties in the Asian countries during the period of expansion of Europe, owing to the fact that they sought to impose Catholicism on the indigenous people.<sup>33</sup>

Since the Committee was seemingly divided on the original text, it was suggested that an alternative text for the second sentence of paragraph 1 to narrow the existing gap as follows: "*This right shall include freedom to have a religion or belief of his choice.*"<sup>34</sup> Yet, it was also suggested that the words '*or to adopt*' be inserted after the words '*to have*' in the above text. On the other hand, Muslim delegations could finally add a new clause which prohibited the coercion as follows: "*No one shall be subject to coercion which would impair his/her freedom to have or to adopt a religion or belief of his choice.*"<sup>35</sup>

Time and again, during the adoption of "*1981 declaration*"<sup>36</sup> the controversial aspect of freedom of religion was a topic of ongoing debate between the two sides. While the western states consistently emphasized the

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31. Annotation on the text of the draft International Covenants on Human rights (Document A/2929), Official Records of the General Assembly, 10th session 1955, Agenda item 28 (Part II) chapter I.

32. Official Records of the General Assembly, 15th session, 1960, Third Committee 1022nd Meeting, at 6-7.

33. Official Records of the General Assembly, 15th session, 1960, Third Committee 1022nd Meeting, at: 11-17.

34. Official Records of the General Assembly, 15th session, 1960, Third Committee 1022nd Meeting, at 8-11.

35. Official Records of the General Assembly, 15th session, 1960, Third Committee 1022nd Meeting, at 1-5.

36. Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief" (U.N. Doc. A/36/684, 1981)

standards they had successfully formulated in UDHR, Muslim delegations were trying to cast doubt on the legitimacy of the established norms. Finally, the attempt of Muslim delegations resulted in deleting the controversial words “*or to adopt*”. Article 1 of the 1981 declaration indicates that: “*right shall include freedom to have a religion or whatever belief of his choice*”. The wording of the second clause reformulated by deleting the words “*or to adopt*” to appease the Muslim delegations and convince them to adopt the declaration.

Despite the significant success that Muslim states have made in changing the language of the established norms in both UDHR and ICCPR, they have never been wholly content with the outcome. As noted earlier, they eventually decided to create a separate human rights system which finally was materialized by the adoption of CDHRI. This is exactly why Article 10 of CDHRI is absolutely focused on their concerns of both material and nonmaterial forms of coercion, rather than concentrating on freedom of religion:

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.

Considering the historical background of the debate, it is really important to know how the CDOHR will resolve such a highly polemic issue that separated Muslim states from their Western counterparts for several decades. The revising process was aiming at bringing its human rights norms in alignment with international standards. They had then to select one of the existing formats of ICCPR or the 1981 declaration. However, it might come as a surprise that the authors have followed the format of the ICCPR in the English version of the revised declaration, instead of the subsequent instrument of the 1981 declaration. Although, the latter is a more recent instrument that Muslim states’ delegations put much effort to refine its provisions and it has been the product of many years’ efforts, the substantive provisions were almost borrowed from Article 18 of ICCPR.

The author had reminded the above points in the initial version of this paper,<sup>37</sup> and the drafters have decided to incorporate the text of Article 1 of the 1981 declaration into the Arabic version of the revised declaration. Although

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37. Mozaffari, Mohammad Hossein; OIC Declaration on Human Rights: Changing the name or a paradigm change? (The Raoul Wallenberg Institute of Human Rights and Humanitarian Law, 2020) available at (accessed on 20/2/2021): <https://rwi.lu.se/pyramid-publications/oic-declaration-on-human-rights-changing-the-name-or-a-paradigm-change/>



the IPHRC has incorporated the text of Article 18 of ICCPR into the English version, the Arabic version was borrowed from the 1981 Declaration. While the main objective of drafting a regional instrument is to indigenize the alien concepts and norms into the cultural context of their respective region to facilitate its implementation. Otherwise, most of the OIC member states have already signed and ratified many of the human rights conventions. Moreover, the IPHRC was mandated “*to refine*” or “*to update and refine*” the CDHRI, and it is evident that it falls beyond its mandate where it exactly incorporated the text of international instruments into the revised declaration.

### **B. Women’s Rights**

Women’s Rights also has been an important subject of controversy between the Muslim and Western States since the adoption of UDHR up until the present day. During the deliberations on the UDHR, Muslim delegations declared that Article 14 (16) on equal rights as to marriage is in conflict with their domestic legislations. The Saudi representative emphasized that:

“The authors of the draft declaration had for the most part taken into consideration only the standards recognized by Western civilization and had ignored more ancient civilizations...the institutions of which, for example, marriage, had proved their wisdom through the centuries.”<sup>38</sup>

The representative of Egypt also expressed that “[A]rticle 17 referred to the freedom to contract marriage without any restrictions as to race, nationality or religion. In Egypt, as in almost all Muslim countries, certain restrictions and limitations exists regarding the marriage of a Muslim woman with a person with another faith.”<sup>39</sup> Although still the dispute had not been settled, Article 16 (1) of the UDHR was adopted which contains that men and women of full age have the right to marry “without any limitation due to race, nationality or religion” and the controversy faded away for a while. When the deliberations on the draft of ICCPR started, there was a sharp disagreement between delegations concerning equal rights of men and women as to marriage such as domicile, nationality, and the right to work. Although the preamble and provisions of both Covenants emphasized the principle of equality before the law, the substantive provisions did not contain gender equality and there was no corresponding article on marriage similar to Article 16 of the UDHR in the draft text of ICCPR prepared by the Commission.

38. Official Records of the General Assembly, Third session (part I) 1948, Third Committee 128th Meeting, 370.

39. Official Records of the General Assembly, Third session (part I) 1948, Third Committee 128th Meeting, 912.

The UN Commission on the Status of Women suggested adding an article to the ICCPR corresponding to Article 16 of the UDHR. In subsequent discussions, some members of the Commission reiterated the same arguments previously made by the representatives of Islamic countries in the Third Committee of the General Assembly. It has been argued that such inequalities are rooted in ancient traditions and religious beliefs that cannot be easily changed and also it requires radical changes of civil laws in many countries. Moreover, the equal responsibilities of men and women should be considered.

The Commission removed a phrase that contained a prohibition of discrimination on the ground of race, religion, and nationality, and the text of Article 23 (2) of the ICCPR was eventually adopted by deleting the words “*without any limitation due to race, nationality or religion*”<sup>40</sup> which was a matter of disagreement between different delegations when the text of Article 16 of UDHR was under deliberation. In addition, a phrase containing “*equality of rights and responsibilities of spouses as to marriage*” was incorporated into paragraph 4 of Article 23 of ICCPR to balance the viewpoints of the two sides.<sup>41</sup>

Time and again, the controversy resurfaced in the UN when Human Rights Commission started to discuss the draft of the CEDAW in the General Assembly.<sup>42</sup> While some delegates were insisting that the text could be passed by a majority vote, other delegates mainly from Muslim and catholic countries believed that it needed more deliberations to remove the substantive defects of the text and ensure that it would achieve its objectives. Although many Islamic countries have now ratified the CEDAW, some of them have inserted general reservations which have seriously challenged the validity of the Convention. Islamic countries finally incorporated observations into the CDHRI. While acknowledging the equality of human dignity, Article 1 (a) of CDHRI puts emphasis on equality of men and women in “dignity” and “responsibility” and forgets to mention equal rights (CDHRI, art. 1.a). Article 6 (a) reiterates that “*women are equal to men in human dignity and they have rights which correspond to their responsibilities*” (CDHRI, art. 6.a). Thus, it has always been considered as one of the major disadvantages of the CDHRI and Article 1 (a) of CDOHR intends to address the same concern:

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40. Bossuyt, Marc J.; *Guide to the "travaux Préparatoires" of the International Covenant on Civil and Political Rights*, Martinus Nijhoff Publishers, 1987, 442.

41. Bossuyt, Marc J.; *Guide to the "travaux Préparatoires"*, 445.

42. Convention on the Elimination of Forms of Discrimination against Women (CEDAW) New York, 18 December 1979.

All human beings form one family. They are equal in dignity, rights and obligations, without any discrimination on the grounds of race, color, language, sex, religion, sect, political opinion, national or social origin, fortune, age, disability or other status.

It is worth noting that the OIC draft declaration had shifted from equality in dignity and responsibilities to equality in dignity and basic rights and it was changed to “*equal in dignity, rights and obligations*” to be in harmony with international standards. On the other hand, Article 5(a) of CDHRI stipulates the right of men and women to marry without distinction as to race, color, or ethnicity. It neglects to mention religion to comply with Islamic Shari’a:

The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, color or nationality shall prevent them from exercising this right.

Thus, CDHRI expresses the same distinctions as set forth in UDHR by removing "religion". Whereas, the CDOHR deleted the contentious phrase to reach a compromise. Article 5 (Article 4, Arabic version) stipulates that women and men have the right to marry and to found a family according to the rules and conditions of marriage:

The family is the natural and fundamental group unit of society. It is based on marriage between a man and a woman.

Men and women of marrying age have the right to marry and to found a family according to the rules and conditions of marriage...

It is to be recalled that in most Islamic countries, the substantive provisions concerning family relations are derived from Islamic Shari’a that is deeply rooted in religious traditions. Nonetheless, it might be more appropriate to incorporate the respected provisions from the ICCPR in order to bring it in alignment with international standards, since we are fully aware that the provisions articulated in subsequent instrument (CEDAW) cannot be incorporated as many Muslim states inserted several reservations to it. Thus, the drafters referred the disputed matters to the domestic legislation of member states. In addition, Article 2 of the Statute of the Women Development Organization (OIC) emphasized that the role of women in Member States will be promoted “*in line with the principles of the Islamic values*”.

### **C. Freedom of Expression**

In contrast to the freedom of religion and women's rights, freedom of expression was not a polemic issue between Western and Muslim states when UDHR and ICCPR were being adopted. The publication of the Satanic Verses in 1988, however, was the root cause of a dispute that suddenly emerged between Muslim and Western states over freedom of expression. This is exactly why the OIC was resolutely determined to address the problem in Article 22(a) and (c) of CDHRI:

- a. Everyone shall have the right to express his opinion freely in such a manner as would not be contrary to the principles of the Shari'ah.
  
- c. Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical values or disintegrate, corrupt or harm society or weaken its faith.

It is plain that the provisions articulated in CDHRI on freedom of expression are in contradiction with the Western interpretation of international standards. Indeed, OIC deliberately decided to stipulate certain norms to prevent the employment of freedom of expression for the defamation of religions and incitement to violence which, in their opinion, lead to discrimination against Muslims. However, the controversy over freedom of expression frequently reemerged up until the late 1990s when it turned into a new frontline between Western and Muslim delegations at the UN. In 1999, the delegation of Pakistan, on behalf of OIC submitted a draft resolution to the Human Rights Commission on the prohibition of vilification of religions. This resolution remained for several years on the agenda of the Human Rights Commission and subsequently its successor, the Human Rights Council.<sup>43</sup>

Since 2005 on behalf of OIC, the delegation of Yemen submitted the resolution to the General Assembly. The OIC delegations believed that vilification of the Islamic faith often resulted in discrimination against Muslim minorities in Western countries.<sup>44</sup> Western delegations, however, considered the resolutions in contradiction with freedom of expression and an attempt to universalize anti-defamation domestic laws. The European Union therefore in

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43. Comm'n on Human Rights, Draft Resolution on Racism, Racial Discrimination, Xenophobia and All Forms of Discrimination, U.N. Doc. E/CN.4/1999/L.40 (Apr. 20, 1999).

44. Diène, Doudou; The former Special Rapporteur to the ninth session of the Human Rights Council: A/HRC/9/12).

2006 made critical remarks about the adoption of the UN General Assembly resolution on combating defamation of religions:

The European Union does not regard the concept of defamation of religion as an accepted and valid concept in human rights discourse. From a human rights perspective, members of a faith or religious communities should not be considered members of a homogeneous identity. The rules of the international human rights basically protect the rights of individuals to practice their religion or belief freely, not religion itself.<sup>45</sup>

It was noted that in 2011, the OIC compromised with Western delegations in Resolution 18/16 and ceased to insist on the adoption of resolutions against defamation of religions.<sup>46</sup> As a result, the language of this resolution shifted from defamation of religion to religious discrimination and the combat against hate speech. The compromise is well reflected in the CDOHR when it followed the pattern adopted by the ICCPR regarding the limitation clause, but also in placing freedom of expression in Article 19 (Article 21, English version). Nonetheless, the original text of Article 19 is not equivalent to corresponding article (Article 21) of English translation. Then, it stipulates that everyone shall have *“the right to freedom of expression. The exercise of this right carries with it special duties and responsibilities.”* (CDOHR, art. 21.b). Moreover, it has innovated a new pattern by incorporating Articles 20 of ICCPR into Article 21(c) that clearly defines the limitation categories.

It goes without saying that despite the innovatory changes we specified, CDOHR did not abandon the rhetoric of Article 22(c) of CDHRI and enunciates that freedom of expression *“should not be used for denigration of religions and prophets or to violate the sanctities of religious symbols or to undermine the moral and ethical values of society.”* (CDOHR, art. 21.c/ Arabic version art. 19.b). The new pattern used in Article 19(b) is an important innovation. Because Article 20 of ICCPR does not define human rights in a separate article, rather mentions a justifying reason for restricting freedom of expression and therefore is properly incorporated into Article 19 (21) of CDOHR. On the other hand, it should be acknowledged that the CDOHR not

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45. Statement by Portugal on behalf of the European Union to the December 18, 2007 session of the GA, as quoted in a February 24, 2008 statement by the International Humanist and Ethical Union to the Human Rights Council, available at <http://www.iheu.org/node/2949>.

46. Resolution 16/18 on combating intolerance, discrimination and violence against individuals on the basis of religion or belief; A/HRC/RES/16/18.

only combines all limitation clauses into Article 19 (21), but also reconciled between conflicting outlooks.

#### **IV. Conclusion**

The process of OIC re-engagement that was initiated by the TYPoA-2005 has been completed by the adoption of CDOHR and it was described as a success for “*the OIC and the Member States*”. However, the Adoption of CDOHR reveals the undemocratic process of the OIC decision making that not only lacks the genuine participation of member states, but turns its main organs such as the CFM and the Islamic Summit into just rubber-stamps for the decisions made by the Secretary-General. Since, the CDOHR neither was adopted by consensus nor by majority vote and its adoption remains a matter of debate. Nonetheless, this paper disclosed that the original Arabic version of CDOHR is not identical with its English translation. The authors of CDOHR have utilized the diplomatic skills of making two separate declarations that will satisfy everyone. The Arabic version of CDOHR will serve to accommodate differing views of member states, and the English translation will satisfy their Western counterparts with the deal.

Even though the English translation of CDOHR retained the general framework of CDHRI, the major changes that were discussed in this paper are expected to bring it in alignment with the UN human rights system. This drastic changes is composed of triple layers of conceptual, structural, and normative levels. At the conceptual level, the CDOHR has shifted from religious notions to human rights language and at the normative level, it moved from Sharia-based particularism to an inclusive universalism. Also at the structural level, it abandoned the parallel arrangement to the UN human rights system and defined a complementary function for the OIC human rights agenda that might lead to the coexistence of regional and international systems and resolve some of the normative conflicts that formed the dispute in the past decades. As a result, neither the adoption of CDOHR removed the inconsistencies that were present in the English text of CDHRI, nor the amendments made will settle the dispute between Western and Muslim states. Thus, this controversy will continue to prevail over their relations in the foreseeable future.

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