

# Penn State Journal of Law & International Affairs

---

Volume 2 | Issue 1

---

April 2013

## Consequences of the Arab Spring: How Shari'ah Law and the Egyptian Revolution Will Impact IP Protection and Enforcement

Stephen S. Zimowski

Follow this and additional works at: <https://elibrary.law.psu.edu/jlia>



Part of the Diplomatic History Commons, History of Science, Technology, and Medicine Commons, International and Area Studies Commons, International Law Commons, International Trade Law Commons, Law and Politics Commons, Political Science Commons, Public Affairs, Public Policy and Public Administration Commons, Rule of Law Commons, Social History Commons, and the Transnational Law Commons

ISSN: 2168-7951

---

### Custom Citation

2 Penn St. J.L. & Int'l Aff. 150 (2013).

*The Penn State Journal of Law & International Affairs* is a joint publication of Penn State's School of Law and School of International Affairs.

# Penn State Journal of Law & International Affairs

---

2013

VOLUME 2 No. 1

---

## CONSEQUENCES OF THE ARAB SPRING: HOW SHARI'AH LAW AND THE EGYPTIAN REVOLUTION WILL IMPACT IP PROTECTION AND ENFORCEMENT

*Stephen S. Zimowski\**

### INTRODUCTION

On February 11, 2011, thousands of Egyptians in Tahrir Square celebrated Hosni Mubarak's departure and, with him, thirty years of rule by an oppressive regime.<sup>1</sup> While Egyptians celebrated, political commentators considered the impact of the Egyptian revolution on peace in the Middle East.<sup>2</sup> Some feared that an extreme sect of Islamic fundamentalists might be behind the revolution and

---

\* J.D. Candidate, 2013, Dickinson School of Law, Pennsylvania State University. Special thanks to Professor William F. Fox and Professor Flynt Leverett for their guidance and recommendations throughout the writing process, and to Mark McCormick-Goodhart and the entire *Penn State Journal of Law & International Affairs* editorial staff for their editorial contributions to this comment.

<sup>1</sup> See David D. Kirkpatrick, *Egypt Erupts in Jubilation as Mubarak Steps Down*, N.Y. TIMES, Feb. 12, 2011, at A1, <http://www.nytimes.com/2011/02/12/world/middleeast/12egypt.html?pagewanted=all>.

<sup>2</sup> E.g., Douglas Bloomfield, *Will Egypt's Revolution Trample the Peace Process?*, JERUSALEM POST, <http://www.jpost.com/Opinion/Columnists/Article.aspx?id=206445> (last updated Feb. 2, 2011); Jennifer Rubin, *Egypt's Revolution Has Nothing to Do with Israel*, WASH. POST (Feb. 1, 2011, 9:00 AM), <http://voices.washingtonpost.com/right-turn/2011/02/egypt-has-nothing-to-do-with-i.html>; Jack Shenker, *Egypt Protesters Play Down Islamist Party's Role*, THE GUARDIAN, Jan. 31, 2011 <http://www.guardian.co.uk/world/2011/jan/31/egypt-protesters-islamists-muslim-brotherhood>.

pondered the impact of replacing the “Arab world’s first secular dictatorship”<sup>3</sup> with a traditionalist regime, likening Egypt to Iran thirty years before.<sup>4</sup>

Egypt’s pivotal role in maintaining stability in the Middle East over the last forty years makes its current instability a source of trepidation for and businesspersons.<sup>5</sup> This comment addresses these concerns relating to intellectual property (IP) rights under Islamic law.<sup>6</sup> Section II defines the IP protection requirements of the World Trade Organization (WTO) under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) and examines the sources and schools of Islamic jurisprudence.<sup>7</sup> Section II also considers the harmony between a nation’s obligations under the TRIPs agreement and Islamic law.<sup>8</sup> Section III expands upon Egypt’s role in international business and policy, including its membership in the WTO and ratification of the TRIPs agreement.<sup>9</sup> In addition, Section III compares the implementation of IP protection in Jordan and Saudi Arabia, the former a secular Islamic nation and the latter a more traditionalist regime.<sup>10</sup> Section IV addresses the application of a secular or traditionalist approach under Egypt’s new government, and how either could affect IP rights.<sup>11</sup>

---

<sup>3</sup> Kirkpatrick, *supra* note 1.

<sup>4</sup> See, e.g., Richard Allen Greene, *Egypt’s Muslim Brotherhood: A Force to be Feared?*, CNN (Jan. 31, 2011), [http://articles.cnn.com/2011-01-31/world/egypt.muslim.brotherhood\\_1\\_egypt-s-muslim-brotherhood-ayman-nour-protests?\\_s=PM:WORLD](http://articles.cnn.com/2011-01-31/world/egypt.muslim.brotherhood_1_egypt-s-muslim-brotherhood-ayman-nour-protests?_s=PM:WORLD); Michael Slackman, *Islamist Group is Rising Force in a New Egypt*, N.Y. TIMES, Mar. 24, 2011, at A1.

<sup>5</sup> See *The Global Fallout from the Middle East Crisis*, BUS. STANDARD (Mar. 14, 2011, 6:44 AM), <http://www.business-standard.com/india/news/the-global-fallout-frommiddle-east-crisis/428442/>.

<sup>6</sup> The author uses Islamic Law in the sense of governmental application of the principles of the Shari’ah as applied to the nation’s system of justice. Islamic law and Shari’ah law are used interchangeably throughout this comment.

<sup>7</sup> See discussion *infra* Parts II.A-B.

<sup>8</sup> See discussion *infra* Part II.C.

<sup>9</sup> See discussion *infra* Part III.C.

<sup>10</sup> See discussion *infra* Parts III.A-B.

<sup>11</sup> See discussion *infra* Part IV.

This comment concludes that IP rights find substantial protection in Islamic nations.<sup>12</sup> Many Islamic law nations have implemented IP protection laws and have become members of the WTO.<sup>13</sup> Commentators concerned about the future of IP rights in Egypt can remain confident that changes in Egypt's governmental structure will not substantially affect its IP protection scheme.<sup>14</sup>

## II. IP, TRIPS, AND ISLAMIC LAW

To competently discuss IP rights under Islamic law, one must understand the nature of Islamic jurisprudence and the role of IP rights in international trade. This section explores the requirements imposed upon WTO member nations under the TRIPs agreement, the sources and schools of Islamic law, and the interaction of Islamic jurisprudence and IP protection. This section concludes with a discussion of the Islamic law of contracts and the role international treaties play in Islamic lawmaking.

### A. TRIPs

In 1986, in an extended negotiation known as the Uruguay Round, members of the international community considered creating a global trade organization.<sup>15</sup> The goal was to stabilize international trade by improving the established guidelines of the 1947 General Agreement on Tariffs and Trade (GATT 1947).<sup>16</sup> The Uruguay Round's conclusion in 1994 established the WTO along with several binding agreements for WTO member nations.<sup>17</sup> The TRIPs

---

<sup>12</sup> See *infra* Part V.

<sup>13</sup> See *Members and Observers*, WORLD TRADE ORGANIZATION, [http://wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last updated Jul. 23, 2008).

<sup>14</sup> See discussion *infra* Part IV.

<sup>15</sup> Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994) [hereinafter WTO Agreement], [http://www.wto.org/english/docs\\_e/legal\\_e/04-wto.pdf](http://www.wto.org/english/docs_e/legal_e/04-wto.pdf).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

agreement defines the minimal IP protection required of WTO members.<sup>18</sup>

The TRIPs agreement is split into seven parts.<sup>19</sup> Part I provides the basic principles of the agreement, requiring a nation to provide non-nationals with IP protection equal to that afforded nationals.<sup>20</sup> Part II provides specific protection requirements for copyrights, patents, trademarks, and trade secrets, among others.<sup>21</sup> Part III requires a signatory nation to implement domestic laws for the enforcement of IP right and remedies for IP infringement.<sup>22</sup> Parts IV through VII discuss IP related procedures, dispute resolution, and other signatory arrangements.<sup>23</sup>

Specifically, the TRIPs agreement requires that copyright protection be extended to literary and artistic works in all forms, including books, pamphlets, lectures, musical compilations, choreographic works, drawings, paintings, sculptures, architecture, and maps.<sup>24</sup> The agreement also adds computer programs to the list of protected copyright media and requires that the author be afforded protection for at least fifty years.<sup>25</sup> In addition, the TRIPs agreement requires that patent protection be available for products or processes that “are new, involve an inventive step and are capable of industrial application.”<sup>26</sup> However, the agreement permits a nation to exclude protection for certain medical methods and other inventions

---

<sup>18</sup> Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994) [hereinafter TRIPs Agreement], [http://www.wto.org/english/tratop\\_e/trips\\_e/t\\_agm0\\_e.htm](http://www.wto.org/english/tratop_e/trips_e/t_agm0_e.htm).

<sup>19</sup> *See id.*

<sup>20</sup> *Id.* arts. 1-8.

<sup>21</sup> *Id.* arts. 9-40.

<sup>22</sup> *Id.* arts. 41-61.

<sup>23</sup> TRIPs Agreement, *supra* note 18, arts. 62-73.

<sup>24</sup> *See id.* art. 9. Article nine implements the requirements of the Berne Convention, which protects the listed media. Berne Convention for the Protection of Literary and Artistic Works, Sept. 9, 1886, as last revised at Paris on July 24, 1971, 1161 U.N.T.S. 30 [hereinafter Berne Convention], [http://www.wipo.int/treaties/en/ip/berne/trtdocs\\_wo001.html](http://www.wipo.int/treaties/en/ip/berne/trtdocs_wo001.html).

<sup>25</sup> TRIPs Agreement, *supra* note 18, arts. 10, 12.

<sup>26</sup> *Id.* art. 27.

“necessary to protect *ordre public* or morality.”<sup>27</sup> Inventors must be afforded at least twenty years of patent protection under the TRIPs agreement.<sup>28</sup>

The TRIPs agreement also requires trademark protection be provided for signs and symbols “capable of distinguishing [] goods and services.”<sup>29</sup> Third parties may not use an identical or similar mark for identical or similar business activities if such use would cause a “likelihood of confusion” for consumers.<sup>30</sup> Adhering nations must create a system for trademark registration, and registration must be indefinitely renewable for terms of at least seven years.<sup>31</sup> Finally, the TRIPs agreement requires protection of trade secrets, defined as information (1) that is “not . . . generally known among or readily accessible to” competitors, (2) that “has commercial value because it is secret,” and (3) for which the holder of the information has taken steps to keep it secret.<sup>32</sup>

Some commentators criticize the TRIPs agreement for its adverse effect on developing countries.<sup>33</sup> Others<sup>34</sup> assert that IP protection in developing nations increases innovative activities and foreign investment, thereby benefiting developing economies.<sup>35</sup> What

---

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* art. 33.

<sup>29</sup> *Id.* art. 15.

<sup>30</sup> TRIPs Agreement, *supra* note 18, art. 16.

<sup>31</sup> *Id.* arts. 15, 18.

<sup>32</sup> *Id.* art. 39.

<sup>33</sup> *E.g.*, Sean Pager, *TRIPS: A Link Too Far? A Proposal for Procedural Restraints on Regulatory Linkage in the WTO*, 10 MARQ. INTEL. PROP. L. REV. 215, 221-22 (2006) (asserting that the WTO has over-exercised its authority by enacting affirmative regulations on member nations); Peter K. Yu, *TRIPS and Its Discontents*, 10 MARQ. INTEL. PROP. L. REV. 369, 370-71 (2006) (arguing that the TRIPs agreement needs reform to advance the agenda of developing nations).

<sup>34</sup> Supporters of the TRIPs agreement are, for the most part, pundits of developed nations that benefit from the international enforcement of IP rights.

<sup>35</sup> *See* Danielle Tully, *Prospects for Progress: The TRIPs Agreement and Developing Countries After the DOHA Conference*, 26 B.C. INT'L & COMP. L. REV. 129, 137 (2003).

is clear is that any nation wishing to benefit from membership in the WTO must enact IP laws in accordance with the TRIPs agreement.<sup>36</sup>

## B. Islamic Jurisprudence

This section explores the primary and secondary sources of Islamic law and the four schools of Sunni Islamic jurisprudence: Hanafi, Shafii, Maliki, and Hanbali.<sup>37</sup> The sources of Islamic law and the schools of jurisprudence require concurrent discussion because each school uses different terminology to reflect similar principles.<sup>38</sup> Accordingly, discussion of a source is difficult without also referencing the related school.

### 1. *Sources of Islamic Law*

The Qur'an and the Sunnah (and Hadith) are the primary sources of Islamic law.<sup>39</sup> The Qur'an is the word of Allah as spoken to the prophet Muhammad.<sup>40</sup> Because the Qur'an is the highest source of law under Shari'ah, no other source may contradict its principles.<sup>41</sup> The Sunnah is a recording of the manner and practice of the Prophet Muhammad's life and provides a guide for Muslim behavior.<sup>42</sup> Similarly, Hadith refers to the recorded sayings and opinions that the Prophet Muhammad verbalized during his life as well as his approval or disapproval of activities he witnessed.<sup>43</sup>

---

<sup>36</sup> See WTO Agreement, *supra* note 15; TRIPs Agreement, *supra* note 18.

<sup>37</sup> M. Charif Bassiouni & Gamal M. Badr, *The Shari'ah: Sources, Interpretation, and Rule-Making*, 1 UCLA J. ISLAMIC & NEAR E. L. 135, 142 n.18 (2002).

<sup>38</sup> See Irshad Abdal-Haqq, *Islamic Law: An Overview of its Origin and Elements*, 7 J. ISLAMIC L. & CULTURE 27, 57 (2002) (noting the different Arabic terms meaning interpretation in the public interest).

<sup>39</sup> Bassiouni & Badr, *supra* note 37, at 139.

<sup>40</sup> Abdal-Haqq, *supra* note 38, at 45.

<sup>41</sup> Silvia Beltrametti, *The Legality of Intellectual Property Rights under Islamic Law*, in THE PRAGUE YEARBOOK OF COMPARATIVE LAW 2009 55, 59 (Mach, T. et al. eds., 2010), <http://www.digitalislam.eu/article.do?articleId=2729>.

<sup>42</sup> *Id.* at 60.

<sup>43</sup> Abdal-Haqq, *supra* note 38, at 46-47.

Islamic scholars use the Sunnah and Hadith in combination to provide the second primary source of Shari'ah law.<sup>44</sup>

Where the principles of the Qur'an and Sunnah do not adequately adjudicate a legal issue, Islamic scholars and jurists use Fiqh<sup>45</sup>—the process of deducing and applying Shari'ah principles—to reach a legal determination.<sup>46</sup> The methodologies of Fiqh are numerous, and it is in the application of Fiqh that the several schools of Shari'ah diverge.<sup>47</sup> However, all four schools recognize the fundamental methodologies of Ijma and Qiyas: reasoning by consensus and analogy, respectively.<sup>48</sup>

Ijma is a consensus regarding the interpretation or application of Shari'ah.<sup>49</sup> Where Islamic scholars or members of the community reach a consensus regarding a legal issue, their interpretation receives deference for future generations.<sup>50</sup> This legal principle is not dissimilar to *stare decisis*<sup>51</sup> under American common law. All schools of Shari'ah recognize the consensus of the Sahaba (followers of the Prophet Muhammad); however, not all schools recognize the consensus of scholars from later eras.<sup>52</sup>

Qiyas is reasoning by analogy.<sup>53</sup> Each individual necessarily reasons by analogy in reaching a consensus.<sup>54</sup> Because Ijma represents

---

<sup>44</sup> *Id.* at 47.

<sup>45</sup> This term can also be used in reference to the collective body of laws arising from Fiqh. *Id.* at 36. However, for the purposes of this comment, Fiqh is used in reference to the method of reasoning.

<sup>46</sup> *Id.* at 36.

<sup>47</sup> *See id.* at 54-58; Bassiouni & Badr, *supra* note 37, at 140-41.

<sup>48</sup> Abdal-Haqq, *supra* note 38, at 73.

<sup>49</sup> *Id.* at 54-55.

<sup>50</sup> *Id.*

<sup>51</sup> Latin in origin, *stare decisis* means “to stand by things decided.” BLACK’S LAW DICTIONARY 1537 (9th ed. 2009). The legal doctrine in American common law requires judges to follow the precedent set by previous courts. *Id.* *Stare decisis* helps to ensure that society can rely on court decisions to guide future behavior, an important aspect of a common law legal system. *See id.*

<sup>52</sup> Abdal-Haqq, *supra* note 38, at 55-56.

<sup>53</sup> *Id.* at 56.



the consensus of several individuals reasoning by analogy, Islamic scholars grant Ijma greater authority in the hierarchy of Fiqh methodology.<sup>55</sup> The schools of jurisprudence differ in the level of authority provided by Qiyas as well as their willingness to engage in the methodology.<sup>56</sup>

Although there are numerous other Fiqh methodologies,<sup>57</sup> this comment additionally considers only Istislah. The term used to represent this methodology varies by school,<sup>58</sup> but the principle invoked is interpretation in the public interest.<sup>59</sup> Like public policy considerations in American common law, Islamic jurists use Istislah to establish legal doctrines and reach legal determinations where the other methodologies fall short.<sup>60</sup>

## 2. *Schools of Islamic Law*

The four Sunni<sup>61</sup> schools of Islamic jurisprudence—each named after the founding scholar of its methodological principles<sup>62</sup>—are Hanbali, Shafii, Maliki, and Hanafi.<sup>63</sup> Each school differs in its application of Fiqh, either by recognizing different doctrines, by

---

<sup>54</sup> All secondary sources provide legal principles in the absence of primary source authority. In reaching a consensus, therefore, each individual uses an analogy to a primary source principle and agrees on the legal result. *See id.* at 56.

<sup>55</sup> *Id.*

<sup>56</sup> For example, Hanbali scholars employ Qiyas only as a last resort. *Id.* at 73.

<sup>57</sup> For a discussion of additional Fiqh methods such as Istihab—presumption of continuity, Urf—local custom, and Ijtihad—individual reasoning, see Abdal-Haqq, *supra* note 38, at 58-59.

<sup>58</sup> Istislah is known as Istihsan in the Hanafi School and Masalih Al-Mursalah in the Maliki School. *Id.* at 57.

<sup>59</sup> *Id.*

<sup>60</sup> Bassiouni & Badr, *supra* note 38, at 158-59.

<sup>61</sup> The Jafari School is an additional Shiite school of jurisprudence. Abdal-Haqq, *supra* note 38, at 74. Because the nations discussed herein are predominantly Sunni, this comment does not discuss the Shiite school.

<sup>62</sup> *Id.* at 67-68.

<sup>63</sup> Bassiouni & Badr, *supra* note 37, at 142 n.18.

giving greater or lesser authority to them, or by applying them differently.<sup>64</sup>

Hanbali is the school from which Saudi scholars base their system of methodology and reasoning.<sup>65</sup> The Hanbali School uses a more literal interpretation of the primary sources.<sup>66</sup> Additionally, Hanbali scholars recognize Ijma (consensus) only of the Sahaba<sup>67</sup> and refuse to apply Ijma to subsequent eras because of the divergence of thought.<sup>68</sup> Finally, Hanbali scholars seldom undertake Istislah and resort to Qiyas only as a last resort.<sup>69</sup>

The Shafii School is the predominant school in Egypt and throughout the western regions of the Middle East.<sup>70</sup> Shafii, the school's founder, is credited with the initial "systemiz[ation] of the fundamental principles of Fiqh."<sup>71</sup> Shafii scholars entirely reject Istislah and undertake Qiyas only to the extent a legitimate analogy can be drawn.<sup>72</sup> Shafii scholars accept Ijma of the Sahaba as well as other eras, separating themselves from Hanbali scholars.<sup>73</sup>

Many commentators regard the Maliki School as the most moderate of the four schools because it permits methods of interpretation beyond those of the other three.<sup>74</sup> In interpreting Shari'ah, Maliki scholars place special emphasis on the historical custom and practices of the Medina<sup>75</sup> people who lived among the Prophet Muhammad during the final ten years of his life.<sup>76</sup> In fact,

---

<sup>64</sup> Abdal-Haqq, *supra* note 38, at 70-75.

<sup>65</sup> *Id.* at 72.

<sup>66</sup> Beltrametti, *supra* note 41, at 63.

<sup>67</sup> The Sahaba were the followers of the Prophet Muhammad. Abdal-Haqq, *supra* note 38, at 55.

<sup>68</sup> *Id.* at 73.

<sup>69</sup> *Id.* at 72-73.

<sup>70</sup> *Id.* at 71.

<sup>71</sup> *Id.*

<sup>72</sup> Abdal-Haqq, *supra* note 38, at 72.

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 71.

<sup>75</sup> Medina is a city in what is now Saudi Arabia. It is the center of the Maliki School and was the home of the Prophet Muhammad for the final ten years of his life. *Id.* at 70-71.

<sup>76</sup> *Id.*

Maliki scholars place those customs above Ijma, Qiyas, and Istislah on the Fiqh hierarchy.<sup>77</sup> The Maliki School is found predominantly throughout northern and western Africa, including parts of northern Egypt.<sup>78</sup>

Hanafi is the final Sunni school of Islamic jurisprudence. It is prevalent throughout the central region of the Middle East, including Jordan and some parts of Egypt.<sup>79</sup> Like Maliki scholars, Hanafi scholars interpret Shari'ah based on local customs and practices.<sup>80</sup> However, unlike Maliki scholars, Hanafi scholars consider custom only after interpretation through Ijma, Qiyas and Istislah fails to provide a suitable resolution.<sup>81</sup> The Hanafi School tends to be more moderate in its interpretation and application of Shari'ah.<sup>82</sup>

Because each of the four schools of Islamic jurisprudence interprets Shari'ah differently, laws in Islamic nations can vary substantially.<sup>83</sup> To appreciate these differences, it is helpful to understand the Islamic schools of jurisprudence and their varying applications of the Fiqh methodologies.

### C. Islamic Law's Effect on IP Protection

After the discussion of Islamic jurisprudence above, this Section briefly explores the effect of Shari'ah on IP laws and the

---

<sup>77</sup> Abdal-Haqq, *supra* note 38, at 71.

<sup>78</sup> *Id.* at 70-71; Beltrametti, *supra* note 41, at 62.

<sup>79</sup> *Id.* at 69; Beltrametti, *supra* note 41, at 62.

<sup>80</sup> *Id.* at 70.

<sup>81</sup> *Id.*

<sup>82</sup> See Beltrametti, *supra* note 41, at 63.

<sup>83</sup> For example, family law and criminal law issues are often dependent on the interpretation of Shari'ah employed in a region, as are human rights considerations. Compare Ferris K. Nesheiwat, *Honor Crimes in Jordan: Their Treatment Under Islamic and Jordanian Criminal Law*, 23 PENN. ST. INT'L L. REV. 251 (2004) (discussing certain Jordan laws relating to human rights), with Frank E. Vogel, *The Trial of Terrorists Under Classical Islamic Law*, 43 HARV. INT'L L.J. 53 (2002) (comparing differences in treatment of criminals in various Islamic nations); see also Katherine M. Weaver, *Women's Rights and Shari'a Law: A Workable Reality? An Examination of Possible International Human Rights Approaches Through The Continuing Reform of the Pakistani Hudood Ordinance*, 17 DUKE J. COMP. & INT'L L. 483 (2007) (discussing the plight of woman under the law in some Islamic nations).

requirements under the TRIPs agreement. Because the primary sources of Shari'ah do not explicitly support IP rights, an Islamic lawmaker must rely on Fiqh methodologies to justify IP protection.<sup>84</sup> There is substantial support for protecting personal property rights under Shari'ah; protecting IP rights follows naturally by analogy. Personal property rights derive from both the Sunnah<sup>85</sup> and the Qur'an: "And among His Signs Is . . . the quest that ye (Make for livelihood),"<sup>86</sup> recognizing the acquisition of property through personal undertakings.<sup>87</sup> Whether through research, composition, ingenuity or some combination thereof, IP, like personal property, derives from the efforts of the discoverer. The same justifications for tangible personal property rights therefore extend to intangible IP rights.<sup>88</sup>

Neither of the primary sources (the Qur'an and the Sunnah) limits its discussion of property to tangible property.<sup>89</sup> This fact is important because scholars employ Fiqh reasoning only for clarification when the primary sources are silent or ambiguous.<sup>90</sup> Some scholars interpret the silence of the primary sources on this issue to be a rejection of intangible property rights.<sup>91</sup> However, this interpretation conflicts with the generally accepted practice of

---

<sup>84</sup> See generally Steven D. Jamar, *The Protection of Intellectual Property Under Islamic Law*, 21 CAP. U. L. REV. 1079 (1992) (asserting that Shari'ah is silent on IP rights); Beltrametti, *supra* note 41 (arguing that Shari'ah supports IP rights, however does so through principles of Fiqh interpretation outside the primary sources).

<sup>85</sup> Beltrametti, *supra* note 41, at 65 (quoting Translation of Sahih Muslim, Book 7, The Book of Pilgrimage (Kitab Al-Hajj) ch. 17, No.2803) (asserting that recognition of personal property can be found in the recorded words of Muhammad: "[Y]our property are as sacred and inviolable as the sacredness of this day of yours.").

<sup>86</sup> Qur'an, 30:23.

<sup>87</sup> See Jamar, *supra* note 84, at 1083 ("The act of making unproductive land productive, of using something unused, creates ownership.").

<sup>88</sup> See *id.* at 1086 (arguing that, at worst, Islamic jurisprudence is silent on protecting IP, and IP rights may be specifically supported through the methodologies of Shari'ah interpretation); see generally Beltrametti, *supra* note 41 (exploring the relationship between IP law and Shari'ah).

<sup>89</sup> See Qur'an, 30:23; Jamar, *supra* note 84, at 1083; Beltrametti, *supra* note 41, at 65-66.

<sup>90</sup> Bassiouni & Badr, *supra* note 37, at 140.

<sup>91</sup> See Jamar, *supra* note 84, at 1085.

applying Fiqh to “fill in the gaps” left by the primary sources.<sup>92</sup> Drawing an analogy between tangible and intangible property is consistent with accepted methods of Shari’ah interpretation.<sup>93</sup>

Certain schools of Islamic jurisprudence are more likely to draw such an analogy.<sup>94</sup> Scholars of the Hanbali and Shafii Schools disfavor Qiyas (reasoning by analogy) and instead prefer a literal translation of the primary sources.<sup>95</sup> By contrast, scholars of the Maliki and Hanafi Schools apply Qiyas more liberally and are likely to accept IP as analogous to personal property.<sup>96</sup> Support for IP laws may therefore depend on the prevailing practice of the region, at least insofar as support depends upon interpretation through Qiyas.

Istislah (public interest) further supports protecting IP rights. There are significant benefits, both economic and societal, in providing IP protection.<sup>97</sup> Recognizing IP rights allows innovators to profit from their ingenuity.<sup>98</sup> The financial benefits encourage further innovation and technological advances,<sup>99</sup> in turn improving quality of life.<sup>100</sup>

---

<sup>92</sup> *Id.* at 1082.

<sup>93</sup> Note that there is some support in historical Islamic jurisprudence for recognizing intangible property. *Id.* at 1085 (“[O]ne does not amputate the hand of a thief for stealing a book because the thief’s intention is not to steal the book as paper, but the ideas in the book . . . . [T]his particular rule is not Quranic, does not come from the traditions, is not based on consensus, and is not from the qiyas type of reasoning. That is, this rule comes from a commentary on the law written by a prominent jurist.”).

<sup>94</sup> See discussion *supra* Part II.B.2.

<sup>95</sup> See Abdal-Haq, *supra* note 38, at 69-74.

<sup>96</sup> See *id.*

<sup>97</sup> See generally *Intellectual Capital and Intellectual Property*, KLM, INC. MGMT. CONSULTATION (Jul. 1, 2011), <http://klminc.com/intellectual-capital/intellectual-capital-and-intellectual-property> (discussing the assessment of the value of a business’s intellectual property).

<sup>98</sup> See *id.* (“On average, in successful organizations Brands, Intellectual Property, and other Intangible Assets are two to three times the value of physical assets.”).

<sup>99</sup> *Why Intellectual Property Matters*, U.S. DEP’T OF STATE, <http://www.state.gov/e/eb/tpp/ipe/why/index.htm> (last visited Oct. 30, 2012).

<sup>100</sup> *Id.*

Some scholars argue that IP protection harms the public interest. “If public interest is drawn too broadly and too powerfully, it can be [used] to remove protections for IP on the grounds that the whole society has need of or could benefit by unrestricted use of the item.”<sup>101</sup> Pharmaceutical patents present the most obvious support for this proposition.

The owner of a pharmaceutical patent has a monopoly over the medication’s production.<sup>102</sup> With complete control over production, the patent owner can manipulate both the price and supply of the medication. Such manipulation can result in high prices and limited supply, which together harm public health.<sup>103</sup> Accordingly, developing countries often advocate against pharmaceutical patent protection.<sup>104</sup> In response, many developed countries have argued that pharmaceutical patents incentivize drug development, improving health care overall.<sup>105</sup>

Furthering the pharmaceutical patent debate’s importance is the WTO’s requirement under the TRIPs agreement that member nations enact laws protecting pharmaceutical patents.<sup>106</sup> If Islamic law

---

<sup>101</sup> Jamar, *supra* note 84, at 1090-91.

<sup>102</sup> TRIPs Agreement, *supra* note 18, art. 28 (“A patent shall confer on its owner the following *exclusive* rights . . . to prevent third parties not having the owner’s consent from the acts of: making, using, offering for sale, [or] selling . . . [the patented] product.”).

<sup>103</sup> For example, the petitioning of Pfizer Inc. to reduce the price of its AIDS treatment drug Diflucan for use in high-risk, poor countries has resulted in about forty-seven percent of those infected receiving treatment. See Kate Kelland, *HIV Numbers Hit New High as AIDS Drugs Save Lives*, REUTERS (Nov. 21, 2011, 6:21 AM), <http://www.reuters.com/article/2011/11/21/us-aids-global-unaid-idUSTRE7AK0KX20111121>.

<sup>104</sup> See Jonathan Lynn, *Developing Countries Form Intellectual Property Group*, REUTERS (Apr. 26, 2010, 10:11 AM), <http://in.reuters.com/article/2010/04/26/idINIndia-48011820100426> (reporting the dissatisfaction of developing countries with many IP schemes because they “deprive poor people of access to essential medicines”).

<sup>105</sup> See *id.* (noting the assertion by developed countries that “strong [IP] rights are needed to encourage invention”).

<sup>106</sup> TRIPs Agreement, *supra* note 18, art. 70 (requiring laws enacting “patent protection for pharmaceutical and agricultural chemical products commensurate with [the member nation’s] obligations under Article 27”); *but cf.* TRIPs Agreement, *supra* note 18, art. 27 (“Members may exclude from patentability

prohibits pharmaceutical patent protection, Islamic nations would be ineligible for WTO membership.<sup>107</sup> Due to these concerns, WTO members are currently engaged in negotiations concerning pharmaceutical patent protection requirements under the TRIPs agreement.<sup>108</sup> To date, the WTO has not reached a resolution.<sup>109</sup>

Indeed, the implications of this debate on Islamic nations could be severe. If lawmakers employing *Istislah* believe pharmaceutical patent protection harms the public interest, they may refuse to accept the TRIPs agreement<sup>110</sup> and reject WTO membership.<sup>111</sup> This result is surprising given the reputation of moderation enjoyed by Shari'ah scholars willing to engage in *Istislah* in comparison to their unwilling counterparts.<sup>112</sup>

Scholars of the Shafii and Hanbali Schools rarely engage in *Istislah*;<sup>113</sup> in fact, Shafii Scholars outright reject the methodology.<sup>114</sup> In part because of their reluctance to employ *Istislah*, many commentators believe the Shafii and Hanbali Schools to be more traditionalist than the Maliki and Hanafi Schools.<sup>115</sup> However, lawmakers guided by the Shafii and Hanbali Schools who disfavor

---

inventions, the prevention within their territory of the commercial exploitation of which is necessary to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment, provided that such exclusion is not made merely because the exploitation is prohibited by their law.”).

<sup>107</sup> If a nation refuses to implement IP protection, they cannot adopt the TRIPs agreement and are therefore ineligible for WTO membership. *See supra* Part II.A.

<sup>108</sup> The Doha Round, or Doha Development Agenda, is designed to address the concerns of developing WTO members. *See The Doha Round*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm#development](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm#development) (last visited Mar. 22, 2013).

<sup>109</sup> *See* Paige McClanahan, *Doha Round Trade Talks – Explainer*, GUARDIAN (Sept. 3, 2012, 5:17 AM), <http://www.guardian.co.uk/global-development/2012/sep/03/doha-round-trade-talks-explainer>.

<sup>110</sup> *See* TRIPs Agreement, *supra* note 18, art. 70 (requiring a WTO member nation to protect pharmaceutical patents).

<sup>111</sup> *See* discussion *supra* Part II.A.

<sup>112</sup> *See* Abdal-Haqq, *supra* note 38, at 71; Beltrametti, *supra* note 41, at 63.

<sup>113</sup> Abdal-Haqq, *supra* note 38, at 72-73.

<sup>114</sup> *Id.*

<sup>115</sup> *See id.* at 71; Beltrametti, *supra* note 41, at 63.

interpreting Shari'ah in the public interest will not encounter the pharmaceutical patent debate and will therefore have no compelling argument for rejecting IP rights.

Overall, Fiqh methodology tends to support recognizing IP rights. Nevertheless, Shari'ah law does not compel such recognition.<sup>116</sup> Islamic lawmakers might therefore reject the arguments supporting IP rights, leaving them to determine the wisdom of undertaking IP protection statutorily and without significant guidance from Shari'ah.

#### D. Contracting to Protect IP Rights

Many considerations will influence the decisions of Islamic lawmakers. These influences include international trade, where treaties with foreign nations can significantly benefit an Islamic nation's economy.<sup>117</sup> International treaties represent binding contractual agreements between two or more nations.<sup>118</sup>

Islamic law commands individuals to uphold their obligations under contractual agreements.<sup>119</sup> Likewise, Islamic nations must fulfill their contractual agreements.<sup>120</sup> In fact, the Qur'an explicitly compels practitioners to honor both contractual agreements<sup>121</sup> and treaties.<sup>122</sup> Therefore, if an Islamic nation enters an international agreement to

---

<sup>116</sup> See generally Jamar, *supra* note 84 (asserting that Shari'ah is silent on IP law); Beltrametti, *supra* note 41 (arguing that Shari'ah supports IP law, however does so through principles of interpretation outside the primary sources).

<sup>117</sup> See, e.g., Jordan: GDP (Purchase Power Parity), INDEX MUNDI, <http://www.indexmundi.com/g/g.aspx?c=jo&v=65> (last visited Oct. 30, 2012) (stating that Jordan's GDP has more than doubled since 1999, which is the same period Jordan began reforms in IP law, joined the WTO, and entered the US-Jordan FTA).

<sup>118</sup> Frederick L. Kirgis, *Treaties as Binding International Obligation*, AM. SOC'Y OF INT'L LAW (May 1997), <http://www.asil.org/insight9.cfm>.

<sup>119</sup> Qur'an 5:1.

<sup>120</sup> Jamar, *supra* note 84, at 1087.

<sup>121</sup> Qur'an 5:1 ("O ye who believe! Fulfill (all) obligations.").

<sup>122</sup> Qur'an 9:4 ("(But the treaties are) not dissolved with those Pagans with whom ye have entered into alliance and who have not subsequently failed you in aught, nor aided any one against you. So fulfill your engagements with them to the end of their term: for Allah loveth the righteous.").



protect IP rights, it is obligated to enact laws in accordance with that treaty's provisions.

Shari'ah interpretation undoubtedly plays a significant role in the legal decisions of any Islamic nation. Lawmakers may differ with respect to Fiqh methodologies and may debate whether Shari'ah supports IP protection.<sup>123</sup> However, there is little, if any, support for prohibiting IP protection.<sup>124</sup> If an Islamic nation contracts to protect IP rights through an international treaty or some other agreement, it must fulfill its contractual obligations.<sup>125</sup>

### III. IP UNDER ISLAMIC LAW: JORDAN, SAUDI ARABIA, AND PRE-REVOLUTION EGYPT

Shari'ah interpretation varies considerably among Islamic jurists.<sup>126</sup> Consequently, Islamic lawmaking can be unpredictable. This section considers the effects of two separate implementations of Shari'ah: the secular approach, taken in the Hashemite Kingdom of Jordan (Jordan), and the traditionalist approach, taken in the Kingdom of Saudi Arabia (Saudi Arabia). Additionally, this section reviews IP law in Egypt under the Mubarak regime and sets the stage for a discussion on the future of IP protection in Egypt.

#### A. IP Protection in the Hashemite Kingdom of Jordan

By enacting new laws and regulations, Jordan has substantially expanded its IP protection over the past fifteen years.<sup>127</sup> As a result, IP rights now find significant protection in the Hashemite kingdom.

---

<sup>123</sup> See discussion *supra* Parts II.B-C.

<sup>124</sup> See generally Beltrametti, *supra* note 41; Abdal-Haqq, *supra* note 38; Jamar, *supra* note 84.

<sup>125</sup> See *infra* Part III.C.

<sup>126</sup> See discussion *supra* Part II.B.2.

<sup>127</sup> E.g., Law No. 9 of 2006 (Trade Names), *Al-Jarida Al-Rasmiya*, 2 Feb. 2006 (Jordan); Law No. 9 of 2005 (Amending the Copyright Protection Law), *Al-Jarida Al-Rasmiya*, 21 Feb. 2005 (Jordan); Law No. 28 of 2007 (Amending the Patents Law), *Al-Jarida Al-Rasmiya*, 31 Mar. 2007 (Jordan). Each of these laws can be found at <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

Jordan's legal system combines Islamic law with a civil code adopted from and similar to many European countries.<sup>128</sup> The Jordanian Constitution of 1953 establishes "an independent sovereign Arab State" and a "parliamentary [system] with a hereditary monarchy."<sup>129</sup> Although the Constitution adopts Islam as the state religion,<sup>130</sup> Article 14 provides for freedom of religion.<sup>131</sup> However, this provision is limited to the "exercise of all forms of worship and religious rites in accordance with the customs observed in the Kingdom, unless such exercise is inconsistent with public order or morality."<sup>132</sup> Despite the constitutional declaration of religious tolerance, Jordan prohibits conversion from Islam and provides that the king must be a member of the Islamic faith.<sup>133</sup> In effect, Islam remains a substantial influence on Jordan's legal system.

Given Islam's influence, Jordan's interpretation of Shari'ah is critical to its implementation of IP protection. As discussed previously, Jordanian lawmakers predominantly follow the Hanafi School of Shari'ah interpretation.<sup>134</sup> Hanafi scholars' emphasis on Qiyas (analogy) and Istislah (public interest) provide significant support for IP rights.<sup>135</sup> An array of recently enacted Jordanian laws reflects this support. These laws protect patents,<sup>136</sup> copyrights,<sup>137</sup>

---

<sup>128</sup> See Abdal-Haqq, *supra* note 38, at 69.

<sup>129</sup> THE CONSTITUTION OF THE HASHEMITE KINGDOM OF JORDAN Jan. 8, 1952, art. 1, [hereinafter CONSTITUTION OF JORDAN], <http://www.wipo.int/wipolex/en/details.jsp?id=9789>.

<sup>130</sup> *Id.* art. 2.

<sup>131</sup> *Id.* art. 14.

<sup>132</sup> *Id.*

<sup>133</sup> *Id.* art. 28(e) ("No person shall ascend the Throne unless he is a Moslem . . ."); see also BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEPT OF STATE, JULY-DECEMBER, 2010 INTERNATIONAL RELIGIOUS FREEDOM REPORT (Jordan) (Sept. 13, 2011), [http://www.state.gov/j/drl/rls/irf/2010\\_5/168267.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168267.htm) ("[T]he government's application of Sharia infringes upon the religious rights and freedoms laid out in the constitution by prohibiting conversion from Islam and discriminating against religious minorities in some matters.").

<sup>134</sup> See *supra* Part II.B.2.

<sup>135</sup> See *supra* Part II.C.

<sup>136</sup> Law No. 32 of 1999 (Patents), *Al-Jarida Al-Rasmiya*, 20 Sept. 1999 (Jordan); Law No. 28 of 2007 (Amending the Patents Law), *Al-Jarida Al-Rasmiya*, 31 Mar. 2007 (Jordan). Each of these laws can be found at <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

trademarks,<sup>138</sup> trade names,<sup>139</sup> trade secrets,<sup>140</sup> plant varieties,<sup>141</sup> integrated circuits,<sup>142</sup> and industrial designs.<sup>143</sup>

Not surprisingly, Jordan's IP law reformation coincides with its entry into the WTO and its adoption of the TRIPs agreement.<sup>144</sup> Notably, the current patent statute protects pharmaceutical patents after its amendment in 2001.<sup>145</sup> In addition to WTO membership,

---

<sup>137</sup> Law No. 22 of 1992 (Protection of Copyright and its Amendments) *Al-Jarida Al-Rasmiya*, 19 Mar. 1992 (Jordan); Law No. 88 of 2003 (Amending the Copyright Protection Law), *Al-Jarida Al-Rasmiya*, 30 Sept. 2003 (Jordan); Law No. 8 of 2005 (Amending the Copyright Protection Law), *Al-Jarida Al-Rasmiya*, 21 Feb. 2005 (Jordan); Law No. 9 of 2005 (Amending the Copyright Protection Law), *Al-Jarida Al-Rasmiya*, 21 Feb. 2005 (Jordan). Each of these laws can be found at <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

<sup>138</sup> Law No. 33 of 1952 (Trademarks), *Al-Jarida Al-Rasmiya*, 20 May 1952 (Jordan); Law No. 19 of 1953 (Marks of Goods with its Amendments), *Al-Jarida Al-Rasmiya*, 16 Feb. 1953 (Jordan); Law No. 34 of 1999 (Amending the Trademarks Law), *Al-Jarida Al-Rasmiya*, 22 Sept. 1999 (Jordan); Law No. 29 of 2007 (Amending the Trademarks Law), *Al-Jarida Al-Rasmiya*, 31 Mar. 2007 (Jordan); Law No. 15 of 2008 (Amending the Trademarks Law), *Al-Jarida Al-Rasmiya*, 11 Mar. 2008 (Jordan). Each of these laws can be found at <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

<sup>139</sup> Law No. 9 of 2006 (Trade Names), *Al-Jarida Al-Rasmiya*, 2 Feb. 2006 (Jordan), <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

<sup>140</sup> Law No. 15 of 2000 (Unfair Competition and Trade Secrets), *Al-Jarida Al-Rasmiya*, 2 May 2000 (Jordan), <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

<sup>141</sup> Law No. 24 of 2000 (Protection of New Varieties of Plants), *Al-Jarida Al-Rasmiya*, 11 June 2000 (Jordan), <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

<sup>142</sup> Law No. 10 of 2000 (Protection of Layout-Designs of Integrated Circuits), *Al-Jarida Al-Rasmiya*, 14 Feb 2000 (Jordan), <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

<sup>143</sup> Law No. 14 of 2000 (Industrial Designs and Models), *Al-Jarida Al-Rasmiya*, 24 Feb. 2000 (Jordan), <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

<sup>144</sup> *Members and Observers*, WORLD TRADE ORG., [http://wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last updated Jul. 23, 2008).

<sup>145</sup> Temporary Law No. 71 of 2001 (Amending Patents Law), *Al-Jarida Al-Rasmiya*, 9 Oct. 2001 (Jordan), <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

Jordan signed a bilateral Free Trade Agreement with the United States<sup>146</sup> (US-Jordan FTA) in 2000.<sup>147</sup>

Jordan's recent ingress into the international trade arena coincides with the rise of King Abdullah II (Abdullah) in 1999.<sup>148</sup> Jordan's GDP has more than doubled from sixteen billion in 1999 to an estimated thirty-four billion in 2010, reflecting economic progress as a result of the Abdullah administration's secular approach to international politics and trade.<sup>149</sup> Assuming the Abdullah administration retains power, Jordan's secular approach to IP protection will likely continue.<sup>150</sup>

Jordan's recently enacted legislation reflects lawmakers' belief that Islamic law supports IP rights.<sup>151</sup> Further demonstrating this belief, Jordanian lawmakers have adopted a number of IP-related international treaties,<sup>152</sup> including the WIPO Copyright Treaty,<sup>153</sup> the Berne Convention,<sup>154</sup> and the Paris Convention.<sup>155</sup>

---

<sup>146</sup> Agreement Between the United States of America and the Hashemite Kingdom of Jordan on the Establishment of a Free Trade Area, U.S.-Jordan, Oct. 4, 2000, 41 I.L.M. 63 [hereinafter USJ FTA], [http://tcc.export.gov/Trade\\_Agreements/All\\_Trade\\_Agreements/exp\\_005607.asp](http://tcc.export.gov/Trade_Agreements/All_Trade_Agreements/exp_005607.asp).

<sup>147</sup> Mohammad El Said, *Jordan*, in INTERNATIONAL ENCYCLOPEDIA OF LAWS, 4 INTELLECTUAL PROPERTY, Jordan-1, Jordan-24 (Roger Blanpain & Hendrick Vanhees eds., 2005).

<sup>148</sup> *Id.* at 23.

<sup>149</sup> *Jordan: GDP (Purchase Power Parity)*, INDEX MUNDI, <http://www.indexmundi.com/g/g.aspx?c=jo&v=65> (last visited Oct. 30, 2012).

<sup>150</sup> See generally Ranya Kadri & Ethan Bronner, *Government of Jordan is Dismissed by the King*, N.Y. TIMES, Oct. 18, 2011, at A8, <http://www.nytimes.com/2011/10/18/world/middleeast/king-abdullah-ii-of-jordan-fires-his-government.html> (facing political pressure and accusations of slowing political change, King Abdullah II fired his prime minister and members of his administration).

<sup>151</sup> E.g., Law No. 28 of 2007 (Amending the Patents Law), *Al-Jarida Al-Rasmiya*, 31 Mar. 2007 (Jordan); Law No. 9 of 2005 (Amending the Copyright Protection Law), *Al-Jarida Al-Rasmiya*, 21 Feb. 2005 (Jordan); Law No. 15 of 2008 (Amending the Trademarks Law), *Al-Jarida Al-Rasmiya*, 11 Mar. 2008 (Jordan). Each of these laws can be found at <http://www.wipo.int/wipolex/en/profile.jsp?code=JO>.

<sup>152</sup> See *Jordan: IP Laws and Treaties*, WORLD INTELL. PROP. ORG., <http://www.wipo.int/wipolex/en/profile.jsp?code=JO> (last updated Aug. 15, 2011).

The Jordanian government also endorsed IP rights by undertaking the US-Jordan FTA.<sup>156</sup> Article 4.3 of the US-Jordan FTA requires that each state must provide IP protection “no less favorable” than the protection provided to “its own nationals.”<sup>157</sup> In addition, Articles 4.24 and 4.25 encourage the enforcement of IP rights against infringers from either country by awarding monetary damages “sufficiently high to deter future acts of infringement.”<sup>158</sup>

Finally, contemporaneous to the US-Jordan FTA, both the U.S. government and the Jordanian government signed an important *Memorandum of Understanding* (MOU).<sup>159</sup> The MOU begins by stating:

The Government of the United States of America . . . and the Government of the Hashemite Kingdom of Jordan . . . *recognizing the need to promote adequate and effective protection of intellectual property rights*, to provide enhanced intellectual property protection to account for the latest technological developments, and to promote greater efficiency and transparency in the administration of intellectual property systems in order to strengthen the international trading system; *Agree . . .*<sup>160</sup>

This language unequivocally reflects Jordan’s recognition of IP rights. Because the Qur’an commands adherence to treaties and

---

<sup>153</sup> WIPO Copyright Treaty, Dec. 20, 1996, 36 I.L.M. 65 (1997), [http://www.wipo.int/treaties/en/ip/wct/pdf/trtdocs\\_wo033.pdf](http://www.wipo.int/treaties/en/ip/wct/pdf/trtdocs_wo033.pdf).

<sup>154</sup> Berne Convention, *supra* note 24.

<sup>155</sup> Paris Convention for the Protection of Industrial Property, as last revised at the Stockholm Revision Conference, Jul. 14, 1967, 21 U.S.T. 1583, 828 U.N.T.S. 305, [http://www.wipo.int/treaties/en/ip/paris/pdf/trtdocs\\_wo020.pdf](http://www.wipo.int/treaties/en/ip/paris/pdf/trtdocs_wo020.pdf).

<sup>156</sup> USJ FTA, *supra* note 146.

<sup>157</sup> *Id.* art. 4.3.

<sup>158</sup> *Id.* art. 4.24-4.25.

<sup>159</sup> Memorandum of Understanding on Issues Related to the Protection of Intellectual Property Rights Under the Agreement Between the United States and Jordan on the Establishment of a Free Trade Area, U.S.-Jordan, Oct. 24, 2000 [hereinafter IP MOU], [http://www.ustr.gov/sites/default/files/uploads/agreements/fta/jordan/asset\\_upload\\_file120\\_8462.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/jordan/asset_upload_file120_8462.pdf).

<sup>160</sup> *Id.* (second emphasis added).

contractual agreements, this agreement compels the Jordan government to protect IP rights.<sup>161</sup>

Given Jordan's secular implementation of Islamic law, it is not surprising to find significant protection for IP rights. The prevalence of Hanafi Scholars has likely contributed to Jordan's secular approach, and there is little reason to expect any change in the near future considering the continued surge in Jordan's economy. As will be discussed, the adoption of a similarly secular approach in post-revolution Egypt would likely benefit its economy and its citizens.

## B. IP Protection in the Kingdom of Saudi Arabia

Unlike Jordan, many commentators view Saudi Arabia as a fundamentalist government because of its substantial lack of progress with respect to human rights.<sup>162</sup> According to the Saudi Basic Law, "The state protects human rights *in accordance with the Islamic Shari'ah*."<sup>163</sup> Consequently, one might expect the fundamentalist Saudi regime to be hesitant to implement IP protection. Nevertheless, Saudi Arabia has passed numerous IP statutes in the last decade.<sup>164</sup> Although Saudi Arabia has failed to progress significantly in the area

---

<sup>161</sup> See discussion *supra* Part II.C.

<sup>162</sup> See, e.g., *Saudi Arabia Human Rights*, AMNESTY INT'L, <http://www.amnestyusa.org/our-work/countries/middle-east-and-north-africa/saudi-arabia?id=1011230> (last visited Oct. 30, 2012); BUREAU OF DEMOCRACY, HUMAN RIGHTS, AND LABOR, U.S. DEP'T OF STATE, JULY-DECEMBER, 2010 INTERNATIONAL RELIGIOUS FREEDOM REPORT (Saudi Arabia) (Sept. 13, 2011) [hereinafter SA RF REPORT 2011], [http://www.state.gov/j/drl/rls/irf/2010\\_5/168275.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168275.htm).

<sup>163</sup> BASIC SYSTEM, Mar. 5, 1992, art. 26 (Saudi Arabia) [hereinafter SA BASIC LAW] (emphasis added), <http://www.wipo.int/wipolex/en/details.jsp?id=7973>. Because the Saudi Constitution is literally the Qur'an and Sunnah, the Saudi Basic Law acts as would a typical national constitution. *Id.* art. 1.

<sup>164</sup> See Law of Trade Names, *Umm al-Qura*, 20 Nov. 1999 (Saudi Arabia); Law of Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs, *Umm al-Qura*, 16 July 2004 (Saudi Arabia); Copyright Law, *Umm al-Qura*, 30 Aug. 2003 (Saudi Arabia); Law of Trademarks, *Umm al-Qura*, 7 Aug 2002 (Saudi Arabia) [hereinafter SA IP Laws]. Each of these laws can be found at <http://www.wipo.int/wipolex/en/profile.jsp?code=SA>.

of human rights,<sup>165</sup> the same is not true of its progress in international trade.

Today, Saudi Arabia remains as one of only three Middle Eastern nations that uses Shari’ah as the sole basis for its legal system.<sup>166</sup> Article 1 of the Saudi Basic Law states: “The Kingdom of Saudi Arabia is a sovereign Arab Islamic state with Islam as its religion; God’s book and the Sunnah of His Prophet . . . are its constitution.”<sup>167</sup> The Saudi Basic Law also states that the “[g]overnment in Saudi Arabia derives power from the Holy Qur’an and the Prophet’s tradition” and that the “Government . . . is based on the premise of justice, consultation, and equality in accordance with the Islamic Shari’ah.”<sup>168</sup> These examples, among others,<sup>169</sup> demonstrate the emphasis on Islamic law found in Saudi Arabia’s Basic Law. Accordingly, Islamic law is paramount to lawmaking in Saudi Arabia.

The Fiqh methodology employed by Hanbali scholars provides the basis for Saudi law.<sup>170</sup> Hanbali scholars place little emphasis on Istislah (public interest), and they undertake Qiyas (reasoning by analogy) only as a last resort when guidance cannot be found through the literal words of the primary sources.<sup>171</sup> As a result, Saudi lawmakers will most likely avoid significant use of Fiqh methodologies; instead, they will construct laws using the traditionalist view of Shari’ah interpretation.<sup>172</sup>

---

<sup>165</sup> See, e.g., AMNESTY INT’L, *supra* note 162; SA RF REPORT 2011, *supra* note 162.

<sup>166</sup> Abdal-Haqq, *supra* note 38, at 68. The other two nations that use Shari’ah law as the sole basis for their legal system are Sudan and Iran. *Id.*

<sup>167</sup> SA BASIC LAW, *supra* note 163, art. 1.

<sup>168</sup> *Id.* art. 7-8.

<sup>169</sup> For example, showing the government’s commitment to preserving Islamic ideals in its citizens, children “shall be brought up on the basis of the Islamic faith.” *Id.* art. 9; see also *id.* art. 14 (“[E]ducation will aim at instilling the Islamic faith in the younger generation.”).

<sup>170</sup> Abdal-Haqq, *supra* note 38, at 72.

<sup>171</sup> See *id.* at 72-73.

<sup>172</sup> The traditionalist view of Shari’ah interpretation looks less to Fiqh interpretation methodologies and more to the literal language of the Qur’an and Sunnah for guidance. See *supra* Part II.B.1.

Despite this traditionalist view, Saudi lawmakers have passed several laws protecting IP rights.<sup>173</sup> These laws indicate their belief that IP rights are consistent with Shari'ah without significant interpretation through Fiqh. Saudi laws protect copyrights,<sup>174</sup> trademarks,<sup>175</sup> trade names,<sup>176</sup> patents,<sup>177</sup> integrated circuits,<sup>178</sup> industrial designs,<sup>179</sup> and plant varieties.<sup>180</sup> Like Jordan, Saudi Arabia passed the majority of these laws shortly before joining the WTO in December 2005.<sup>181</sup> Saudi Arabia's willingness to adopt TRIPs, given its traditionalist reputation, indicates that Islamic law supports IP rights irrespective of the jurist's method of Shari'ah interpretation.

Notwithstanding Saudi Arabia's traditionalist reputation and its lack of progress on human rights issues,<sup>182</sup> lawmakers have provided substantial IP protection.<sup>183</sup> Although Saudi Arabia may not agree with Jordan's secular approach to Shari'ah,<sup>184</sup> both nations agree that Islamic law should protect IP rights.

---

<sup>173</sup> See SA IP Laws, *supra* note 164.

<sup>174</sup> Copyright Law, *Umm al-Qura*, 30 Aug. 2003 (Saudi Arabia), <http://www.wipo.int/wipolex/en/details.jsp?id=3593>.

<sup>175</sup> Law of Trademarks, *Umm al-Qura*, 7 Aug 2002 (Saudi Arabia), <http://www.wipo.int/wipolex/en/details.jsp?id=3595>.

<sup>176</sup> Law of Trade Names, *Umm al-Qura*, 20 Nov. 1999 (Saudi Arabia), <http://www.wipo.int/wipolex/en/details.jsp?id=7890>.

<sup>177</sup> Law of Patents, Layout-Designs of Integrated Circuits, Plant Varieties, and Industrial Designs, *Umm al-Qura*, 16 July 2004 (Saudi Arabia), <http://www.wipo.int/wipolex/en/details.jsp?id=3596>.

<sup>178</sup> *Id.*

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> See *Accession Status: Saudi Arabia*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/acc\\_e/a1\\_arabie\\_saoudite\\_e.htm](http://www.wto.org/english/thewto_e/acc_e/a1_arabie_saoudite_e.htm) (last visited Oct. 30, 2012).

<sup>182</sup> See, e.g., AMNESTY INT'L, *supra* note 162; SA RF REPORT 2011, *supra* note 162.

<sup>183</sup> See SA IP Laws, *supra* note 164.

<sup>184</sup> Compare Ferris K. Nesheiwat, *Honor Crimes in Jordan: Their Treatment Under Islamic and Jordanian Criminal Law*, 23 PENN ST. INT'L L. REV. 251 (2004) (discussing certain Jordan laws relating to human rights), with Frank E. Vogel, *The Trial of Terrorists Under Classical Islamic Law*, 43 HARV. INT'L L.J. 53 (2002) (considering certain Saudi laws and human rights implications); see also Katherine M. Weaver, *Women's Rights and Shari'a Law: A Workable Reality? An Examination of*



### C. IP Protection in Pre-Revolution Egypt

Since the Camp David accords and the peace treaty between Egypt and Israel in 1978,<sup>185</sup> Egypt has shown stability in an otherwise volatile region.<sup>186</sup> Moreover, Egypt has been a leader in the secular Islamic movement.<sup>187</sup> As the “Arab world’s first secular dictatorship,”<sup>188</sup> Egypt represented a significant shift toward tolerance and away from the traditionalist views many believe to be the primary source of Middle Eastern instability.<sup>189</sup> For example, Egypt was one of the first Middle Eastern members of the WTO<sup>190</sup> and has been a leading advocate for developing nations in the Doha Round of WTO negotiations.<sup>191</sup> With the departure of President Mubarak, Egypt’s role as a stable leader in the Middle East is now uncertain.

---

*Possible International Human Rights Approaches Through The Continuing Reform of the Pakistani Hudood Ordinance*, 17 DUKE J. COMP. & INT’L L. 483 (2007).

<sup>185</sup> In September 1978, U.S. President Jimmy Carter invited Israeli Prime Minister Begin and Egyptian President Anwar al-Sadat to Camp David for secret negotiations. As a result, Egypt and Israel have remained at peace for the last three decades. See *Camp David Accords*, ENCYCLOPEDIA BRITANNICA, <http://www.britannica.com/EBchecked/topic/91061/Camp-David-Accords> (last visited Oct. 30, 2012).

<sup>186</sup> See Jane Friedman, *Hosni Mubarak Brought Stability to Egypt, At a Price*, VOICE OF AM., <http://www.voanews.com/english/news/middle-east/Mubarak-Egyptys-Controversial-Former-Leader-115924004.html> (last updated Feb. 11, 2011) (reflecting on the Mubarak presidency and the stability of the Egypt-Israel peace treaty over the last three decades).

<sup>187</sup> See Kirkpatrick, *supra* note 1; see also Jamar, *supra* note 84, at 1080 (noting that Egypt’s IP laws have been adopted by many other Islamic nations).

<sup>188</sup> Kirkpatrick, *supra* note 1.

<sup>189</sup> See Mary Kate Cary, *Democracy Must be the Future of the Middle East*, US NEWS, Mar. 2, 2011, <http://www.usnews.com/opinion/articles/2011/03/02/democracy-must-be-the-future-of-the-middle-east> (noting that “violent extremism” is a “source[] of tension in middle eastern nations”); *Terrorism, Concerns about Extremism & Foreign Policy*, PEW RESEARCH CTR. (Aug. 30, 2011), <http://www.people-press.org/2011/08/30/section-6-terrorism-concerns-about-extremism-foreign-policy/> (discussing concerns about violent extremism in the Muslim American community).

<sup>190</sup> See *Egypt – Member Information*, WORLD TRADE ORG., [http://www.wto.org/english/thewto\\_e/countries\\_e/egypt\\_e.htm](http://www.wto.org/english/thewto_e/countries_e/egypt_e.htm) (last visited Oct. 30, 2012).

<sup>191</sup> See Lynn, *supra* note 104 (noting that Egypt is “coordinator” of developing countries’ intellectual property group).

Prior to the revolution, the Egyptian legal system combined Islamic law with a European style civil code.<sup>192</sup> Like Jordan's Constitution and Saudi Arabia's Basic Law, the Egyptian Constitution<sup>193</sup> established "Islam [as] the Religion of the State"<sup>194</sup> and declared "the principal source of legislation [to be] Islamic Jurisprudence."<sup>195</sup> Significantly, the Egyptian Constitution made "[a]ll citizens [] equal before the law"<sup>196</sup> with respect to "sex, ethnic origin, language, religion or creed"<sup>197</sup> and "guarantee[d] the freedom of belief and the freedom of practicing religious rights."<sup>198</sup> Such provisions are unusual for Islamic law constitutions<sup>199</sup> and reflect the secularist governing approach adopted in Egypt.

Shari'ah interpretation in Egypt derives primarily from Shafii scholars, although Hanafi and Maliki scholars have some influence.<sup>200</sup> Shafii scholars reject Istislah (public interest) and consider Qiyas (analogy) to be "the farthest legitimate extent" of Shari'ah interpretation permissible.<sup>201</sup> However, the more moderate Hanafi and Maliki Schools permit consideration of Istislah, and Egypt's legislative actions reflect this influence.<sup>202</sup>

---

<sup>192</sup> Hossam A. El Saghir, *Egypt*, in INTERNATIONAL ENCYCLOPEDIA OF LAWS, 3 INTELLECTUAL PROPERTY Egypt-1, Egypt-16 (Roger Blanpain & Hendrick Vanhees eds., 2009).

<sup>193</sup> Note that, throughout this section, the Egyptian Constitution, statutes, international treaties, and other agreements created under the former Egyptian government will be referenced. Although it will not be specified in each instance, any reference to governmental documents in this section should be understood as relating to the former Egyptian government, and not to the post-revolution government.

<sup>194</sup> CONSTITUTION OF THE ARAB REPUBLIC OF EGYPT, 11 Sept. 1971, *as amended*, May 22, 1980, May 25, 2005, Mar. 26, 2007, art. 2 [hereinafter CONSTITUTION OF EGYPT], [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=189854](http://www.wipo.int/wipolex/en/text.jsp?file_id=189854).

<sup>195</sup> *Id.*

<sup>196</sup> *Id.* art. 40.

<sup>197</sup> *Id.*

<sup>198</sup> *Id.* art. 46.

<sup>199</sup> *See supra* Parts III.A-B.

<sup>200</sup> *See* Abdal-Haqq, *supra* note 38, at 70-73.

<sup>201</sup> *Id.* at 72.

<sup>202</sup> *E.g.*, CONSTITUTION OF EGYPT, *supra* note 194, art. 2 (providing multiple clauses denoting considerations of public interest as well as considerations

Egypt began its IP protection scheme near the end of the 1800s, earlier than most nations in the region.<sup>203</sup> More recently, Egypt enacted a comprehensive IP statute that protects copyrights, trademarks, trade names, trade secrets, patents, integrated circuits, and plant varieties.<sup>204</sup> It is significant that Egypt had IP laws in place before any international agreement so required.<sup>205</sup> Egyptian lawmakers chose to protect IP independent of any contractual obligation, thereby showing that they “believed intellectual property to be compatible with Shari’ah.”<sup>206</sup>

Furthermore, Egypt is among the first Islamic nations to have joined the WTO<sup>207</sup> and has adopted several IP related international treaties.<sup>208</sup> Egypt’s adherence to TRIPs is especially significant given that Egyptian scholars are willing to engage in Istislah (public interest).<sup>209</sup> As discussed previously, the TRIPs agreement requires protecting pharmaceutical patents,<sup>210</sup> and some scholars argue that this protection is harmful to the public interest.<sup>211</sup> In effect, Egypt has

---

of the rights and privileges of the individual and public order and morality); Law No. 82 of 2002 (Law on the Protection of Intellectual Property Rights), *Al-Jarida Al-Rasmiyya*, 3 Jun. 2002 (Egypt), [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=126540](http://www.wipo.int/wipolex/en/text.jsp?file_id=126540) (noting the interests of public order and morality).

<sup>203</sup> Heba A. Raslan, *Shari’a and the Protection of Intellectual Property – The Example of Egypt*, 47 IDEA 497, 498 (2007).

<sup>204</sup> Law No. 82 of 2002 (Law on the Protection of Intellectual Property Rights), *Al-Jarida Al-Rasmiyya*, 3 Jun. 2002 (Egypt), [http://www.wipo.int/wipolex/en/text.jsp?file\\_id=126540](http://www.wipo.int/wipolex/en/text.jsp?file_id=126540). The statute consists of four books. Book one covers patents and integrated circuits; book two covers trademarks, trade names and trade secrets; book three covers copyrights; and book four covers plant varieties.

<sup>205</sup> Raslan, *supra* note 203, at 498.

<sup>206</sup> Chad M. Cullen, *Can TRIPs Live in Harmony with Islamic Law? An Investigation of the Relationship Between Intellectual Property and Islamic Law*, 14 SMU SCI. & TECH. L. REV. 45, 62 (2010).

<sup>207</sup> *Members and Observers*, WORLD TRADE ORG., [http://wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last updated Jul. 23, 2008).

<sup>208</sup> For a list of Egypt’s IP related multinational treaty agreements, see *Egypt: IP Laws and Treaties*, WORLD INTEL. PROP. ORG., <http://www.wipo.int/wipolex/en/profile.jsp?code=EG> (last updated July 2, 2012).

<sup>209</sup> Egyptian scholars are willing to engage in Istislah because of the influence of the Hanafi and Maliki Schools. See Abdal-Haqq, *supra* note 38, at 70-73.

<sup>210</sup> See *supra* Part II.C.

<sup>211</sup> See *supra* Part II.C.

rejected this argument, and its role as a leading nation in the Middle East makes this rejection quite influential.

In fact, Egypt had been a leading advocate on behalf of developing nations in the Doha Round of WTO negotiations,<sup>212</sup> where pharmaceutical patent protection is a principle concern.<sup>213</sup> Although Egypt disfavored pharmaceutical patent protection, lawmakers did not assert that such protection conflicted with Islamic law. Instead, Egypt enacted complying legislation and thereafter petitioned the WTO for a change in TRIPs requirements.<sup>214</sup> In essence, Egypt asserted that the benefits of IP protection outweigh the harm that might result to public health.<sup>215</sup> Through these actions, Egyptian lawmakers demonstrated their belief that *Istislah* does not forbid IP protection.

Like the Islamic nations considered previously, Egypt has asserted harmonization of IP protection and *Shari'ah* through its legal and political actions. Finding neither convincing theoretical support against IP rights nor a real world example of an Islamic nation rejecting them, Islamic law appears to support IP protection.

#### IV. THE FUTURE OF EGYPT

With new government comes change. Indeed, change is precisely what Egyptian citizens want, and rightly so.<sup>216</sup> However, not all change is for the better. This section discusses the potential changes coming to Egypt through a new democratically elected

---

<sup>212</sup> Lynn, *supra* note 104.

<sup>213</sup> See *The Doha Round*, WORLD TRADE ORG., [http://www.wto.org/english/tratop\\_e/dda\\_e/dda\\_e.htm#development](http://www.wto.org/english/tratop_e/dda_e/dda_e.htm#development) (last visited Oct. 30, 2012).

<sup>214</sup> See Lynn, *supra* note 104.

<sup>215</sup> See discussion *supra* Part II.C.

<sup>216</sup> The Mubarak regime's human rights violations against the Egyptian people are well documented. See Emily Loftis, *Mubarak's Human Rights Legacy*, MOTHER JONES (Feb. 1, 2011, 7:00 AM), <http://motherjones.com/mojo/2011/01/mubaraks-human-rights-record> (commenting on accusations of torture, police violence, and other human rights violations in Egypt); see also *Egypt: Impunity for Torture Fuels Days of Rage*, HUM. RTS. WATCH (Jan. 31, 2011), <http://www.hrw.org/news/2011/01/31/egypt-impunity-torture-fuels-days-rage> (asserting that human rights violations by the Mubarak administration fueled the revolution).

government and how different applications of Islamic law might affect Egyptian IP protection and international trade relations.

The traditional argument against IP rights begins by asserting that “the concept of ownership in Shari’a is confined to tangible objects only.”<sup>217</sup> This assertion is based on the idea that, because the primary sources (Qur’an and Sunnah) do not mention intangible property, Shari’ah does not support its recognition.<sup>218</sup> Such a construction essentially rejects Fiqh interpretation methodologies entirely.<sup>219</sup> Even the most traditionalist Shari’ah scholars rarely accept this extreme position.<sup>220</sup>

In the past, Egyptian lawmakers have demonstrated a willingness to engage in Fiqh primarily under the Shafii School of interpretation, with some influence from the Hanafi and Maliki Schools.<sup>221</sup> Because the same scholars continue to predominate in Egypt, there is no reason to expect any shift in the theology of Egyptian lawmakers causing the rejection of IP rights.

Although Shafii scholars are more traditional in their application of Fiqh reasoning, they have always accepted Qiyas (reasoning by analogy) as a legitimate interpretation method.<sup>222</sup> There is a clear analogy to be drawn between tangible and intangible property, especially because the Qur’an justifies property accumulation through individual undertaking.<sup>223</sup> Like tangible property, IP arises from such undertakings, making IP rights equally justified.

---

<sup>217</sup> Raslan, *supra* note 203, at 502 (quoting Mufti Taki Usmani, *Copyright According to Shariah*, ALBALAGH, <http://www.albalagh.net/qa/copyright.shtml> (last visited Oct. 30, 2012)).

<sup>218</sup> *See supra* Part II.C.

<sup>219</sup> *See supra* Part II.C.

<sup>220</sup> All schools of Shari’ah interpretation accept the fundamental Fiqh methodologies of Ijma (consensus) and Qiyas (analogy). Abdal-Haqq, *supra* note 38, at 73.

<sup>221</sup> *See supra* Part III.C.

<sup>222</sup> *See* Abdal-Haqq, *supra* note 38, at 72.

<sup>223</sup> The Qur’an recognizes accumulation of wealth and property through the efforts of the individual. Qur’an, 30:23 (“And among His Signs Is . . . the quest that ye (Make for livelihood).”).

A second argument against IP rights arises from the Shari'ah prohibition of gains disproportionate (and therefore dishonest) to the property holder's efforts.<sup>224</sup> Some scholars argue that although IP rights arise from personal efforts, they provide disproportionate wealth to undeserving persons.<sup>225</sup>

This argument ties in with another similar argument against IP rights: Shari'ah prohibits usury, or interest.<sup>226</sup> Some Islamic scholars view interest as unwarranted financial gain and argue that it is therefore prohibited.<sup>227</sup> These prohibitions derive from the main justification of property under Islamic law—that individuals should accumulate in wealth and property an amount proportionate to their efforts.<sup>228</sup>

Some traditionalist scholars therefore argue that Islamic law prohibits IP protection because the owners of IP rights often receive royalties far greater than their investment.<sup>229</sup> Additionally, these scholars argue that licensing fees are comparable to interest, and represent an unjustified markup, or usury.<sup>230</sup>

While such arguments may have found support in historical Islamic interpretation, they have proved far less useful in modern Islamic society.<sup>231</sup> An absolute ban on interest would render banking

---

<sup>224</sup> Qur'an 104:1-2 ("Woe to every (kind of) scandal-monger and backbiter, who pileth up wealth and layeth it by.").

<sup>225</sup> See Beltrametti, *supra* note 41, at 75; Amir H. Khoury, *Ancient and Islamic Sources of Intellectual Property Protection in the Middle East: A Focus on Trademarks*, 43 IDEA 151, 167 (2003).

<sup>226</sup> Qur'an 2:275 ("But Allah hath permitted trade and forbidden usury."); Qur'an 2:278 ("O ye who believe! Fear Allah, and give up what remains of your demand for usury, if ye are indeed believers.").

<sup>227</sup> See Beltrametti, *supra* note 41, at 75-76; Khoury, *supra* note 225, at 190-91.

<sup>228</sup> See Beltrametti, *supra* note 41, at 75-76; Jamar, *supra* note 84, at 1083; Khoury, *supra* note 225, at 168.

<sup>229</sup> See Beltrametti, *supra* note 41, at 75-76; Khoury, *supra* note 225, at 189.

<sup>230</sup> See Beltrametti, *supra* note 41, at 76; Khoury, *supra* note 225, at 191.

<sup>231</sup> See Beltrametti, *supra* note 41, at 86; see also Khoury, *supra* note 225, at 191 (asserting that Shari'ah principles supporting IP protection outweigh those rejecting it); Raslan, *supra* note 203, at 557 (asserting that Shari'ah principles and its main objectives support IP rights).

impracticable, and, as such, the Shari'ah prohibition of usury is normally limited to excessive interest.<sup>232</sup> Furthermore, the disproportionate gains argument represents a subjective determination, and rejecting IP rights entirely on such a basis is improbable at best. A more likely solution would be statutory limitations on royalties.

Today, neither moderate nor traditionalist Shari'ah scholars find much support for the outright rejection of IP rights.<sup>233</sup> The realities of modern society encourage IP protection.<sup>234</sup> The number of Islamic nations who have enacted IP protection legislation reflects this reality.<sup>235</sup> There is little room remaining in modern Islamic society for the type of literal interpretation that would preclude IP rights under Shari'ah.

Whatever the political nature of the new Egyptian government, lawmakers will most likely continue to protect IP rights. Egypt has historically been among the leaders in the secular Islamic movement,<sup>236</sup> which indicates the progressive mindset of many Egyptian citizens. With a populace that supports continued advancement in the global marketplace, an Islamic traditionalist government rejecting IP rights would be incompatible.

Moreover, Egypt will continue to protect IP rights because it must adhere to the international agreements of the previous government. Islamic law commands practitioners to fulfill their contractual obligations.<sup>237</sup> Even if the new Egyptian government

---

<sup>232</sup> See Beltrametti, *supra* note 41, at 76; Khoury, *supra* note 225, at 190; Raslan, *supra* note 203, at 531-32.

<sup>233</sup> See discussion *supra* Part III.

<sup>234</sup> It is generally accepted that IP protection provides incentive for innovation and is beneficial to a nation's economy. See *supra* Part II.C.

<sup>235</sup> Membership in the WTO requires ratification of TRIPs and IP protection laws; the current Islamic members of the WTO include Bangladesh, Egypt, The Gambia, Ghana, Jordan, Mauritania, Morocco, Nigeria, Oman, and Saudi Arabia. *Members and Observers*, WORLD TRADE ORG., [http://wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/org6\\_e.htm](http://wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm) (last updated Aug. 24, 2012).

<sup>236</sup> See Kirkpatrick, *supra* note 1; see also Jamar, *supra* note 84, at 1080 (noting Egypt's IP laws have been adopted by many other Islamic nations).

<sup>237</sup> See discussion *supra* Part II.C.

considered disregarding the obligations of its predecessor regime, Islamic law compels it otherwise.<sup>238</sup> International scholars and businesspersons can therefore rest assured that Egyptian IP protection will persevere.

Egypt's future as a stable, secular leader in the Middle East may be in doubt,<sup>239</sup> but the revolution's effect on IP rights and protections should be minimal. The Egyptian people seek progress in human rights and quality of life, and IP rights provide a vehicle for that progress.

### CONCLUSION

Historically, IP rights have contributed substantially to economic advancement.<sup>240</sup> The United States—the world's predominant economic power<sup>241</sup>—has enjoyed the benefits of IP protection since ratifying its Constitution in 1787.<sup>242</sup> After implementing similar policies, other nations have experienced similar

---

<sup>238</sup> See *supra* Part II.C; see also Qur'an 5:1 (requiring fulfillment of contractual obligations).

<sup>239</sup> For a discussion of the current political instability in Egypt, see *Egypt News – Revolution and Aftermath Chronology*, N.Y. TIMES, <http://topics.nytimes.com/top/news/international/countriesandterritories/egypt/index.html> (last updated Mar. 20, 2013).

<sup>240</sup> See generally Jeong-Yeon Lee & Edwin Mansfield, *Intellectual Property Protection and U.S. Foreign Direct Investment*, 78 REV. OF ECON. & STAT. 181 (1996) (analyzing the role a nation's IP protection plays in encouraging investment from U.S. businesses, thereby boosting economic growth).

<sup>241</sup> The International Monetary Fund ranks the U.S. nominal GDP in 2011 (the most recent statistics available) at approximately 15 trillion, more than double China's 7.3 trillion as the world's second largest economy. Data from the World Bank and Central Intelligence Agency show similar results. *List of Countries by GDP (Nominal)*, WIKIPEDIA.ORG, [http://en.wikipedia.org/wiki/List\\_of\\_countries\\_by\\_GDP\\_%28nominal%29](http://en.wikipedia.org/wiki/List_of_countries_by_GDP_%28nominal%29) (last modified Oct. 29, 2012).

<sup>242</sup> The U.S. Constitution specifically provides for patent and copyright protection. U.S. CONST. art. 1, § 8, cl. 8. The U.S. legislature has protected other forms of IP, such as trademarks, statutorily. *E.g.*, Lanham Act, 15 U.S.C. §§ 1051-1141 (1946).



economic gains.<sup>243</sup> The impact of innovation on economic prosperity is undisputable, and IP protection encourages this innovation.

The same economic interests inspire Islamic nations like Egypt to protect IP rights. Shari'ah principles have progressed over time, and few Islamic scholars now advocate against IP rights. Perhaps the words of Steven D. Jamar<sup>244</sup> reflect this progression best:

Regardless of whether Islamic law moves in the direction of modern reformist theoreticians or toward more fundamentalist traditionalists, there is no compelling reason to anticipate dramatic enhancement or reduction in the protections of intellectual property based solely on the desire to make them fit within the shari'a. Other political concerns may result in sweeping changes or a particular zealot's view of the proper interpretation of the Quran and the shari'a could result in dramatic changes, but such changes are not compelled by either traditional or modern understanding of the shari'a.<sup>245</sup>

Without a prohibition on IP rights arising from Islam, Egypt can continue IP protection and ride its revolution to economic prosperity and social equality, a vision that the Egyptian people yearn to experience.

---

<sup>243</sup> See COMM'N ON INTELL. PROP. RTS., INTEGRATING INTELLECTUAL PROPERTY RIGHTS AND DEVELOPMENT POLICY (2002), [http://www.iprcommission.org/papers/pdfs/final\\_report/CIPRfullfinal.pdf](http://www.iprcommission.org/papers/pdfs/final_report/CIPRfullfinal.pdf).

<sup>244</sup> Professor of Law and Associate Director of the Institute of Intellectual Property and Social Justice, Howard University School of Law.

<sup>245</sup> Jamar, *supra* note 84, at 1106.