

THE LEAGUE OF ARAB STATES AND THE PROTECTION OF  
HUMAN RIGHTS: A LEGAL ANALYSIS

A thesis submitted for the degree of Doctor of Philosophy

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## **Declaration**

I declare that the thesis is written by me and its contents, in full or in parts, have not been submitted to any other institute or university for the award of any degree.

## **Abstract**

The United Nations has created an abundance of human rights treaties and declarations over the decades to promote a culture of human rights and to set normative provisions of human rights standards for all states to follow. This broad effort is supplemented by the work of regional human rights organisations, which aim to ensure implementation of these fundamental precepts, and to enhance its work to suit its regional circumstances, offering a protective source of jurisprudence at the domestic level. One such organisation, which this thesis examines, is the Arab League. In critically examining the history and the work of the Arab League, the study highlights the deficiencies in promoting and protecting human rights.

In this context, this thesis critically examines the Arab League's development and relationship with the wider international human rights apparatus. It provides a comprehensive overview of the system of the United Nations and its specialised organs that with the resolutions adopted helped the League establish its own regional human rights systems. It traces the history of the application of international human rights discourse in the Arab world. Accordingly, an attempt is made to conceptualise the universality of human rights in the region and the impact of the Shariah discourse. It then attempts to provide an analytic description of the Arab League and background to the region and undertakes an in-depth critical analysis of the structure of the League and assesses its impact in the region, all of which may have incentives to the League's attempt to institutionalise, promote and protect human rights. The study considers the efforts made by the Arab Permanent Commission on Human Rights and its specialised agencies that ultimately led to the adoption of the Arab Charter on Human Rights (1994). After examining the limitations of the Commission and its work, the scope and structure of the revised Arab Charter on Human Rights (2004) is critically analysed. The study also examines and evaluates the legislative framework of the Arab Human Rights Committee (the Charter's enforcement mechanism as per Art.45). A case study of the Syrian Arab Republic and the analysis of continuing violations of human rights in the region illustrate the deficiencies and limitations of the Arab League as a regional organisation.

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## List of Acronyms and Abbreviations

### General

ACOHHR	Arab Charter on Human Rights
ACHPR	African Commission on Human and Peoples' Rights
ACHR	American Convention on Human Rights
American Declaration	American Declaration of the Rights and Duties of Man
ASEAN	Association of Southeast Asian Nations
AU	African Union
CAT Committee	UN Committee against Torture and Other Cruel, Inhuman or Degrading Treatment
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment
CED	Committee on Enforced Disappearances
CEDAW Committee	UN Committee on the Elimination of Discrimination against Women
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CDHRI	Cairo Declaration on Human Rights in Islam.
CIHRS	Cairo Institute for Human Rights
CMW	Committee on the Protection of Migrant Workers and Members of their Families
CoE	Council of Europe
CRC	Convention on the Rights of the Child
CRPD	Convention on the Rights of Persons with Disabilities
CSO	Civil Society Organization
CSW	Commission on Status of Women
ECHR	European Convention for the Protection of Human Rights and Fundamental Freedoms
ECtHR	European Court of Human Rights
ECOSOC	UN Economic and Social Council.



EU	European Union
FIDH	The International Federation for Human Rights
HRC	Human Rights Council
HRW	Human Rights Watch
IACHR	Inter-American Commission on Human Rights
ICC	International Coordinating Committee of National Human Rights Institutions
ICCPR	International Covenant on Civil and Political Rights
ICED	International Convention for the Protections of All Persons from Enforced Disappearances
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Commission of Jurists
ICPPED	International Convention for the Protection of All Persons from Enforced Disappearance
ILO	International Labour Organization
IMF	International Monetary Fund
LAS	League of Arab States
LAS Council	Council of League of Arab States
NGO	Non-governmental organization
OAS	Organization of American States
OAU	Organization of African Unity
OHCHR	The Office of the United Nations High Commissioner for Human Rights
OSCE	Organization for Security and Co-operation in Europe
UDHR	Universal Declaration of Human Rights
UNHCR	The Office of the United Nations High Commissioner for Refugees
UIHDR	The Universal Islamic Declaration of Human Rights
UK	United Kingdom
UN	United Nations

UNDP	United Nations Development Programme
UNESCO	United Nations Education, Scientific and Cultural Organization
UNFPA	United Nations Population Fund
UNGA	United Nations General Assembly
UNICEF	United Nations Children's Fund
UPR	Universal Periodic Review
WHO	World Health Organization
WTO	World Trade Organization

### **Journals**

Afr. Hum. Rts. L.J.	African Human Rights Law Journal
ALF	Asia Law Forum
ALQ	Arab Law Quarterly
Am. J. Int'l L.	American Journal of International Law
Am. Pol. Science Rev.	American Political Science Review
Ann. Am. Acad. Polit. Soc. Sci.	Annals of the American Academy of Political and Social Science
ASIL Proc.	American Society of International Law Proceedings
ASIL	American Society of International Law
Austl. Int'l L. J.	Australian International law journal
B.U. Int'l L.J.	Boston University International Law Journal
Cambridge Rev. Int'l	Cambridge Review of International Affairs
CJICL	Cambridge Journal of International and Comparative Law
CMLR	Common Market Law Reports
Columbia Hum. Rts. L. Rev.	Columbia Human Rights Law Review
Cornell Int'l L. J.	Cornell International Law Journal
EHRR	European Human Rights Reports
EJIL	European Journal of International Law
Eur. Hum. Rts L. Rev.	European Human Rights Law Review

Eur. J Int'l L.	European Journal of International Law
Ga. J. Int'l & Comp. L	Georgia Journal of International and Comparative Law
Quebec J of Int'l. L.	Quebec Journal of International Law
Harv. Hum. Rts. J	Harvard Human Rights Journal
Harv. Int'l Rev.	Harvard International Law Review
Hum. Rts. Brief	Human Rights Brief
HRLJ	Human Rights Law Journal
Hum. Rts. L. Rev.	Human Rights Law Review
HRQ	Human Rights Quarterly
Int'l J. Middle East Stud.	International Journal of Middle East Studies
Int'l J. Refugee L.	International Journal of Refugee Law
ICLQ	International and Comparative Law Quarterly
ILM	International Legal Materials
ILS	ILS Journal of International Law
Jinan Hum. Rts.J.,	Jinan Human Rights Journal
Mich St J Int'l L. Rev.	Michigan State Journal of International Law
MJIL	Melbourne Journal of International Law
NQHR	Netherlands Quarterly of Human Rights
Oxford J. Legal Stud.	Oxford Journal of Legal Studies
Penn St Int'l L. Rev.	Penn State International Law Review
PIJPEC	Palestine-Israel Journal of Politics, Economics and Culture
Stanford J. Int. L.	Stanford Journal of International Law
SUR Int'l J. on Hum Rts.	Sur - International Journal on Human Rights
Sydney L.Rev.	Sydney Law Review
Syracuse J. Int'l L. & Com.	Syracuse Journal of International Law and Commerce
Protection Project J.Hum. Rts & Civ. Soc'y	The Protection Project Journal of Human Rights and Civil Society
Vand. J. Transnat'l L.	Vanderbilt Journal of Transnational Law
Vienna J. Int'l Const. L.	Vienna Journal on International Constitutional Law
Yale Hum. Rts. & Dev. L.J.	Yale Human Rights and Development Law Journal

## Table of Treaties, Documents and Cases

### Table of Treaties

#### International

Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945, 18-24, 149, 161, 212, 213.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, [annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984)], *entered into force* June 26, 1987, 26, 28, 31, 34, 35, 37, 43, 205, 207-209.

Convention concerning Forced or Compulsory Labour (ILO No. 29), 39 U.N.T.S. 55, *entered into force* May 1, 1932, 18.

Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ILO No. 182), 2133 U.N.T.S.161, *entered into force* Nov. 19, 2000, 18.

Convention on the Elimination of All Forms of Discrimination against Women, G.A. res. 34/180, 34 U.N. GAOR Supp. (No. 46) at 193, U.N. Doc. A/34/46, *entered into force* Sept. 3, 1981, 9, 21, 18, 28, 30, 31, 33, 34, 35, 38, 207-209.

Convention on the Rights of the Child, G.A. res. 44/25, annex, 44 U.N. GAOR Supp. (No. 49) at 167, U.N. Doc. A/44/49 (1989), *entered into force* Sept. 2 1990, 28-31, 33, 36-38, 151, 207.

Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137, *entered into force* on 22 April 1954, 152, 187, 188, 210, 215, 216, 219, 220-224.

Declaration on the Elimination of Violence against Women G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993) 49.

Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System (Nov. 19, 2009), reprinted in 2010 Neth. Q. Hum. Rts 116,121 (2010), 40.

First Optional Protocol to the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex II, U.N. GAOR, 61st Sess., Supp. No. 49, at 80, U.N. Doc. A/61/49 (2006), *entered into force* May 3, 2008, 29, 30, 31, 32, 40.

International Convention for the Protection of All Persons from Enforced Disappearance, G.A. res. 61/177, U.N. Doc. A/RES/61/177 (2006), adopted Dec. 20, 2006, 26, 31, 34, 35, 36, 37.

International Convention on the Elimination of All Forms of Racial Discrimination, G.A. res. 2106 (XX), Annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, *entered into force* Jan. 4, 1969, 26, 30-35, 127, 146, 168.

International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex I, U.N. GAOR, 61st Sess., Supp. No. 49, at 65, U.N. Doc. A/61/49 (2006), *entered into force* May 3, 2008, 29, 30, 31, 32, 33, 34.

International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, *entered into force* Mar. 23, 1976, 10, 15, 24-29, 36, 37, 43, 49, 64, 125, 141, 154, 159, 164, 167, 171, 175, 185, 186.

International Covenant on Economic, Social and Cultural Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, *entered into force* Jan. 3, 1976, 10, 15, 24-29, 36, 44, 49, 64, 125, 179.

Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. A/RES/57/199, *adopted* Dec. 18, 2002 [*reprinted in* 42 I.L.M. 26 (2003)], 31, 36, 207-210.

Optional Protocol to the Convention on the Elimination of Discrimination against Women, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), *entered into force* Dec. 22, 2000, 34.

Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* January 18, 2002, 30, 31.

Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* February 12, 2002, 30, 31.

Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, *entered into force* March 23, 1976, 31, 33, 35, 37.

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, G.A. res. 63/117 (2008), 33.

Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968), 46, 144, 231.

Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p.267, *entered into force* 4 October 1967, 187, 220, 221, 222, 224,

UN General Assembly, National institutions for the promotion and protection of human rights, (1993) G.A. Res. 134, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/134, 20 December 1993, 49.

United Nations Millennium Declaration, G.A. Res. 55/2, U.N. GAOR, 55th Sess., Supp. No. 49, at 4, U.N. Doc. A/55/49 (2000), 131.

Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948), 5, 8, 9, 15, 21-25, 27, 44-48, 52-58, 67, 156, 160, 185, 241.

Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, *entered into force* Jan. 27, 1980, 38, 39, 48, 186.

Vienna Declaration, World Conference on Human Rights, Vienna, 14 - 25 June 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (13 October 1993), 26, 48, 49, 50, 58, 61, 67, 147, 155, 230, 232.

### Regional

African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986, 45, 53, 58, 148, 153, 179, 181, 190, 195.

Protocol to the African Charter on Human and Peoples' Rights, OAU Doc. OAU/LEG/MIN/AFCHPR/PROT.1 rev.2 (1997), *entered into force* January 25, 2004, 149, 176.

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, *entered into force* Nov. 25, 2005, 149.

Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, OAU Doc. OAU/LEG/AFCHPR/PROT (III), *entered into force* Jan. 25, 2004, 167.

Charter of the Organization of African Unity, 479 U.N.T.S. 39, *entered into force* Sept. 13, 1963, 58, 151.

Charter of the Organization of American States, 119 U.N.T.S. 3, *entered into force* December 13, 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, *entered into force* Feb. 27, 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, *entered into force* Nov. 16, 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, *entered into force* September 25, 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, *entered into force* January 29, 1996, 45, 151, 153, 190, 191, 192, 232, .

League of Arab States, Arab Charter on Human Rights, September 15, 1994, *reprinted in* 18 Hum. Rts. L.J. 151 1997, 167, 168, 180, 231.

League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008, 3, 133, 178- 196, 215, 220, 226, 231.

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992) 192, 241.

American Convention on Human Rights, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), 27, 45, 181, 185, 191- 195, 228, 240, 241.

Statute of the Inter-American Commission on Human Rights, O.A.S. Res. 447 (IX-0/79), O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80, Vol. 1 at 88, Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/11.50 doc.13 rev. 1 at 10 (1980), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 (1992) 153, 191.

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, 45, 52-57, 138, 163, 180, 183, 185, 194, 232, 233, 240.

Universal Islamic Declaration of Human Rights, adopted by the *Islamic Council of Europe* on 19 September 1981/21 Dhul Qaidah 1401, 68, 141, 143, 160, 237.

Cairo Declaration on Human Rights in Islam, Aug. 5, 1990, U.N. GAOR, World Conf. on Hum. Rts. 4th Sess., Agenda Item 5, U.N. Doc. A/CONF.157/PC/62/Add.18 (1993) [English translation] 132, 141, 149, 162, 165, 167, 180, 237.

### Table of Other Documents

'Other Treaties' Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82, September 24, 1982, Inter-Am. Ct. H.R. (Ser. A) No. 1 (1982) 45.

Annotation of the Draft International Covenants on Human Rights prepared by the UN Secretary General (1955), UN Doc. A/929 of 1 July 1955, 25.

LAS Council, Resolution No. 573, 24th Arab Summit, (Doha, 26 March 2013) 135.

LAS Council, Resolution No. 7489, 'Establishment of an Arab Court on Human Rights', 24th Summit, (Doha, 26 March 2013) 135.

LAS Council, Resolution No. 0215, 'Sirte Declaration', 22nd Summit (Sirte, 5 March 2010) 134, 135.

LAS Council, Resolution No. 559, 'Approval of the Statute of the Arab Parliament' 23rd Summit, (Baghdad Iraq, 29 March 2012) 127.

LAS Council, 'The Khartoum Declaration', 18th Summit (Khartoum, 28 to 29 March 2006) 131.

LAS Council, 'Arab Peace Initiative', Resolution No. 221, 14th Arab Summit, (Beirut, 28 March 2002) 131.

LAS Council, 'Beirut Declaration', (Beirut, March 27-28 2002) 68, 131.

Regional Commissions on Human Rights with Special Reference to Africa, U.N. Doc. ST/TAO/HR/39 (1969) (held in Cairo, United Arab Republic, Sept. 2-15, 1969) 135, 140.

Joint Defence and Economic Co-operation Treaty Between the States of the Arab League, signed at Cairo 13 April 1970, Am. J Int'l, Vol. 49, No. 2, Supplement: Official Documents (Apr., 1955) 117, 238.

UN, Seminar on the Regional Commissions on Human Rights with Special Reference to Africa, U.N. Doc. ST/TAO/HR/39 (1969) (held in Cairo, United Arab Republic, Sept. 2-15, 1969) 148.

UNGA, Cooperation between the United Nations and the League of Arab States, resolution 46/24, para. 6, 64th plenary meeting (5 December 1991) 128, 133, 154.

UNGA, The situation in the Middle East, 11 December 1992, A/RES/47/63, 139.

UNGA, Regional Arrangements for the Promotion and Protection of Human Rights (1977) A/RES/32/127 (16 December 1977) 47, 49, 130, 139, 232.

UNGA, 'International Year for Human Rights', A/RES/2441(XXIII) 19 Dec. 1968, 144.

### **Table of Cases**

Centre of the Independence of Judges and Lawyers V Algeria, Communication No. 104/93, (2000) AHRLR 15 (7th Activity Report, ACHPR 1994).

Cyprus v Turkey, Merits, App no 25781/94, judgement 10 May 2001, ECHR Reports 2001- IV (2002) 35 EHRR 30.

Engel and Others v The Netherlands No. 5100/71 (1976) 23 November 1976, ECtHR.

Golder Case v. the United Kingdom, App. No 445/170, (ser. A) No. 18, 1 EHRR, 21 February 1975.

Goodwin v. United Kingdom. Judgment (Grand Chamber), 11 July 2002,

Hadjali Mohamad v. Algeria, Communication No.13/88, (2000) AHRLR 321 (7th Activity Report, ACHPR 1994).

I/A Court H.R, Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6), Advisory Opinion OC-8/87 of January 30, 1987, (ser. A) No. 8, para. 18 at p. 37.

I/A Court H.R., Case of Ricardo Canese v. Paraguay. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111, 50, 222.

Ireland v. United Kingdom (1978) No.5310/71, Series A no 25, p 65, 8 January 1978, 2 EHRR.

Mamatkulov and Askarov v Turkey, App. Nos 46827/99 and 46951/99, Grand Chamber judgement 4 February 2005, ECHR Reports 2005-1.

'Mapiripán Massacre' v. Colombia, Judgement (Merits, Reparations, and Costs), of September 15 2005, Inter. Am. Ct. H. R., (Ser.C) No. 134 (2005).

Marck v Belgium, App. No. 6833/74, (1987) 9 EHRR 330, 13 June 1979.

Mohammed El-Nekheily v. OAU, Communication No. 12/88, 321 (7th Activity Report, ACHPR 1994).

Rantsev v. Cyprus and Russia, App. No. 25965/04, (2010), ECHR, 7 January 2010.



Selmouni v. France, App. No. 25803/94, (1999) Judgment 28 July 1999, ECHR 1999-V.

Soering v United Kingdom, App. No. 14038/88 ECHR (1989) 11 EHRR 439. (ser. A) No 161.

Tyrer v. United Kingdom, App. No. 5856/72, 2 ECHR. (ser. A) 1 (1978).

## **PART I: INTRODUCTION**

## Chapter 1 Introduction

### 1.1 The Arab League as a Regional Organisation and its Record on Human Rights Protection

The League of Arab States (Jami'at Ad-Duwal al-'Arabiyah), hereinafter the Arab League,<sup>1</sup> is an intergovernmental organisation established in 1945, prior to the formation of the United Nations. The Arab League is created to establish State sovereignty, anti-colonialism and interstate relations.<sup>2</sup> It is one of the oldest regional organisations in the world, yet harbours one of the youngest regional human rights institution.<sup>3</sup> Although, there have been 'remarkable' international developments in the field of human rights, Arab governments have failed to implement the universally accepted human rights standards in their national settings.<sup>4</sup> Thus, while an effective regional human rights system to supplement the work of the United Nations can be vital, it has unfortunately not materialised in the case of the Arab League. The process towards establishing a regional human rights mechanism by the Arab League has been very difficult and has been prolonged for centuries.<sup>5</sup>

This study attempts to critically assess the current human rights concerns prevalent within the Arab League and the region it governs. It traces the multifaceted history of the Arab region and attempts to provide an insight in understanding the reasons for the Arab region comparing unfavourably to other regions in attempts to protect human rights. The study examines the human rights protection offered by a regional organisation – the Arab League – and in so doing contends that without organic, sustained growth and in the absence of established principles of democratic governance and rule of law, regional organisations remain a difficult medium to provide effective

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<sup>1</sup> CE Toffolo, *The Arab League*, (nfobase Publishing, 2008) 7.

<sup>2</sup> See Art. 2 in League of Arab States, *Charter of Arab League*, 22 March 1945, and Art.1 of the Alexandria Protocol, October 7, 1944.

<sup>3</sup> While predating the United Nations (1945), but not the League of Nations (1914), see generally, F Pollock, *The League of Nations*, (The Lawbook Exchange, Ltd., 1920) 251pp, for an analysis of the League of Nations. See also International Center for Not-for-Profit Law (ICNL), 'NGO Law Monitor: League of Arab States' (2012) <<http://www.icnl.org/research/monitor/las.html>> accessed 2 January 2015.

<sup>4</sup> E Cotran and AO Sheri, *Democracy: The Rule of Law and Islam* (BRILL, 1 Jan 1999) 13.

<sup>5</sup> M Aljaghoub, IM Aljazy and M S Bydoon, 'The Arab League' in G Zyberi *An Institutional Approach to the Responsibility to Protect* (Cambridge University Press, 2013) 289-311, at 289.

protection of human rights. In analysing the aforementioned hypothesis, the study also investigates several related themes. The research contextualises human rights standards as developed by international and regional treaties and attempts to highlight the level of engagement by States that are members of the Arab League.

In its overall assessment, the study engages with the controversial issue of the appropriateness and efficacy of regional mechanisms as vehicles for effective promotion and protection of internationally recognised human rights. The examination of the work and viability of regional human rights instruments also needs to take account of the long-standing debate of Universalism vis-à-vis cultural relativism: this study briefly dwells upon the aforementioned debate, taking into account the role and influence of the Islamic *Shariah* upon States and societies of the Arab region.

This research aims to examine the relevance of the Arab League in the twenty-first century. The work makes an assessment of the reasons for such inordinate delay not only in conceptualisation of human rights but more significantly their practical implementation. Therefore, in advancing its analysis, Parts III and IV of the study focuses on the historical settings of the Arab League, as well as the legislative and political dynamics of the region. Culture and religion feature prominently in the constitutional developments of the Arab world and therefore require a careful scrutiny in the present context. Consequently, in order to determine as to how the human rights precepts and mechanisms embraced by the Arab League have evolved, the study examines the complex history of the Arab region, the effect of colonialism, the origins of the Arab League, the League's structure and importantly approaches towards human rights. The weaknesses in the system are best illustrated through the discussion of gaps in the Arab Charter on Human Rights and the ineffectiveness of its implementation machinery.

The ineffectual nature of the Arab regional human rights protection is exemplified in Part IV of the study through a detailed case-study of the Syrian Arab Republic.

As this study explores, the Arab League is deficient in a number aspects and needs to reform, in order to amend its current human rights infrastructure, to better monitor and

protect fundamental human rights standards at the regional and domestic level.<sup>6</sup> The existing position is detrimental, because as Aljaghoub *et. al.*, rightly note the Arab League has proved to be ‘unwilling or unable to solve recurring regional problems.’<sup>7</sup> With the emerging demands for reform and democracy and the fundamental human rights in the region,<sup>8</sup> the League has not played the constructive role needed.<sup>9</sup> Pollack postulates that if these human rights violations are not defused ‘repression typically acts as a pressure cooker: keeping the unhappiness bottled up but magnifying its volatility such that an unexpected event can produce a sudden explosion.’<sup>10</sup> The recent ‘Arab Spring’ serves as an example and issues arising from the ‘Arab Spring’ are investigated at the various stages of this study.<sup>11</sup>

On the 17th of December 2010, Mohamed Bouazizi, an unemployed graduate, self-immolated, sparking a revolution and uprising in Tunisia and across the Arab world. The corruption in Tunisia and the lack of political and civil freedom ‘left no loophole for dialogue’.<sup>12</sup> Protesters took to the streets, forcing their dictator, President Zein al-Abedine Ben Ali, to flee the country.<sup>13</sup> According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), this event symbolized an end to decades of human rights violations and failed economic development.<sup>14</sup> It caused a

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<sup>6</sup> See for example, J Donnelly ‘International Human Rights: Universal, Relative or Relatively Universal?’ in M Baderin and M Ssenyonjo, *International Human Rights Law, International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Publishing, Ltd., 2013) 31-48 at 31, 44. MM Aljaghoub, IM Aljazy and MS Bydoon, ‘The Arab League’ in G Zyberi, *An Institutional Approach to the Responsibility to Protect* (Cambridge University Press, 2013) 289-311 at 289. KM Pollack, ‘Understanding the Arab Awakening’ in Pollack *et.al.*, *Arab Awakening, The: America and the Transformation of the Middle East* (Brookings Institution Press, 2011) 1-12, at 2.

<sup>7</sup> *ibid.*, See Aljaghoub, Aljazy and Bydoon, ‘The Arab League’ 289.

<sup>8</sup> See for example M Rishmawi, ‘The League of Arab States in the Wake of the “Arab Spring”’ (2012) CIHRS 55 < <http://www.cihrs.org/wp-content/uploads/2013/09/Arab-Leage.pdf>> accessed 1 January 2015.

<sup>9</sup> *ibid* at 49. See also *ibid* at 49. See also Pollack, *The Arab Awakening: America and the Transformation of the Middle East*, above n 6.

<sup>10</sup> See Pollack, above n 6, at 3. See also T Klug ‘Have the Arab Uprisings Lost Their Spring?’ (2012) Vol.18 No.1 <<http://www.pij.org/details.php?id=1409>> Accessed 2 January 2015.

<sup>11</sup> See also See also Helpdesk Research Report: Effects of the ‘Arab Spring’ on the Middle East and North Africa (MENA) region (1 July 2011). Egypt Programme, GSDRC, 1, <<http://www.gsdrc.org/docs/open/HD774.pdf>> accessed 2 January 2015.

<sup>12</sup> Y Ryan, ‘How Tunisia’s revolution began’ *Aljazeera* (26 January 2011) <<http://english.aljazeera.net/indepth/features/2011/01/2011126121815985483.html>> Accessed 2 January 2015.

<sup>13</sup> *ibid.*

<sup>14</sup> ‘Middle East Regional Office’ OHCHR (2012) <<http://www.ohchr.org/EN/Countries/MENARegion/Pages/MenaRegion20122013.aspx>> Accessed 2 January 2015.

‘ripple effect’ and inspired other people in the Arab world to revolt against their dictators.<sup>15</sup> Thousands of people in the Arab world were in rebellion demanding more accountability, more jobs and civil and political rights.<sup>16</sup> According to Khashanah, the most common ingredient for these spontaneous revolutions are: ‘*Poverty, illiteracy, corruption and tyranny*’.<sup>17</sup>

The impact of the Arab Spring has been felt even in States that did not experience regime change to act more repressive.<sup>18</sup> This is despite the fact that the United Nations Universal Declaration of Human Rights (UDHR) states in its preamble the importance of human rights to be protected under the rule of law, and where it is not protected, the people have a right to rebellion against tyranny and oppression.<sup>19</sup> However, throughout the region, numerous human rights activists and protesters have often been subject to arbitrary arrest and prosecution ‘without due respect for the right to a fair trial’.<sup>20</sup> In this regard, the situation in Syria, as shall be considered in detail, poses one of the most significant issues not only for the Arab League but also for the United Nations.

According to the Office of the United Nations High Commissioner for Refugees (UNHCR), the humanitarian situation in Syria is a grave problem where approximately 6.8 million Syrians (mostly internally displaced), are in dire need of humanitarian assistance.<sup>21</sup> At the time of writing, Syria is locked in a brutal civil war between Bashar

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<sup>15</sup> See Ryan above n 12 (2011).

<sup>16</sup> David Cameron stated: ‘we must expect each country in the region to chart its own course towards the rule of law, democratic government and human rights. Fundamental political change is essential in every one of these (Arab) countries. If it can be achieved without social and political collapse, all will benefit.’ Cited in M Rifkind ‘The Middle East is ready to join the rest of the world’ (24 Feb 2011) <<http://www.standard.co.uk/news/the-middle-east-is-ready-to-join-the-rest-of-the-world-6570716.html>> accessed 2 January 2015; CIHRS (2012) annual report <[http://www.cihrs.org/?page\\_id=7156&lang=en](http://www.cihrs.org/?page_id=7156&lang=en)> accessed 2 January 2015; UNDP, ‘Chapter 4 Sustaining momentum’ in ‘Human Development Report’ (2013) 92, 93, <[http://hdr.undp.org/en/media/HDR\\_2013\\_EN\\_complete.pdf](http://hdr.undp.org/en/media/HDR_2013_EN_complete.pdf)>

<sup>17</sup> Emphasis added, K Khashanah, ‘The Syrian Crisis: a systematic framework’ *Contemporary Arab Affairs* (2014) Vol. 7, No. 1, 21, at 3.

<sup>18</sup> Cairo Institute for Human Rights Studies, CIHRS, ‘Delivering Democracy Repercussions of the “Arab Spring” on Human Rights Human Rights in the Arab Region’ Annual Report 2012, 9, <<http://www.cihrs.org/wp-content/uploads/2013/09/the-annual-report-2013.pdf>> accessed 1 January 2015. See also M Malki, ‘From the Law of the Ruler to the Rule of Law’ in B Korany *Arab Human Development in the Twenty-First Century: The Primacy of Empowerment*, 66, at 57-60.

<sup>19</sup> Para.3, Preamble, Universal Declaration of Human Rights, G.A. Res. 217 (III) A, pmbl., U.N. Doc. A/RES/217(II) (Dec. 10, 1948). See JJ Paust ‘International Law, Dignity, Democracy, and the Arab Spring’ (2013) *Cornell Int’l LJ*, 1 Vol. 46, 1.

<sup>20</sup> See OHCHR (2012) above n 14.

<sup>21</sup> UNHCR, ‘2014 UNHCR country operations profile - Syrian Arab Republic’ <<http://www.unhcr.org/pages/49e486a76.html>> Accessed 1 January 2015.

al-Assad's regime forces and a disparate 'Free Syrian Army'<sup>22</sup> escalating to one of the largest humanitarian disasters in the world.<sup>23</sup> Despite the many calls by the international community to resign, Assad and his undemocratic and autocratic regime appear to cling Syria with an iron fist, regardless of how many innocent lives it would cost.<sup>24</sup>

The Cairo Institute of Human Rights (CIHRS) (among other NGOs), and the United Nations Development Programme (UNDP) are concerned with the human rights situation in the region.<sup>25</sup> The CIHRS is concerned that the ongoing conflicts and political tensions have a considerable effect on women, children, the elderly, as well as minority groups and persons with disabilities.<sup>26</sup> The UNDP argues without legal protection for refugees in the region, many women and children are abducted and exploited causing them to suffer the worst forms of human rights violations.<sup>27</sup> It is also submitted that even in States that have disposed of their dictatorial regimes are in a more deteriorating state than they were prior to the uprisings.<sup>28</sup> It is therefore arguable that prospects for transition to democracy in these newly developed Arab States appears to be 'out of reach'.<sup>29</sup>

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<sup>22</sup> JS Ismael and ST Ismael 'The Arab Spring and the Uncivil State' ASQ, 229, at 229.

<sup>23</sup> UN Secretary-General, Department of Public Information 'With Violence In Syria Reaching "Unthinkable Levels", Secretary-General Appeals For End To Tragedy Of World's Biggest Humanitarian, Peace, Security Crisis', (12 March 2014) SG/SM/15703, <<http://www.un.org/News/Press/docs/2014/sgsm15703.doc.htm>>

<sup>24</sup> S Heydemann and R Leenders, *Middle East Authoritarianisms: Governance, Contestation, and Regime Resilience in Syria and Iran* (Stanford University Press, 2013) 3.

<sup>25</sup> See for example, Human Rights Watch, 'World Report 2014 – Syria', (21 January 2014), <<http://www.refworld.org/docid/52dfddae247.html>> accessed October 2 2014, See also Amnesty International 'Updated Briefing on Sieges across Syria' (June 2014) MDE 24/023/2014, <<http://www.amnesty.org/en/library/asset/MDE24/023/2014/en/00aee8fa-6f0e-4d5f-aeb7-bc6b0cd25467/mde240232014en.pdf>> accessed March 2 2014.

<sup>26</sup> Cairo Institute for Human Rights (CIHRS) 'Conclusion of the Report, Where is the "Arab Spring" Taking us?' cited in CIHRS 'Delivering Democracy Repercussions of the "Arab Spring" on Human Rights Human Rights in the Arab Region' Annual Report 2012, 29 <<http://www.cihrs.org/wp-content/uploads/2013/09/summery.pdf>> >accessed 1 January 2015.

<sup>27</sup> UNDP 'Iraq: Syrian women and girls struggle to survive in camps' <<http://www.undp.org/content/undp/en/home/ourwork/crisispreventionandrecovery/successstories/alone-in-iraq--syrian-women-and-girls-struggle-to-survive-in-ref/>> Accessed 1 January 2015.

<sup>28</sup> CIHRS 'Delivering Democracy Repercussions of the "Arab Spring" on Human Rights Human Rights in the Arab Region' (2012) 29 <<http://www.cihrs.org/wp-content/uploads/2013/09/summery.pdf>> >accessed 1 January 2015.

<sup>29</sup> *ibid.*

## 1.2 Structural Framework of the Study

This study is divided into five parts, consisting of eight chapters. Part I, consisting of a single introductory chapter, chapter 1, sets out the overall context in relation to developments in human rights at the regional and international levels. This introductory chapter presents an overview of the study and in so doing also identifies the hypothesis and research questions for investigation.

Chapter 2, contained within Part II, provides a detailed journey of the development of international human rights treaties and the extent of engagement of Arab States with these instruments. The chapter exemplifies that despite the myriad of treaties and treaty bodies, and resolutions for the promotion and protection of the universal human rights standards, often these efforts are lost when States, especially those present in the Arab world, do not adhere to them. The chapter also examines various discussions on regionalism and universalism in order to assess as to whether regional human rights establishments support or undermine the universality of human rights.

Chapter 3, of the study, addresses the complex issues surrounding cultural relativism and the universality of human rights. The chapter also examines the historical developments and influence of *Shariah* in the Arab region and the relationship of *Shariah* with that of the international human rights discourse. The chapter assesses the impact of the sectarian divide and its cause of the escalating ideological tensions within the Arab region.

As noted earlier, Part III of the study offers a critical examination of the Arab World's legal and constitutional dynamics, alongside an assessment of the specific cultural and human rights issues.

Chapter 4, located within Part III examines the history and the structure of the Arab League. It provides a comprehensive understanding of the political and constitutional history of the Arab region and why it is considered to host a deeply fractured State system. The chapter discusses the impact of colonialism, the problems faced by newly developed Arab States, the drive of Arab nationalist towards unity, the various inter-State conflicts in the region, and the demise of the Arab unity in the twenty-first



century. The chapter also investigates the capabilities of the Arab League as a unified body and whether it contains a sufficient legislative framework to deal with the human rights disparities existent in the Arab World. Thus, it also critically examines the effectiveness of the Arab League Summits and if these Summits have had any effect to explain the promotion and implementation of the international human rights discourse in the region.

Chapter 5 presents a critical assessment of the Arab Permanent Commission on Human Rights (the first human rights commission of the Arab League) and examines its efforts to promote and protect universal human rights norms and precepts. The analysis reviews the chronology of events leading to the Arab League's adoption of the Arab Charter on Human Rights. Understanding these evolutionary processes are important in order to comprehend the current legislative framework the Arab League offers to promote and protect human rights and to have a knowledge of the limitations of the system. It also evaluates various Islamic human rights documents adopted by Member States of the Arab League, before the League considered the Arab Charter on Human Rights in 1994.

Chapter 6 evaluates the drafting process of the revised Arab Charter of Human Rights. It critically examines provisions of the Charter, in order to determine as to whether the document meets international standards. The Chapter also examines the legislative framework of the Arab Human Rights Committee and its functioning powers (as per arts. 45-48). In its analysis, the chapter explores the continuing frailties within the Arab League and its revised Charter of human rights.

The limitations and weaknesses in the Arab League are further illustrated in Part IV through the practice of its operations in Syria. Chapter 7, contained within Part IV, examines the reasons for the Syrian uprising. An overarching and practice-oriented analysis is aimed at establishing and affirming the argument that the Arab League has and continues to remain a limited and largely ineffectual medium for the protection of individual and collective rights of the people of the Arab region.

Finally, chapter 8, contained within Part V, discusses conclusions and recommendations.

The subject matter of this study is significant, yet multifaceted and highly controversial. The outcome of this study is based on a comprehensive analytical and comparative analysis. An exhaustive amount of primary materials from the United Nations and the Arab League (available only in Arabic) have been used. The study also consulted a large body of literature and reports written by prominent theoreticians, scholars and jurists from the Arab, Islamic, and Western world. Although various historical materials have been used in this study, the observations displayed throughout this study are critical and interpretive in spirit.

### **1.3 Enormity of the Human Rights Challenges faced by the Arab Region and the Arab League**

As this study will examine in detail, the United Nations created a myriad of treaties and treaty bodies established in harmony with the provisions of the treaty that they monitor,<sup>30</sup> agreements, and issued important statements signalling the promotion and protection of human rights. However, despite these agreements and pronouncements it is submitted that '[t]here are more countries in the world today where fundamental rights and civil liberties are regularly violated than countries where they are effectively protected'.<sup>31</sup> It is certainly the case that there do not exist any appropriate enforcement mechanisms to bind Arab States to adhere to fundamental and binding human rights norms.

It appears that many State Members of the Arab League have ratified or adopted international human rights conventions in order to improve their international image and gain international consensus, but without actually bringing their national laws in line with the provisions they have accepted.<sup>32</sup> Most of these States have also failed to engage with the UN treaty bodies. As reported by the UNDP, rights provided by international human rights conventions, such as the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on

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<sup>30</sup> 'Human Rights Bodies' OHCHR (2012)

<<http://www.ohchr.org/en/hrbodies/Pages/HumanRightsBodies.aspx>> accessed 1 January 2015.

<sup>31</sup> AH Robertson and JG Merrills, *Human Rights in the World: An Introduction to the Study of the International*, (Manchester University Press, 1996) 2.

<sup>32</sup> UNDP 'Arab Human Development Report: Challenges to Human Security in Arab Countries' (2009) 59 <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2009e.pdf>> accessed 2 January 2015.

Civil and Political Rights (ICCPR) are applied in various degrees in Arab constitutions – but are abolished readily and without hesitation when a general state of emergency arises.<sup>33</sup>

Additionally, the fight against terrorism is also the most serious threat to citizen's security in the Arab region,<sup>34</sup> because it often allows States to violate individual human rights and freedoms without legal recourse.<sup>35</sup> The UNDP observes that the overall counter-terrorism laws in most of the Arab countries have often failed to find the necessary balance between State security and protection of individual rights and freedoms.<sup>36</sup>

It is also important to note that the Arab region hosts millions of non-citizens, migrant domestic workers, refugees and stateless persons, who fall outside the legal protection required of host States thus rendering them vulnerable to exploitation and abuse.<sup>37</sup> Therefore, legal protection for non-nationals and migrants workers is an essential prerequisite to forming viable human rights constitutional structures. The level of refugee protection in the region is a particular concern, as will be evaluated in chapter 7.

Gender-based inequality, according to the Office of the United Nations High Commissioner for Human Rights (OHCHR), remains to be an 'acute concern', and though there have been efforts to secure the rights of women, only a few cases have ended on a positive note.<sup>38</sup> Darwazeh argues that in conflict and transition countries of the Arab world women are increasingly targeted and gender-based violence in the public and private spheres is an evident concern.<sup>39</sup> In addition, women who are

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<sup>33</sup> *ibid.*

<sup>34</sup> UNDP 'Study on the links between economic and social rights and legal empowerment of the poor in the Arab World' (2010) 24 <[http://204.200.211.31/Update\\_Feb\\_2011/ESC%20and%20LEP\\_6.pdf](http://204.200.211.31/Update_Feb_2011/ESC%20and%20LEP_6.pdf)> accessed 2 January 2015.

<sup>35</sup> *ibid.*

<sup>36</sup> *ibid.*

<sup>37</sup> See OHCHR (2012) 'Middle East Regional Office', n 14.

<sup>38</sup> According to the OHCHR 'the lack of gender equality remains a matter of grave concern' OHCHR, 'Field Activities– Middle East And North Africa High Commissioner's Strategic Management Plan 2010-2011' 119 <<http://www.ohchr.org/Documents/Press/SMP2010-2011.pdf>> accessed 1 January 2015.

<sup>39</sup> Although, recently Saudi Arabia passed a law to criminalise all forms of domestic violence. Saudi Embassy, 'Saudi Arabia Passes New Law against Domestic Violence' August 26, 2013 <<http://www.saudiembassy.net/press-releases/press08261301.aspx>>; However this has not been the case of all Arab States. According to one report in most parts of the Arab region there are no policies or

marginalized are at risk of abduction, exploitation, rape and trafficking.<sup>40</sup> One of the most evident problems in the region is the lack of legal protection for these women and all too often cultural and gender-discriminatory attitudes undermine the status and rights of women.<sup>41</sup> Although there does exist provisions that protect some rights for women, most often discriminatory cultural and religious beliefs and practices make it difficult to see these laws implemented.<sup>42</sup> According to the United Nations Population Fund (UNFPA), accessibility to legal services for women and girls are virtually impossible.<sup>43</sup>

Furthermore, the illiteracy rate for women is much higher than men in the region, UNESCO submits that two out of three women are illiterates.<sup>44</sup> In rural areas in Yemen, Libya, and Palestine, the percentage of women who are illiterate is much higher than in other areas.<sup>45</sup> Furthermore, women currently lack economic power in the region, which restricts access to legal protection and social safety nets; they account to 28 percent of the current economic activity, thus making them the least economically active women in the world.<sup>46</sup> There are also other discriminatory provisions in penal codes, personal status laws and employment.<sup>47</sup> Women in the Arab world are unaware of their inherent and fundamental rights, and this is a major problem present in the region.

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legislations that protect women's 'human rights' during conflict and post conflict situations, see UN Women for Arab States & The Committee on Elimination of Discrimination Against Women (CEDAW Committee) 'Regional Consultation for the Proposed General Recommendation on Women Human Rights in Situations of Conflict and Post Conflict contexts' Amman, (2013) 32.

<<http://www.ohchr.org/Documents/HRBodies/CEDAW/Womenconflictsituations/RegionalConsultationAmmanJan2013.pdf>> accessed 1 January 2015.

<sup>40</sup> See above UNDP n 32.

<sup>41</sup> For an excellent study on the subject see SS Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (The Hague: Kluwer Law International, 2000).

<sup>42</sup> See UN Women for Arab States & The Committee on Elimination of Discrimination Against Women (CEDAW Committee) Regional Consultation for the Proposed General Recommendation on Women Human Rights in Situations of Conflict and Post Conflict contexts," Amman, January 2013.

<sup>43</sup> The United Nations Population Fund (UNFPA) 'UNFPA Regional Strategy on Prevention and Response to Gender-Based Violence in the Arab States Region' (2014-2017) (November 2013) 25, <[http://arabState.unfpa.org/webdav/site/as/shared/docs/2013\\_ArabGBVStrategy\\_English.pdf](http://arabState.unfpa.org/webdav/site/as/shared/docs/2013_ArabGBVStrategy_English.pdf)> Accessed 2 January 2015.

<sup>44</sup> UNESCO 'Education for All Regional Report 2012 for Arab State' Global Education for All Meeting 11 (Paris, France November 21-23, 2012)

<[http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/ED\\_new/pdf/ARB\\_EN.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/ED_new/pdf/ARB_EN.pdf)> Accessed 2 January 2015.10, Education for All Regional Report 2012

<sup>45</sup> *ibid.*, See also M Mattar 'Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards'(2013) Harv. Hum. Rts. J. Vol. 26, 97.

<sup>46</sup> *ibid.*, Mattar (2013) 97.

<sup>47</sup> See UNDP (2009) n 32 at 58.

Evidently, many studies suggest the various uprisings in the region (the Arab Spring) represent a solid reminder that the primary elements that enables the rule of law to operate are not in place.<sup>48</sup> It is also submitted that there exists a prevalent gap between enshrining principles of the rule of law in Arab constitutions and safeguarding their implementation.<sup>49</sup> Regional efforts to strengthen accountability and the rule of law are vital, especially if some headway is to be made with regard to promoting fundamental human rights standards, such as, equal rights, justice, eradicating torture, implementing fair trials and ensuring due process.<sup>50</sup> According to the HRW during this norm-building period, States in the Arab region need to provide effective courts, accountable public officials, and institutions of governance in order for the promise of the Arab Spring to be realized.<sup>51</sup>

Overall, there are enormous challenges faced by the prevalent domestic legal systems as well as the supranational structures including those established by the Arab League. In highlighting the deficiencies of the Arab League to provide an effective medium to promote and protect human rights within the Arab World, the enormity of the existing challenges become obvious and real.

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<sup>48</sup> United Kingdom Foreign & Commonwealth Office, 'Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report' (April 2012) Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty, 42

<<https://www.gov.uk/government/uploads/system/...data/.../Cm-8339.pdf>> accessed 1 January 2015. As Šimonović of the OHCHR states, 'the "Arab Spring" is direct and solid proof that human rights violations are the root causes of the conflict', interview with Mr. Ivan Šimonović, Assistant Secretary General for Human Rights Office of the High Commissioner for Human Rights UNDP, Human Rights for Development. Cited in UNDP Human Rights for Development. New York' (UNDP 2011) News Brief Vol. 4, 5

<[http://www.undp.org/content/dam/undp/library/Democratic%20Governance/NewsbriefVol4\\_F\\_WEB.pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/NewsbriefVol4_F_WEB.pdf)> accessed 1 January 2015.

<sup>49</sup> See M Malaki, 'From the Law of the Ruler to the Rule of Law' in B Korany, *Arab Human Development in the Twenty-First Century: The Primacy of Empowerment*, (I.B.Tauris, 2014) 27-66, at 35.

<sup>50</sup> *ibid.*

<sup>51</sup> HRW, 'World Report 2013: events of 2012' 1

<[http://www.hrw.org/sites/default/files/wr2013\\_web.pdf](http://www.hrw.org/sites/default/files/wr2013_web.pdf)> Accessed 1 January 2015.

**PART II: BACKGROUND (HUMAN RIGHTS NORMS AND STANDARDS)**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.<sup>1</sup>

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<sup>1</sup> Art.1, Universal Declaration of Human Rights, G.A. res. 217A (III), U.N. Doc A/810 at 71 (1948).

## Chapter 2

### 2.1 Introduction

At the outset, it is important to begin this study by conceptualising human rights in order to understand its meaning and impact on the Arab region. Such an exercise would also illustrate that many visionaries, religious leaders and intellectuals across the world may share similar knowledge and ideas concerning human rights. The study demonstrates how over the course of the twentieth century, human rights has been transformed into a global movement.<sup>2</sup> As shall be examined in various chapters of this study, within the Arab region, however, the concern for institutionalizing and enforcing human rights has evolved only recently.

The following analysis will critically examine the history and influence of the UDHR and the International bill of rights (consisting of the UDHR, the ICCPR and ICESCR). It will also evaluate the level of engagement and adherence of Arab States to fundamental human rights treaties and treaty bodies. It will then critically examine studies indicating UN support for regional arrangements. Subsequently, this chapter will discuss problems and issues evident within regional human rights arrangements, and evaluate existing concerns on whether or not regional arrangements undermine or support the universality of human rights.

### 2.2 Conceptualising human rights

Human Rights is ‘the moral lingua Franca of our age,’<sup>3</sup> its definition is based on the right one has simply by being human.<sup>4</sup> The concept of human rights is often used by people to protect themselves from abuse from a monarch or head of State or more

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<sup>2</sup> BA Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*. (Cambridge University Press 2009) 3. See also ‘The Dynamic Changes in International Law since the Second World War’ in LB Sohn, ‘The New International Law: Protection of the Rights of Individuals rather Than States’ (2003) *Am. U. L. Rev.*, Vol. 32:1, 1.

<sup>3</sup> J Morsink, *The Universal Declaration of Human Rights: origins, drafting, and intent* (University of Pennsylvania Press 1999) 153. See also UN Office of the High Commissioner for Human Rights/ International Bar Association, *Human Rights in the Administration Of Justice: A Manual On Human Rights For Judges, Prosecutors and Lawyers*, Professional Training Series No.9 ( New York- Geneva, UN Publications, 2003) 2.

<sup>4</sup> RE Howard and J Donnelly ‘What are human rights?’ in *International handbook of human rights*, 1 (36). See also PG Lauren, *The Evolution of International Human Rights: Visions* ( 3<sup>rd</sup> edn., University of Pennsylvania Press 2003), 13. See also J Donnelly, ‘The virtues of legalization’, in S Meckled-Garcia and B Cali, *The Legalization of Human Rights, Multidisciplinary perspectives on human rights and human rights law* (Routledge 2005) 61-7, at 69.



recently governments with sovereign status.<sup>5</sup> Therefore, the concept does not find a legal expression in all societies.<sup>6</sup> Orend contends that this legal variability does not weaken the existence of the moral right and provides emphasis for contemporary human rights activism.<sup>7</sup> Here, the goal is often to translate the original moral claim into an ‘effective legal entitlement’.<sup>8</sup> That is, the international legal definition offers relations between citizens and their government to be ‘reframed’, to benefit citizens.<sup>9</sup>

Robertson and Merrills, note, ‘the struggle for human rights is as old as the [world] itself’.<sup>10</sup> Its lineage may be traced from the time of Moses through to Grotius and St. Thomas Aquinas; in fact, the *Lex talionis* is seen to encompass a study of the nature of restitution, including the idea of ‘an eye for an eye’ and other forms of remedial justice.<sup>11</sup> According to Howard and Donnelly, Aquinas (1225-1274) is said to have developed a strong theory of natural law, where he emphasised ‘all law is the expression of divine reason’.<sup>12</sup> This is made available to humankind in two principal forms: ‘divine law,’ (e.g. the Quranic, or Biblical revelation) and the ‘natural law,’ which are the inscription of divine understanding, that are directly available to all ‘through the exercise of reason’.<sup>13</sup> Aquinas calls ‘human law,’ the conventional kinds of law made by legislators, it is appropriate to the extent that it ‘conforms to the natural law, of which it ought to be merely a practical political expression’.<sup>14</sup>

Early on in history, different religious philosophies attempted to address, with varying degrees, preeminent theories of human relations and ideas concerning compassion and justice, even in Arab and Islamic societies.<sup>15</sup> For example, the Prophet Muhammad

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<sup>5</sup> See Howard and Donnelly above n 4 at 36. See also, LP Gordon, *The Evolution of International Human Rights: Visions in*, (3<sup>rd</sup> edn, University of Pennsylvania Press 2003), 13. See ‘The Origins of the Human Rights Revolution’ in Sohn, above n 2.

<sup>6</sup> B Orend, *Human Rights: Concept and Context* (Broadview Press 2002) 33.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*, emphasis added, Orend 33-34.

<sup>9</sup> J Donnelly, ‘The virtues of legalization’, in *The legalization of Human Rights*, S Meckled-García, B Ca (Routledge, 2006) 61-74, at 68.

<sup>10</sup> A H Robertson and J G Merrills, *Human Rights in the World* (Manchester University Press, 1992) 9.

<sup>11</sup> N Roht-Arriaza, *Impunity and Human Rights in International Law and Practice*, 17-18 (Oxford University Press 1995)

<sup>12</sup> See Howard and Donnelly above n 4, at 1-2.

<sup>13</sup> *ibid.*

<sup>14</sup> *ibid.*, see generally T Aquinas, *The Political Ideas of St. Thomas Aquinas*, ed. D Bigongiari (New York: Hafner Press, 1953) 1- 55.

<sup>15</sup> See Lauren above n 4, at 13. See also, ‘The Dynamic Changes in International Law since the Second World War’ in Sohn LB, ‘The New International Law: Protection Of The Rights Of Individuals Rather

(PBUH)<sup>16</sup> established the first Charter of ‘freedom of conscience in human history’<sup>17</sup> in which he pledged that Jews and Christians ‘shall be protected from all insults and harm; they shall have an equal right with our own people to our assistance and good offices,’ and further, ‘they shall practice their religion as freely as the Muslims’.<sup>18</sup> The Prophet also developed an advanced level of social thought when it comes to the desired social order and democracy.<sup>19</sup>

Therefore, historically, most societies set out some form of civil redress for harm to individuals and fair laws for the equitable governing of society.<sup>20</sup> For centuries, the theoretical underpinnings and the concept of human rights has appealed to jurists, philosophers and legal anthropologists across the globe and across various civilizations.<sup>21</sup> There, Lauren makes the correct assertion that, ‘no single civilization, or location, or people, or nation, or time, can claim as uniquely [human rights] its own’.<sup>22</sup> It is also necessary to realise that while the struggle for ‘a life of dignity’ is as old as ‘human society itself’, dependence on human rights and dignity as a legally enforceable

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Than States’ (2003) Vol. 32:1, Am. U. L. Rev., Morgan-Foster J, ‘Third Generation Rights: What Islamic Law Can Teach the International Human Rights Movement’ (2005)1, Yale Hum. Rts. & Dev. L.J. Vol. 8, 67; Azim Nanji, The Right to Development: Social and Cultural Rights and Duties to the Community, paper submitted to United Nations Seminar “Enriching the Universality of Human Rights: Islamic Perspectives on the Universal Declaration of Human Rights,” UN Doc. HR/IP/SEM/1999/1 (PART II Sect. 2), at 345 (Mar. 15, 1999); M H Kamali, *Principles of Islamic Jurisprudence*, (2002).

<sup>16</sup> The sayings ‘Peace be upon him’, or ‘Peace and blessing of Allah be upon him (PBUH)’, is often used by Muslims when referencing any Prophet of Allah. This is found in various verses of the Quran, such as al-Ahzaab 33:56 ‘Allaah sends His Salaah (Graces, Honours, Blessings, Mercy) on the Prophet (Muhammad), and also His angels (ask Allaah to bless and forgive him). O you who believe! Send your Salaah on (ask Allaah to bless) him (Muhammad)...’ This interpretation is found under the supervision of Shaykh Muhammad Saalih al-Munajji in ‘Islam Question and Answer’ <<http://islamqa.info/en/23274>> accessed 10 September 2014.

<sup>17</sup> See Lauren above n 4, at 9.

<sup>18</sup> Quoted in H Smith *The World's Religions* (Harper Collins, 1991) 256., C Bassiouni *Crimes Against Humanity in International Criminal Law* (Dordrecht, Netherlands: M Nijhoff, 1992), 544. the Quran [4:1] sanctifies equal rights to all men and women: ‘O humankind! Be conscious of your Lord Who created you from a single soul, and out of it created its mate, and out of the two spread countless men and women. Be conscious of your Lord through Whom you demand your mutual rights and honor the wombs; God always watches over you’. Quran 4:1; also Prophet Muhammad (PBUH) stated: ‘The most perfect in faith among you believers is he who is best in manner and kindest to his wife.’ (Discover Islam, <[http://www.discoverislam.com/poster.asp?poster=DIP2004\\_28&page=1](http://www.discoverislam.com/poster.asp?poster=DIP2004_28&page=1)>).

<sup>19</sup> J Griffin, *On Human Rights* (Oxford University Press, 2008) 299. See also B Lewis, *The Crisis of Islam* (New York: Random House, 2004), xxix-xxx.

<sup>20</sup> See Roht-Arriaza, above, n 11, at 18.

<sup>21</sup> PG Lauren, ‘The Foundation of Justice and Human Rights in early legal texts and thought’ cited in D Shelton, *The Oxford Handbook of International Human Rights Law*, (Oxford University Press, 2010) 163-193, at 164.

<sup>22</sup> *ibid.*

mechanism is a ‘relatively recent development’.<sup>23</sup> In fact, it is submitted that the term ‘human rights’ became conventional only after the UN Charter was drafted.<sup>24</sup>

### 2.2.1 International Standard-Setting and the Universal Declaration of Human Rights

International human rights law establishes minimum standards that constitute the common expression of humanity’s conscience and encapsulates ‘[a] shared vision for a humane world’.<sup>25</sup> Over the course of the twentieth century, the development of human rights law has been a consequence of an extensive and substantial global movement.<sup>26</sup> With the imposition of global human rights, the most significant change was that sovereign States could no longer deploy sovereignty or cultural relativism as a defense to protect appalling human rights abuses.<sup>27</sup>

As a consequence of the Second World War, and to deter any future wars from happening, the United Nations (UN) Conference on International Organisation was held on the 26<sup>th</sup> of June 1945. The conference led to the adoption of the UN Charter before fifty State representatives from various regions of the World (including five States Members of the Arab League).<sup>28</sup> The Charter entered into force as an international treaty<sup>29</sup> on 24 October 1945, with the Statute of the International Court of Justice at the

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<sup>23</sup> It is also important to note that in addition to the UN, international human right standard setting also involved other inter-governmental organisations, such as the International Labour Organization (ILO). The ILO adopted numerous human rights conventions on non-discrimination, equal pay, forced labour, child labour, worst forms of child labour, freedom of association and collective bargaining, and ‘indigenous and tribal populations’. Cited in International Council on Human Rights Policy ‘Human Rights Standards: Learning from Experience’ (The Trustees of the British Museum 2006) 1, <[www.ichrp.org/files/reports/31/120b\\_report\\_en.pdf](http://www.ichrp.org/files/reports/31/120b_report_en.pdf)> accessed 1 January 2015. See for example, Convention concerning Forced or Compulsory Labour (ILO No. 29), 39 U.N.T.S. 55, *entered into force* May 1, 1932; Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labor (ILO No. 182), 2133 U.N.T.S.161, *entered into force* Nov. 19, 2000.

<sup>24</sup> See CR Durham, ‘International Human Rights Law: A Legitimate Influence or Constraint on Sovereign Jurisdiction’ (1997) *Austl. Int’l L.J.* 56, 58.

<sup>25</sup> F Viljoen, ‘An introduction to international human rights law’ cited in *International Human Rights Law in Africa* (Oxford University Press, 2012) 9.

<sup>26</sup> B Simmons, *Mobilizing for Human Rights: International Law in Domestic Politics*, (Cambridge University Press 2009) 3. See also ‘The Dynamic Changes in International Law since the Second World War’ in LB. Sohn, ‘The New International Law: Protection of the Rights of Individuals rather Than State’ *Am. U. L. Rev.*, Vol. 32:1, 1.

<sup>27</sup> *ibid.*, Simmons.

<sup>28</sup> The charter came into existence on 24 October 1945 after it achieved its majority ratifications. UN, ‘History of the United Nations’ <<http://www.un.org/en/aboutun/history/>> accessed 1 January 2015.

<sup>29</sup> B Fassbender, *United Nations Charter as the Constitution of the International Community* (BRILL, 2009) 2.

heart of the Charter.<sup>30</sup> It was considered according to the first General Counsel and Director of the Legal Department of the UN, A.H. Feller, '[t]he constitutional instrument which governs the organisational structure of a world community'.<sup>31</sup> Drawing from lessons and inspirations from World War II,<sup>32</sup> the main purpose of the UN is to prevent any future wars from happening and to promote friendly relations between States. As such, the Preamble of the UN Charter confirms the reason behind its establishment:

[T]o save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small,<sup>33</sup>

Although the Charter of the UN was considered the foundation of 'the contemporary human rights structure',<sup>34</sup> it is not meant to be a human rights document. The Charter does, however, contain some provisions that aims to promote and protect human rights, such as Article 1 (3) which stipulates the purpose of the UN is to achieve international cooperation towards 'promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion'.<sup>35</sup> Article 68 of the Charter also instructs the Economic and Social Council (ECOSOC) to establish Commissions in social and economic field and for promotion of human rights.<sup>36</sup>

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<sup>30</sup> UN 'Charter of the United Nations' <<http://www.un.org/en/documents/charter/intro.shtml>> accessed 1 January 2015. See generally, Fassbender, at n 29.

<sup>31</sup> J L Brierly, *The Law of Nations: An Introduction to the International Law of Peace* (6<sup>th</sup> edn, 1963, Sir Humphrey Waldock ed.) 95, Fassbender, n 29, at 3.

<sup>32</sup> R Emerson, *The Fate of Human Rights in the Third World*, Vol. 27, No. 2 (Cambridge University Press 1975), 201. See also J Rehman, *International Human Rights Law*, (London and New York: Longman 2010) 28. The ILO that was created by the Treaty of Versailles in 1919 was integrated into the UN, obligated with, *inter alia*, promoting 'fundamental human rights. See Durham above, n 24, 56, 58.

<sup>33</sup> UN Preamble, para 1 and 2, Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945.

<sup>34</sup> D Levin, 'Practicalities and Positive Human Rights Obligations in International Law' (2005) CSLR, 21.

<sup>35</sup> UN Charter, Art. 1.

<sup>36</sup> UN Charter, Article 62, mandates the creation of ECOSOC and Article 68 charges it with this role. See Article 68, other human rights articles listed in the charter are; Articles 13(1)(b), 55(c), 62(2), 68, and 76(c).

Since its inception, the UN has attained almost universal membership and has influenced development of international law, international human rights law, and international relations.<sup>37</sup> The basic frameworks of the UN have included the UN General Assembly, the Security Council, the Economic and Social Council (ECOSOC), International Court of Justice, the Trusteeship Council and the Secretariat.<sup>38</sup>

It may be submitted that the main objectives of the UN is to promote democracy and dispose of dictatorial regimes.<sup>39</sup> The Charters of Nuremberg and Tokyo tribunals were unanimously affirmed by the first UN General Assembly, in addition to the Convention on the Prevention and Punishment of the Crime of genocide.<sup>40</sup>

In 1945, during the UN International Organisation Conference, it was suggested that the UN Charter should contain a Bill of Rights; however, the United Nations General Assembly (UNGA) decided to consider the proposal for future deliberations.<sup>41</sup> Subsequently, the UNGA approved the proposal by the Economic and Social Council (ECOSOC)<sup>42</sup> and a human rights commission was established in 1946 to work on the Bill of Rights.<sup>43</sup> Throughout the drafting process, there were long-standing debates on whether the Declaration should be drafted as a binding Convention, or the first part of the International Bill of Rights.<sup>44</sup>

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<sup>37</sup> J Rehman, *International Human Rights Law* (London and New York: Longman, 2010) 31.

<sup>38</sup> *ibid.*, Rehman at 31.

<sup>39</sup> These were largely based on American and Western European ideals, as such, the objectives were prioritized at the time because of the ‘cancerous growth of dictatorships within the Western world had caused enormous damage to human dignity’ See F Coomans *Human Rights from Exclusion to Inclusion; Principles and Practice: An Anthology from the Work of Theo Van Boven* (Martinus Nijhoff Publishers, 2000) 33.

<sup>40</sup> *ibid.*, Coomans 33-34.

<sup>41</sup> United Nations Audio Visual Library, ‘Universal Declaration Of Human Rights’ (1998) <[http://legal.un.org/avl/pdf/ha/udhr/udhr\\_ph\\_e.pdf](http://legal.un.org/avl/pdf/ha/udhr/udhr_ph_e.pdf)> accessed 1 January 2015; See also United Nations Information Organizations, Documents of the United Nations Conference on International Organization, Vol 6 (San Francisco, 1945) 456. See also J Wronka, *Human Rights and Social Policy in the 21st Century: A History of the Idea of Human Rights and Comparison of the United Nations Universal Declaration of Human Rights with United States Federal and State Constitutions* (University Press of America, 1998) 91.

<sup>42</sup> See Rehman above n 37, at 75.

<sup>43</sup> *ibid.*, 75.

<sup>44</sup> See notes by Charles Malek (Lebanon) UNGA, Draft universal declaration of human rights : report of the Third Committee (A/777), 857, A/PV.180,180th Plenary Meeting, (Thursday, 9 December 1948) 116.

The drafters of the declaration agreed to the latter, and in 1947<sup>45</sup> the Declaration was drafted and left open for debate at the UNGA.<sup>46</sup> Finally, on December 10, 1948 the UNGA passed resolution 217 (III) and adopted the UDHR.<sup>47</sup> It includes civil and political rights, social, economic and cultural rights and was considered the first of a three part series of the international bill of rights.<sup>48</sup> When the UDHR was completed and passed to the UNGA for adoption, the Human Rights Commission started to work on codifying the principles of the UDHR into a legally binding human rights convention. This will be discussed below.<sup>49</sup>

It is important to highlight that early on during the drafting sessions of the UDHR there were long-standing debates on whether or not the provisions recognized by the UDHR are universal or only reflect western ideals of human rights.<sup>50</sup> During this time, some State representatives (largely coming from the Socialist Soviet Union, and third world States, including those emanating from Muslim majority States) argued for the latter because they assumed the provisions reflected Western interests and ideologies.<sup>51</sup> However, the Special Rapporteur for the Commission on Human Rights, Charles Malek (a Lebanese Christian) stated that the UDHR was drafted ‘on a firm international

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<sup>45</sup> UN Economic and Social Council, Unrestricted E/CN.4/9, 30 January 1947. Members of the Commission on Human Rights, include, Mr. Osman Ebeid representative of Egypt, Dr. Ghassame Ghani (Iran), Dr. Charles Malik (Lebanon). See also ECOSOC E/38 27 March 19, Report of the Commission on Human Rights. Other issues were discussed and taken into consideration such as such as Egypt’s concern with the draft version of UDHR Art.17 and 19 by Egypt. UN , 183rd Plenary Meeting, (A/777) 912.

<sup>46</sup> See notes by Charles Malek (Lebanon) UNGA. 116. Draft universal declaration of human rights : report of the Third Committee (A/777), 857, A/PV.180,180th Plenary Meeting, (Thursday, 9 December 1948).

<sup>47</sup> Adopted and proclaimed by General Assembly resolution 217 A (III) of 10 December 1948. See Rehman (2010) n 37, at 76. UNGA, Universal Declaration of Human Rights, 10 December 1948, 217 A (III). 48 States voted for the adoption of the UDHR in 1948 and eight states abstained (including Saudi Arabia, one of the founding members of the Arab League). Whereas Yemen, among other States were absent when the UDHR was adopted. CM Cerna ‘Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts’ Human Rights Quarterly, Vol. 16, No. 4 (Nov., 1994), 742.

<sup>48</sup> CM Cerna ‘Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts’ Human Rights Quarterly, Vol. 16, No. 4 (Nov., 1994), 742. See also Rehman above n 37, at 76.

<sup>49</sup> UNGA, Draft universal declaration of human rights: report of the Third Committee (A/777), 857, A/PV.180,180th Plenary Meeting, (Thursday, 9 December 1948) 4.

<sup>50</sup> See notes by Charles Malek (Lebanon) UNGA, 116. Draft Universal Declaration Of Human Rights: Report Of The Third Committee (A/777), 857, A/PV.180,180th Plenary Meeting, (Thursday, 9 December 1948).

<sup>51</sup> *ibid.*

basis’;<sup>52</sup> as such, he argued that all Member States of the UN should refer to the UDHR to elevate domestic protection of human rights. He noted:

[T]he Members of the United Nations had already solemnly pledged themselves, under the Charter, to promote respect for human rights and fundamental freedoms but that it was the first time that human rights and fundamental freedoms had been set forth in detail. Hence every Government knew, at present, to what extent exactly it had pledged itself, and every citizen could protest to his Government if the latter did not fulfil its obligations. The declaration would therefore provide a useful means of criticism and would help to bring about changes in present legal practice.<sup>53</sup>

It is important to mention that Member States of the Arab League (Iraq, Syria, Lebanon, Saudi Arabia, and Egypt) participated in the drafting of the UDHR and its bill of Rights.<sup>54</sup> In fact, there were some ‘Islamic’ challenges to human rights, as there were provisions that contradict with Islamic values, especially Article 18.<sup>55</sup> However, Arab States were far from argumentative and it seemed that they were overall supportive of the document.<sup>56</sup> Therefore, they voted in favour of the UDHR, while Saudi Arabia abstained.<sup>57</sup> Abiad suggests the reason for an affirmative vote formulating from Muslim majority States was the belief that the UDHR was a non-binding declaration. Thus no concrete measures were needed to be taken by the States to implement the provisions within their national legislations.<sup>58</sup> Furthermore, as with the case of Egypt, the votes advanced by Muslim majority States were accompanied by reservations.<sup>59</sup>

It is equally important to highlight the fact that there exist many concerns by different scholars and theorists regarding the intention of the Human Rights Commission while

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<sup>52</sup> *ibid.*

<sup>53</sup> *ibid.*, A/777 857, and A/PV.180, 859.

<sup>54</sup> M Khadduri, ‘International Affairs towards an Arab Union: The League of Arab States’ (1946) *Am. Polit. Sci. Rev.*, Vol. 40, No. 1, 100. See also K Cavanaugh ‘Narrating Law’ in A M. Emon, M Ellis, and B Glahn, *Islamic Law and International Human Rights Law* (Oxford University Press, 2012) 17-51, at 35.

<sup>55</sup> UDHR, art. 18. See 3. UN GAOR C.3 (127 mtg.) at 391-392, UN Doc. A/C.3/SR.127 (1948). See N Abiad, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, (BIICL 2008) 60.

<sup>56</sup> See Cavanaugh above n 54, at 35. See also S Waltz, ‘Universal Human Rights: The Contribution of Muslim States’ HRQ (26 November 2004), 799-844.

<sup>57</sup> See Abiad above n 55, at 61.

<sup>58</sup> *ibid.*, For more information on this see A Verdoodt, *Naissance et signification de la Déclaration Universelle des droits de l’homme* (Nauwelaerts, Louvain-Paris, 1963), AAC Trindade, Judge Antônio A. Cançado Trindade. *The Construction of a Humanized International Law: A Collection of Individual Opinions* (1991-2013) (Hotei Publishing 2014) 1926.

<sup>59</sup> See Abiad above n 55, at 61.

drafting the UDHR. For example, Krivenko argues that the drafters of the UDHR were not concerned about enforcing standards defined therein.<sup>60</sup> In line with Krivenko, Ignatief argues that many States saw the Declaration as a non-binding document. He states:

Indeed, many of the States that contributed to the drafting of the Universal Declaration saw no apparent contradiction between endorsing international norms abroad and continuing oppression at home. They thought that the Universal Declaration would remain a pious set of clichés more practiced in the breach than in the observance.<sup>61</sup>

Furthermore, it seems the Declaration attained an unbalanced inclusion of the economic and social rights. The UDHR provides more space and impetus to civil and political rights than to economic, social and cultural rights, and as Cassese observes '[n]o mention at all is made of the rights of peoples'.<sup>62</sup> He notes that only five of the thirty articles of the UDHR refer to Economic Social and Cultural rights: these include Articles 2|2, 23, 24, 25, 26, 27 and 28.<sup>63</sup>

Notwithstanding these arguments, it is submitted that the UDHR has gained prominence and serves as a '[p]owerful influence on the evolution of present-day international law',<sup>64</sup> and its provisions have attained a status in customary international law.<sup>65</sup> As mentioned above, universal applicability of the norms present in the UDHR has not only been supported by authorities within the UN, but also various scholars, jurists, and legal professionals. For example, Buergenthal argues that the UDHR serves as conceptual foundation for the myriad of human rights treaties created since its establishment.<sup>66</sup> Given that the principles ingrained in the UDHR are binding, 'either as customary international legal philosophy, universal principles of law, or as fundamental

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<sup>60</sup> EY Krivenko, *Women, Islam and International Law: Within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women* (BRILL 2009) 14.

<sup>61</sup> M Ignatief, *Human Rights as Politics and Idolatry* (Princeton, Oxford: Princeton University Press, 2001) 6

<sup>62</sup> A Cassese, *International Law* (Oxford University Press, 2001), 358.

<sup>63</sup> *ibid.*

<sup>64</sup> United Nations, 'The International Bill of Human Rights' (1985), Department of Public Information. United Nations, New York, 1.

<sup>65</sup> See Rehman (2010) above n 37, at 80. See also United States Diplomatic and Consular Staff in Tehran (United States of America v. Iran), Judgment, ICJ Reports 1980, p. 42, para. 91.

<sup>66</sup> T Buergenthal, 'The U.N. Covenants and Regional Human Rights' (1986) Vol. 80, ASIL Proc.422.



principles of humanity'.<sup>67</sup> For the first time in UN history the UDHR introduced a global human rights framework that defined human rights and set universal human rights standards 'without distinction as to race, sex, language, or religion'.<sup>68</sup> According to Durham, the UDHR is taken as a vital step for more 'idealistic human rights goals',<sup>69</sup> for instance, its preamble proclaims the establishment is based on:

[A] common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.<sup>70</sup>

Sohn also observes that the UDHR provides for the first time an 'authoritative' interpretation of the UN Charter, and provides clarification of the meaning of the phrase 'human rights and fundamental freedoms'.<sup>71</sup> Therefore, the UDHR has become an authoritative document that conceptualizes human rights, and has become a major component of international customary law.<sup>72</sup> However, as this study argues, the normative force of universal human rights failed to be implemented in the Arab world and that the area compares unfavourably with other regions in terms of adherence to universal human rights norms.<sup>73</sup>

### **2.2.2 The International Covenants on Human Rights: the ICCPR and the ICESCR**

After the UDHR was adopted in 1948, the Commission on Human rights worked during 1949 and 1951 on interpreting the rights (political as well as socioeconomic)

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<sup>67</sup> UN Office of the High Commissioner for Human Rights/ International Bar Association, *Human Rights in the Administration Of Justice: A Manual On Human Rights For Judges, Prosecutors and Lawyers*, Professional Training Series No.9 ( New York- Geneva, UN Publications, 2003) 3.

<sup>68</sup> Article 1, paragraph 3 of the UN Charter.

<sup>69</sup> CR Durham, 'International Human Rights Law: A Legitimate Influence or Constraint on Sovereign Jurisdiction' (1997) *Austl. Int'l L.J.* 56 58. For a discussion of dignity, see C McCrudden, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19(4) *Eur. J. Int'l L.* 655–724.

<sup>70</sup> UDHR, Preamble, para. 8.

<sup>71</sup> See UDHR, Preamble, para.6. See also LB Sohn, 'the New International Law: protection of the rights of individuals rather than States' (1982) *Am.U.L.Rev.* 1, Vol 32, 16.

<sup>72</sup> *ibid.*

<sup>73</sup> See for example, J Donnelly 'Chapter 2, International Human Rights: Universal, Relative or Relatively Universal?' in M Baderin and M Ssenyonjo, *International Human Rights Law, International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Publishing, Ltd., 2013) 31-48, at 34.

into binding covenants.<sup>74</sup> In 1951, the UN Commission originally intended to establish a single Covenant to complement the UDHR.<sup>75</sup> However, it is argued, because it was under pressure from some western States, the UN agreed to divide the rights into two separate covenants: the International Covenant on Civil and Political Rights (ICCPR) recognizing political and civil rights and the International Covenant on Economic, Social and Cultural Rights (ICESCR) for economic, social and cultural rights.<sup>76</sup>

Indeed, Trindade observes the reason behind the separation into two covenants was because of ‘deep ideological divisions’ present at that time which resulted in categorization of human rights.<sup>77</sup> Similarly, it is also submitted that the real driving forces behind the long process and divide of the conventions were based on Cold War politics,<sup>78</sup> where the United States and the west advocated civil and political rights and the socialist countries supported economic and social rights.<sup>79</sup>

The ICCPR is often categorised as the ‘first generation of human rights’, based on western ideals of a fair and democratic society that emanated from the French and American declarations in the eighteenth century.<sup>80</sup> The ICCPR concerned itself with article 3-21 of the UDHR.<sup>81</sup> It includes the civil and political rights, such as right to a fair trial, liberty, and freedom of opinion and expressions.<sup>82</sup> The ICESCR on the other hand, are second-generation human rights, these rights evolved near the close of the nineteenth century during Europe’s accession to social reform,<sup>83</sup> it concerned itself with

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<sup>74</sup> P Alston and R Goodman, *International Human Rights* (Oxford University Press, 2012) 281.

<sup>75</sup> *ibid.*

<sup>76</sup> Alston and Goodman, above n 74, at 281. See UNGA, Annotation of the Draft International Covenants on Human Rights prepared by the UN Secretary General (1955) 10<sup>th</sup> session, UN Doc. A/929 (1 July 1955) Annexes at para. 9 at 8.

<sup>77</sup> A AC Trindade, ‘Universal Declaration Of Human Rights’, United Nations Audio Visual Library <[http://legal.un.org/avl/pdf/ha/udhr/udhr\\_e.pdf](http://legal.un.org/avl/pdf/ha/udhr/udhr_e.pdf)>

<sup>78</sup> D Otto, ‘Rethinking the “Universality” of Human Rights Law’ (1997) *Columbia Hum. Rts. L. Rev.* 1 29, 5–6. See also, M J. Dennis and, D P. Stewart, ‘Justiciability of Economic, Social, and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing,’ (2004) *Am. J. Int’l L.* Vol. 98, No. 3, 463.

<sup>79</sup> See I Merali and V Oosterveld (eds), *Giving Meaning to Economic, Social and Cultural Rights* (Philadelphia, University of Pennsylvania Press, 2001). See also A Kirkup and T Evans, ‘The Myth of Western Opposition to Economic, Social, and Cultural Rights? A Reply to Whelan and Donnelly’ (2009) 31(1) *HRQ* 221–38.

<sup>80</sup> R Smith, *Textbook on International Human Rights*, (6<sup>th</sup> edn, Oxford University Press, 2013) 42.

<sup>81</sup> *ibid.*

<sup>82</sup> *ibid.* Smith, 42. According to Smith, these rights are to be universally recognised by all Member States of the United Nations.

<sup>83</sup> See Smith above n 80, at 42.

articles 22-27 of the UDHR.<sup>84</sup> According to Smith, unlike the ICCPR, the ICESCR rights were to be ‘idealistic’ in nature because they were difficult to implement especially by developing countries.<sup>85</sup> These include the right to health, to education and the right to appropriate living accommodations.<sup>86</sup>

It is submitted by various authors that whatever the rationale was behind the division of the ICCPR and the ICESCR (even if it was because of ‘power politics’), both Covenants are vital instruments<sup>87</sup> and serve to provide ‘the universal rights of all human beings’.<sup>88</sup> This is reaffirmed in the Vienna Declaration and Programme of Action, which declares the two categories of human rights in the two covenants are ‘universal, indivisible and interdependent and interrelated’ and should be treated in a ‘fair and equal manner, on the same footing and with the same emphasis’.<sup>89</sup>

Therefore, it took almost two decades since the UDHR was adopted by the UNGA for the ICCPR and ICESCR to come into force.<sup>90</sup> One of the reasons why it took so long was because it did not gain immediate support by Member States.<sup>91</sup> According to Durham, ratifying these instruments took political will and it was not until States became increasingly pressurized by NGOs and intergovernmental organisations that they considered the Covenants.<sup>92</sup> These treaties (and international human rights treaties that follow) carry a clause that requires contracting States to take the necessary steps to

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<sup>84</sup> See above Alston, n 74 at 281. See GA Resn. 2200A, (1966), see also Smith 42.

<sup>85</sup> Smith n 80, at 42.

<sup>86</sup> *ibid.*

<sup>87</sup> See Levin, above, at n 34, at 30. As Levin emphasises ‘human rights law started with the movement to limit State interference in private affairs’, however, currently, the reverse is needed to ‘transition from a “fatally malleable” to a practically workable concept of human rights’

<sup>88</sup> See Smith above, n 80 at 42.

<sup>89</sup> *ibid.*, Vienna Declaration and Programme of Action, World Conference on Human Rights, Vienna 14-25, June 1993, UN Doc A/CONF.57/24 (Part I) at 20 (1993), 32 ILM 1661 (1993) (hereinafter Vienna Declaration), para 5. See also World Summit Outcome, UN DOC A/60/LI (15 September 2005) para 13; General Assembly Resolution 60/251 establishing the Human Rights Council, UN Doc A/RES/60/251 (3 April 2006) preamble, para 3, and Human Rights Council Resolution 8/2, ‘Optional Protocol to the statements of more modest truths’, see JW Nickel, ‘Rethinking Indivisibility: Towards a theory of supporting relations between human rights’ (2008) 30 Human Rights Quarterly 984-1001.

<sup>90</sup> The ICESCR came into force on 3 January 1976, while the ICCPR and the Optional Protocol came into force on 23 March 1976. See CR Durham, ‘International Human Rights Law: A Legitimate Influence Or Constraint On Sovereign Jurisdiction’ (1997) *Austl. Int’l L. J.*, 59.

<sup>91</sup> See C R Durham, ‘International Human Rights Law: A Legitimate Influence or Constraint on Sovereign Jurisdiction’ (1997) *Austl. Int’l L. J.*, 59.

<sup>92</sup> *ibid.*

adopt legislative or other measures to provide effect to the ‘protected rights’ provisioned.<sup>93</sup>

Despite their importance, most of the Arab States have failed to ratify these fundamental human right treaties, and those who do ratify them do not enforce the provisions because there exists no accountability mechanism in the region.<sup>94</sup>

### 2.2.3 Ratifications of International Human Rights Treaties

As highlighted above, since its establishment, the UN provided the impetus for the global development of international human rights law, as stipulated in the preamble of the UDHR:

[W]hereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,<sup>95</sup>

As such, according to McCorquodale ‘no other field of law, perhaps, rests so directly on a moral foundation, the belief that every human being, only by virtue of his or her existence, is entitled to certain very basic, and in some instances unqualified, rights and freedom(s)’.<sup>96</sup> In addition to the International Bill of Rights, the UN has established (and continues to establish) conventions that deal with global challenges,<sup>97</sup> and provides special organs as means to safeguard and enforce human rights.<sup>98</sup>

Generally, human rights treaties elaborate specific substantive rights and are intended to bind all States that are parties to the treaty either through ratification or accession to it – as either of these two acts ‘signals a country’s concrete willingness to undertake the

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<sup>93</sup> M Pinto, ‘Poverty and Constitutional Rights’ (2010) *Penn St Int’l L Rev.*, Vol. 28:3, 480. See International Covenant on Civil and Political Rights, G.A. Res. 2200A (XXI), art. 2(2), U.N. OHCHR, 999 U.N.T.S. 171, 173 (Dec. 16, 1966) [hereinafter ICCPR], available at <http://www2.ohchr.org/english/law/pdf/ccpr.pdf>; American Convention on Human Rights, Art. 2(1), 1144 U.N.T.S. 143, 145 (Jul. 18, 1978).

<sup>94</sup> See M Baderin, *International Human Rights and Islamic Law*, (Oxford University Press 2003) 229.

<sup>95</sup> UDHR, Preamble, para. 5.

<sup>96</sup> R McCorquodale, ‘The Rule of Law in International and Comparative Perspective’ (2010) *BIICL* 7.

<sup>97</sup> D Olowu, ‘The United Nations Human Rights Treaty System and The Challenges Of Commitment and Compliance in The South Pacific the UN Human Rights Treaty System in the South Pacific’ (2006) *MJIL* Vol 7, 1, < <http://www.law.unimelb.edu.au/files/dmfile/download00c41.pdf>>

<sup>98</sup> S Bachmann, *Civil Responsibility for Gross Human Rights Violations: The Need for a Global Instrument* (PULP, 1 Jan 2007) x.

legal rights and obligations contained in a treaty'.<sup>99</sup> According to Brownlie, the creation of law through treaties is less contentious than by other means, and generally achieves worldwide support.<sup>100</sup> Additionally, the ECtHR maintained rights created by treaty law is binding on States.<sup>101</sup> Notwithstanding, there are a number of fundamental human rights treaties with their own monitoring bodies that not only set out human rights standards, but also provide a platform for redress.<sup>102</sup> Unfortunately, Member States of the Arab League failed to engage with the UN human rights mechanisms despite the many benefits these mechanisms can offer for the citizens of the region.

For example, the International Covenant on Civil and Political Rights (ICCPR) entered into force on 23 March 1976 in accordance with Article 49. It has 168 ratifying States including fourteen from the Arab League.<sup>103</sup> The ICCPR's first optional protocol entered into force on 23 March 1976, in accordance with Article 9. The optional protocol gained popularity with a total of 115 State parties, however from the Arab League only four Arab States are parties.<sup>104</sup> There is also a second Optional Protocol

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<sup>99</sup> The Commonwealth, 'Ratifications of International Human Rights Treaties' (2011) <<http://www.thecommonwealth.org/Internal/190707/190891/218476/ratifications/#cerd>> accessed 2 January 2015.

<sup>100</sup> I Brownlie, *Principles of Public International Law* (6<sup>th</sup> edn, Oxford, 2003) 83.

<sup>101</sup> C Beyani, 'The Legal Premises for the International Protection of Human Rights,' in G S. Goodwin-Gill and S Talmon (eds.), *The Reality of International Law: Essays in Honour of Ian Brownlie* (Oxford: Clarendon Press 1999).

<sup>102</sup> OHCHR 'Human Rights Treaty Bodies – Individual Communications', <<http://www2.ohchr.org/english/bodies/petitions/individual.htm>> See also International Covenant on Civil and Political Rights, adopted 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976), International Covenant on Economic, Social and Cultural Rights, adopted 16 December 1966, 993 UNTS 3 (entered into force 3 January 1976), Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 December 1984, 1465 UNTS 85 (entered into force 26 June 1987), International Convention for the Elimination of All Forms of Racial Discrimination, adopted 21 December 1965, 660 UNTS 195 (entered into force 4 January 1969), Convention of the Elimination of All Forms of Discrimination against Women, adopted 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981), Convention on the Rights of the Child, adopted 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990), Convention of the Rights of Persons with Disabilities, adopted 13 December 2006, (entered into force 3 May 2008), International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted 8 December 1990), (entered into force 1 July 2003), International Convention for the Protection of All Persons from Enforced Disappearance, adopted 20 December 2006 (not yet into force).

<sup>103</sup> Those who are parties to the ICCPR are: Jordan ratified on 28 May 1975, Bahrain 20 Sept 2006 a, Tunisia ratified 18 March 1969, Algeria ratified 9 December 1989, Sudan 18 March 1986 a, Syrian Arab Republic 21 April 1969 a, Egypt 14 Jan 1982, Kuwait 21 May 1996 a, Lebanon 3 Nov 1972 a, Morocco 3 May 1979, Djibouti 5 Nov 2002 a, Mauritania 17 November 2004 a, Yemen 9 Feb 1987 a, Libya 15 May 1970 a, Iraq 25 January 1971, State of Palestine 2 April 2014 a. See treaty 'Status at 5 December 2013. Chapter IV Human Rights, 4. International Covenant on Civil and Political Rights, New York, 16 December 1966. <[http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-4&chapter=4&lang=en](http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&lang=en)> > accessed 1 January 2015.

<sup>104</sup> Djibouti 5 Nov 2002 a, Algeria 12 Sep 1989 a, Libya 16 May 1989 a, and Tunisia 29 Jun 2011 a.

attached to the ICCPR aiming at the abolition of the death penalty, the protocol has 81 State parties including one State from the Arab League.<sup>105</sup>

The International Covenant on Economic, Social and Cultural Rights (ICESCR) entered into force on 3 January 1976 in accordance with article 27.<sup>106</sup> It has 162 State parties, including fifteen from the Arab League.<sup>107</sup> The optional protocol to ICESCR entered into force on 5 May 2013 and has 17 parties, however to date none of the Arab States signed or ratified it.<sup>108</sup>

The Convention on Elimination of Discrimination against Women (CEDAW)<sup>109</sup> entered into force on 3 September 1981 and became one of the most comprehensive human rights treaty dealing with the universally accepted principles on women's rights.<sup>110</sup> There are 188 State parties to CEDAW, 19 State Members of the Arab League have ratified or acceded to this instrument.<sup>111</sup> However, as will subsequently be

Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976. See also the OHCHR, First Optional Protocol to the International Covenant on Civil and Political Rights Overview of procedure.

<[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-5&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en)> accessed 1 January 2015.

<sup>105</sup> Djibouti is the only State to ratify on 5 Nov 2002 a. See UNTC, Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, New York, 15 December 1989, entered into force, 11 July 1991, in accordance with article 8(1). See UNTC, <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en)> accessed 1 January 2015.

<sup>106</sup> UNGA, International Covenant on Economic, Social and Cultural Rights, 16 December 1966, United Nations, Treaty Series, vol. 993,3.

<sup>107</sup> Those who are parties are: Jordan 28 May 1975, Bahrain 27 September 2007, Tunisia 18 March 1969; Algeria 9 December 1989, Djibouti 5 November 2002 a, Egypt 14 January 1982, Lebanon 3 November 1972 a, Libya 15 May 1970 a, Mauritania 17 November 2004 a, Morocco 3 May 1979, Sudan 18 March 1986 a, State of Palestine 2 April 2014 a, Syrian Arab Republic 21 April 1969 a, Yemen 9 February 1987 a, Iraq 25 Jan 1971. UNTC, 'International Covenant on Economic, Social and Cultural Rights, New York, 16 December 1966, Entry into force 3 January 1976, in accordance with article 27.

<[https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg\\_no=iv-3&src=treaty](https://treaties.un.org/pages/viewdetails.aspx?chapter=4&lang=en&mtdsg_no=iv-3&src=treaty)>

<sup>108</sup> Optional Protocol to the International Covenant on Economic, Social and Cultural Rights New York, 10 December 2008, Entry into force 5 May 2013, in accordance with article 18(1). Status of Ratification (As of 29-05-2013). Doc. A/63/435; C.N.869.2009.TREATIES-34 of 11 December 2009 "UNTC." 2013. <[http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-3-a&chapter=4&lang=en](http://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-3-a&chapter=4&lang=en)> accessed 1 January 2015.

<sup>109</sup> UNTC, Chapter IV 8. Convention on Elimination of all forms of discrimination against women. New York, 18 December 1979 < [http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en)> accessed 1 January 2015.

<sup>110</sup> The Commonwealth 'Ratifications of International Human Rights Treaties' (Status at : 29-05-2013) <<http://www.thecommonwealth.org/Internal/190707/190891/218476/ratifications/#cerd>> accessed 1 January 2015.

<sup>111</sup> Of the Arab League: Jordan 7 January 1992, Tunisia 20 September 1985, Algeria 22 May a, 1996 Djibouti 2 December 1998 a, Saudi Arabia 9 July 2000, Iraq 13 August 1986 a, Oman 7 February 2006

discussed, an overwhelming majority have upheld reservations or declarations on substantive provisions. The protocol to CEDAW<sup>112</sup> has 105 States; only two States from the Arab League have ratified this Protocol.<sup>113</sup>

The Convention of the Right of Children (CRC) entered into force 2 September 1990. It has 193 parties to it, including 20 from the Arab League.<sup>114</sup> The optional protocol on a communications procedure entered into force on 14 April 2014 (in accordance with Article 19 (1) of the CRC). Currently, it has a total of 14 State parties. However, none of the State Members of the Arab League have ratified it.<sup>115</sup> There are also two additional protocols attached to the CRC: the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the Optional protocol to the CRC on the involvement of children in armed conflict. The Optional Protocol to the Convention on the Rights of the Child on the Sale of

a, Qatar 22 April 2009 a, Comoros 31 October 1994 a, Kuwait 2 September 1994 a, Lebanon 16 April 1997 a, Libya 16 May 1989a & protocol 18 June 2004, Egypt 18 September 1981, Morocco 21 June 1993 a, Mauritania 10 May 2001 a and Yemen 30 May 1984 a, Syrian Arab Republic 28 March 2003 a, Bahrain 18 June 2002 a and United Arab Emirates 6 October 2004 a, State of Palestine 2 Apr 2014 a, Saudi Arabia

7 Sep 2000. See UNTC < [https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-8&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en) > Accessed 1 January 2015.

<sup>112</sup> OHCHR, 'Committee on the Elimination of Discrimination against Women' <<http://www2.ohchr.org/english/bodies/cedaw/> > accessed 1 January 2015. Optional Protocol to the Convention on the Elimination of Discrimination against Women, G.A. res. 54/4, annex, 54 U.N. GAOR Supp. (No. 49) at 5, U.N. Doc. A/54/49 (Vol. I) (2000), entered into force Dec. 22, 2000.

<sup>113</sup> Tunisia (on September 23, 2008) and Libya (on June 18, 2004), Optional Protocol to CEDAW, see UNTC, Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women

New York, 6 October 1999, Entry into force 22 December 2000, in accordance with article 16(1) See paragraph 16 of Resolution A/RES/54/4

<[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en)> accessed 1 January 2015.

<sup>114</sup> Those who are parties to CRC are: the United Arab Emirates 3 January 1997 a, Bahrain 13 February 1992 a, Saudi Arabia 26 January 1996 a, Oman 9 December 1996 a, Libya 15 April 1993 a, Iraq 15 June 1994 a;; Comoros 22 Jun 1993, Djibouti 6 December 1990, Egypt 6 July 1990 ; Kuwait 21 October 1991, Lebanon 14 May 1991, Mauritania 16 May 1991, Morocco 21 June 1993, Qatar 9 December 1996 a, Syrian Arab Republic 15 July 1993, State of Palestine 2 April 2014 a, and Yemen 1 May 1991, Sudan 3 Aug 1990 , Tunisia 30 Jan 1992, Algeria 16 Apr 1993

<[https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-11&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-11&chapter=4&lang=en)> accessed 1 January 2015.

<sup>115</sup> See also UNTC, optional Protocol to the Convention on the Rights of the Child on a communications procedure, New York, 19 December 2011, entered into force 14 April 2014, in accordance with article 19(1) <[https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-11-d&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-11-d&chapter=4&lang=en)> accessed 1 January 2015. Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, G.A. Res. 54/263, Annex II, 54 U.N. GAOR Supp. (No. 49) at 6, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* January 18, 2002; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, G.A. Res. 54/263, Annex I, 54 U.N. GAOR Supp. (No. 49) at 7, U.N. Doc. A/54/49, Vol. III (2000), *entered into force* February 12, 2002.

Children, Child Prostitution and Child Pornography entered into force on 18 January 2002, in accordance with article 14(1). It currently has 169 State Parties, including 19 from the Arab League.<sup>116</sup> The Optional protocol to the CRC on the involvement of children in armed conflict entered into force in 2002 in accordance with article 10 (1). It currently has a total of 159 States parties including 12 from the Arab League.<sup>117</sup>

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatments or Punishments (CAT) entered into 26 June 1987 and currently 153 parties to it. From the Arab League, eighteen States are parties to it.<sup>118</sup> However, three of these States declared reservations to Article 20 thus do not recognize the competence of the Committee.<sup>119</sup> In addition, on 22 June 2006, CAT brought into force its optional protocol which provides for an international mechanism for carrying out of visits to places of detention.<sup>120</sup> Currently, the Optional Protocol has 76 State parties to it and only four from the Arab League.<sup>121</sup>

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<sup>116</sup> Algeria 27 Dec 2006 a, Bahrain 21 Sep 2004 a, Comoros 23 Feb 2007 a, Djibouti 27 Apr 2011 , Egypt

12 July 2002 a, Iraq 24 June 2008 a, Jordan 4 December 2006, Kuwait 26 August 2004 a, Lebanon 8 November 2004, Libya 18 June 2004 a, Mauritania 23 April 2007 a, Morocco 2 October 2001, Oman 17 Sep 2004 a, Qatar 14 December 2001 a, Saudi Arabia 18 Aug 2010 a, Sudan 2 November 2004, Syrian Arab Republic 15 May 2003 a, Tunisia 13 September 2002, Yemen 15 December 2004 a.

<sup>117</sup> Djibouti 27 April 2011, Iraq, 24 June 2008 a, Jordan 23 May 2007, Kuwait 26 August 2004 a, Morocco 22 May 2002 , Oman 17 Sep 2004 a, Qatar 25 Jul 2002 a, Saudi Araba 10 Jun 2011 a, Sudan 26 Jul 2005 , Syrian Arab Republic, 17 Oct 2003 a, Tunisia, 2 Jan 2003 , Yemen, 2 Mar 2007 a. UNTC, 11 .b Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, New York, 25 May 2000, 12 February 2002, in accordance with article 10(1).

<[https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtmsg\\_no=iv-11-b&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtmsg_no=iv-11-b&chapter=4&lang=en)> accessed 1 January 2015.

<sup>118</sup> Those who are parties to CAT are: Algeria 12 Sep 1989 , Bahrain 6 March 1998 a, Egypt 25 June 1986 a, Djibouti 5 November 2002 a, Iraq 7 July 2011 a; Jordan 13 November 1991 a; Kuwait 8 March 1996 a; Lebanon 5 October 2000 A; Libya 16 May 1989 A; Mauritania 17 November 2004 a, Morocco 21 June 1993, Saudi Arabia 23 September 1997 A, Qatar 11 January 2000 a, Syrian Arab Republic 19 August 2004 a, United Arab Emirates 19 July 2012 a, Yemen 5 Nov 1991 a, Tunisia 23 Sep 1988, State of Palestine 2 April 2014 a, UNTC, Convention Against Torture And Other Cruel, Inhumane And Degrading Treatment <[https://treaties.un.org/Pages/ViewDetails.aspx?mtmsg\\_no=IV-9&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-9&chapter=4&lang=en)> accessed 1 January 2015.

<sup>119</sup> These States are: Saudi Arabia, Mauritania, Syrian Arab Republic and the United Arab Emirates. <[https://treaties.un.org/Pages/ViewDetails.aspx?mtmsg\\_no=IV-9&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-9&chapter=4&lang=en)> accessed 1 January 2015.

<sup>120</sup> UN General Assembly, Optional Protocol to the Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment, 9 January 2003, A/RES/57/199.

<sup>121</sup> Lebanon 22 Dec 2008 a, Tunisia 29 June 2011 a, Mauritania 3 October 2012, Morocco 24 Nov 2014 a, UNTC, ‘Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’ <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg\\_no=IV-9-b&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtmsg_no=IV-9-b&chapter=4&lang=en)> accessed 1 January 2015.



The Convention on the Rights of Persons with Disabilities (CRPD) entered into force on 3 May 2008 in accordance with article 45(1). It currently has 151 State parties, fourteen from the Arab League.<sup>122</sup> The Optional Protocol to CRPD was adopted in 2006 and has 85 Member States parties, including nine from the Arab League.<sup>123</sup>

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD), entered into force on 4 January 1969.<sup>124</sup> It has 177 State Parties, including twenty from the Arab League.<sup>125</sup>

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<sup>122</sup> See First Optional Protocol to the International Convention on the Protection and Promotion of the Rights and Dignity of Persons with Disabilities, G.A. Res. 61/106, Annex II, U.N. GAOR, 61st Sess., Supp. No. 49, at 80, U.N. Doc. A/61/49 (2006), *entered into force* May 3, 2008. Those who are parties are: State of Palestine 2 Apr 2014 a, Algeria 4 December 2009, Comoros 26 September 2007, Morocco 8 April 2009 a, Saudi Arabia 24 June 2008 a, Sudan 24 April 2009 a, Syrian Arab Republic 10 July 2009 a, Tunisia 2 April 2008, United Arab Emirates 12 February 2008, Yemen 26 March 2009, Bahrain 22 September 2011, Egypt 14 April 2008, Djibouti 18 June 2012 a, Jordan 31 March 2008, Libya 1 May 2008, Oman 6 January 2009, Qatar 13 May 2008, Iraq 20 March 2013 a, Kuwait 22 Aug 2013 a, Mauritania

3 April 2012 a. For statements on reservations, see [Treaties.un.org](http://treaties.un.org). "UNTC." 2013

<[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15&chapter=4&lang=en)> accessed 1 January 2015.

<sup>123</sup> Djibouti 18 June 2012 a, Mauritania 3 Apr 2012 a, Morocco 8 Apr 2009 a, Saudi Arabia 24 Jun 2008 a; Sudan 24 April 2009 a; Syrian Arab Republic 10 Jul 2009 a; Tunisia 30 Mar 2007 2 Apr 2008; United Arab Emirates 12 February 2008; Yemen 26 March 2009. UNTC, Optional Protocol to the Convention on the Rights of Persons with Disabilities. 13 December 2006, entered into force 3 May 2008, No. 44910. Doc.A/61/611. New York

<[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en)> accessed 1 January 2015; Doc. A/61/611.

<sup>124</sup> Algeria 14 Feb 1972, Bahrain 7 Mar 1990 a, Djibouti 30 September 2011, Comoros 27 September 2004, Iraq 14 January 1970, Kuwait 15 October 1968 a, Libya 3 July 1968 a, Mauritania 13 December 1988, Morocco 18 December 1970, Oman 2 Jan 2003 a, Qatar 22 Jul 1976 a, Saudi Arabia, 23 Sep 1997 a, Sudan 21 Mar 1977, Syrian Arab Republic 21 Apr 1969 a, Tunisia 13 Jan 1967, the United Arab Emirates 20 Jun 1974 a, Yemen 18 Oct 1972 a, State of Palestine 2 April 2014 a, Egypt 1 May 1967, Jordan

30 May 1974 a. See UNTC, Status of ratification,

<[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en)> accessed 1 January 2015. UNGA, International Convention on the Elimination of All Forms of Racial Discrimination, 21 December 19 United Nations, Treaty Series, vol. 660, p. 195. See "UNTC." 2013.

<[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en)> accessed 1 January 2015.

<sup>125</sup> Algeria 14 February 1972, Bahrain 27 March 1990 a, Comoros 27 September 2004, Egypt 1 May 1967, Iraq 14 January 1970, Jordan 30 May 1974 a, Kuwait 15 October 1968 a, Lebanon 12 November 1971 a, Libya 3 July 1968 a, Morocco 18 December 1970, Oman 2 January 2003 a, Qatar 22 July 1976 a, Saudi Arabia 23 September 1997 a, Somalia 26 August 1975; Sudan 21 March 1977 a; Syrian Arab Republic 21 April 1969 a; Tunisia 13 January 1967; United Arab Emirates 20 June 1974 a; Yemen 18 October 1972 a. cited in UNTC, International Convention on the Elimination of All Forms of Racial Discrimination, New York, 7 March 1966. <[http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-2&chapter=4&lang=en)> accessed 1 January 2015.

The International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) entered into force 1 July 2003. It has 46 Parties to it, including 6 States from the Arab League.<sup>126</sup>

Furthermore, in an attempt to strengthen adherence to these normative provisions of human rights, UN treaty mechanisms also provide three main procedures for addressing human rights violations. These are individual communications,<sup>127</sup> state-to-state complaints, and inquiries.<sup>128</sup> However, inter-State disputes have never been used.<sup>129</sup>

A Committee of experts (Treaty Body) is established under each treaty to monitor how the provisions are being implemented by contracting States.<sup>130</sup> There are nine core international human rights treaty bodies, however, only seven are in force. Nevertheless, it seems only five treaty bodies have been engaged with Member States of the Arab League at some point, these are:

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<sup>126</sup> Algeria 21 April 2005 a, Egypt 19 February 1993 a, Libya 18 June 2004 a; Mauritania 22 Jan 2007 a, Morocco 21 Jun 1993, Syrian Arab Republic 2 Jun 2005 a. See in 'UNTC' International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families New York, 18 December 1990, Entry into force 1 July 2003, in accordance with article 87(1). <[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-13&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-13&chapter=4&lang=en)> accessed 1 January 2015.

<sup>127</sup> Some of the above human rights treaties also include optional protocols and provisions included and attached to the conventions to enhance the UN's ability to monitor human rights violations. See Cavanaugh above n 54, at 36.

<sup>128</sup> See OHCHR 'Human Rights Bodies - Complaints Procedures' <<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#inquiries>> Accessed 1 January 2015.

<sup>129</sup> *ibid.*

<sup>130</sup> OHCHR, 'View the ratification status by country or by treaty' Treaty Database <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Treaty.aspx?CountryID=184&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Treaty.aspx?CountryID=184&Lang=en)> accessed 1 January 2015. See CAT, Article 22 - Individual complaints procedure under the Convention against Torture; CCPR-OP1 - Optional Protocol to the International Covenant on Civil and Political Rights; , Article 31 - Individual complaints procedure under the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED); CEDAW-OP - Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women; CERD, Article 14 - Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination; CESCR-OP - Optional protocol to the International Covenant on Economic, Social and Cultural Rights; CMW, Article 77 - Individual complaints procedure under the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; CRC-OP-IC - Optional Protocol to the Convention on the Rights of the Child; CRPD-OP - Optional protocol to the Convention on the Rights of Persons with Disabilities. There are also the Special Procedures of the Human Rights Council and the Human Rights Council Complaint Procedure, these procedures for complaints fall outside treaty body system. ( See OHCHR 'Human Rights Bodies - Complaints Procedures' <<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#inquiries>> accessed 1 January 2015. OHCHR, 'View the ratification status by country or by treaty' Treaty Database <[http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Treaty.aspx?CountryID=184&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Treaty.aspx?CountryID=184&Lang=en)> accessed 1 January 2015.

1. The First Optional Protocol to the International Covenant on Civil and Political Rights has 4 State parties: Djibouti (5 Nov 2002 a), Algeria (12 Sep 1989 a), Tunisia (29 Jun 2011 a) Libya (16 May 1989 a).<sup>131</sup>
2. Optional Protocol to the Convention on the Rights of Persons with Disabilities (OP-CRPD) has nine State parties: Djibouti (18 June 2012 a), Mauritania (3 Apr 2012 a), Morocco (8 Apr 2009 a), Saudi Arabia (24 Jun 2008 a); Sudan (24 April 2009 a); Syrian Arab Republic (10 Jul 2009 a); Tunisia (2 Apr 2008); United Arab Emirates (12 February 2008); Yemen (26 March 2009).<sup>132</sup>
3. Convention against Torture (CAT) Article 22 - Individual complaints procedure has 3 State Parties: Algeria (12 Sep 1989), Morocco (19 Oct 2006), Tunisia (23 September 1988).<sup>133</sup>
4. Article 14 Individual complaints procedure under the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) has 2 State Parties: Algeria (12 September 1989) and Morocco (19 October 2006).
5. Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW-OP) has 2 State Parties: Libya (18 June 2004), Tunisia (23 September 2008).<sup>134</sup>

Therefore, the Optional Protocols have gained minimal support by Arab States, only 4 States ratified the OP to ICCPR<sup>135</sup>, 2 States ratified the CEDAW OP<sup>136</sup>, while CRPD

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<sup>131</sup> UNTC, Optional Protocol to the International Covenant on Civil and Political Rights, New York, 16 December 1966, Entry into force: 23 March 1976, in accordance with article 9. <[https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-5&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-5&chapter=4&lang=en)> accessed 1 January 2015.

<sup>132</sup> UNTC, Optional Protocol to the Convention on the Rights of Persons with Disabilities, 13 December 2006 entered into force 3 May 2008, No. 44910. Doc.A/61/611. New York, <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en)> accessed 1 January 2015.

<sup>133</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment New York, 10 December 1984, Entry into force 26 June 1987, in accordance with article 27(1). 1 Declarations and Reservations, United Nations, Treaty Series, vol. 1465, p. 85. <[https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-9&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-9&chapter=4&lang=en)>

<sup>134</sup> Declarations recognizing the competence of the Committee on the Elimination of Racial Discrimination, in accordance with article 14 of the Convention (Unless otherwise indicated, the declarations and reservations were made upon ratification, accession or succession.) United Nations, Treaty Series, vol. 660, <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-2&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-2&chapter=4&lang=en)> accessed 1 January 2015.

<sup>135</sup> Optional Protocol to the International Covenant on Civil and Political Rights, G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 59, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 302, entered into force March 23, 1976. See also the OHCHR, First Optional Protocol to the International Covenant on Civil and Political Rights Overview of procedure. <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-5&chapter=4&lang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-5&chapter=4&lang=en)> There are also another Optional Protocol attached to the ICCPR regarding abolition of the death penalty OP, Djibouti is the only State to ratified it on 5 Nov 2002 a. Optional Protocol to the International Covenant on 2 <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-12&chapter=4&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-12&chapter=4&lang=en)> accessed 1 January 2015.

<sup>136</sup> Tunisia (23 September 2008) and Libya (18 June 2004) accessed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women New York, 6 October 1999. Entry into force 22 December 2000, in accordance with article 16(1) (see paragraph 16 of Resolution. United Nations,

OP has only 9 States parties;<sup>137</sup> while although the ICESCR OP is in force with 17 State parties, no Arab State has ratified the Protocol.<sup>138</sup>

With regards to the UN inquiry procedures only a few Arab States engaged with the international human rights system these are:

1. CRPD-OP, Article 6-7- inquiry procedure under the CRPD, only 5 States accepted the procedure: Sudan (24 April 2009), Mauritania (3 April 2012), Djibouti (18 June 2012), Morocco (8 April 2009), Saudi Arabia (24 June 2008);
2. CAT, Article 20 - Inquiry procedure under the Convention against Torture, 12 States accepted the procedure: Yemen (5 November 1991), Algeria (12 September 1989), Libya (16 May 1989), Djibouti (5 November 2002), Morocco (21 June 1993), Tunisia (23 September 1988), Qatar (11 January 2000), Bahrain (4 August 1998), Iraq (7 Jul 2011), Jordan (13 November 1991), Egypt (25 June 1986), Lebanon (5 October 2000);
3. CEDAW Article 8-9 - Inquiry procedure: 2 State that accepted the procedures: Libya, (18 June 2004) and Tunisia (23 September 2008);<sup>139</sup>
4. ICPED, Article 33 - Inquiry procedure has 4 State parties: Mauritania (3 October 2012), Morocco (14 May 2013), Tunisia (29 June 2011)<sup>140</sup> and Iraq (23 November 2010).<sup>141</sup>

A/RES/54/4)<[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8-b&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en)>

<sup>137</sup> See UNTC, CRPD at n 132.

<sup>138</sup> UNTC, Optional Protocol to the International Covenant on Economic, Social and Cultural Rights New York, 10 December 2008, Entry into force in 5 May 2013, in accordance with article 18(1) 5 May 2013, No. 14531, Doc.A/63/435; C.N.869.2009.TREATIES-34 of 11 December 2009 (Rectification of the original of the Protocol (French authentic text) and transmission of the Procès-verbal) <[https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg\\_no=iv-3-a&chapter=4&lang=en](https://treaties.un.org/pages/viewdetails.aspx?src=ind&mtdsg_no=iv-3-a&chapter=4&lang=en)>.

<sup>139</sup> See also, OHCHR 'Human Rights Bodies - Complaints Procedures'

<<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#inquiries>> Accessed 4 September 2014.

<sup>140</sup> See report United Nations CED/C/TUN/1, 31 October 2014, International Convention for the Protection of All Persons from Enforced Disappearance, Distr.: General, 31 October 2014, Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention, Reports of States parties due in 2013, Tunisia (in Arabic) Submitted 25 September 2014.

<sup>141</sup> See report United Nations International Convention for the Protection of All Persons from Enforced Disappearance, CED/C/IRQ/1Distr.: General 25 July 2014, Committee on Enforced Disappearance Consideration of reports submitted by States parties under article 29, paragraph 1, of the Convention Reports of States parties due in 2012, Iraq, [Date received: 26 June 2014] <[http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/TUN/INT\\_CED\\_INR\\_TUN\\_7068\\_A.pdf](http://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/TUN/INT_CED_INR_TUN_7068_A.pdf)> International Convention for the Protection of All Persons from Enforced Disappearance New York, 20 December 2006 Entry into force, 23 December 2010, in accordance with article 39(1) which reads as follows: 'This Convention shall enter into force on the thirtieth day after the date of deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession'. Registration 23 December 2010, No. 48088, United Nations, Treaty Series, vol. 2716, p. 3 Doc.A/61/448

<[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-16&chapter=4&lang=en#EndDec](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-16&chapter=4&lang=en#EndDec)>.

Therefore, it appears most Member States of the Arab League are not supporting the implementation mechanisms provided by fundamental human rights treaties. This is despite the fact that the provisions and optional protocols aim to provide UN treaty bodies the competence to monitor implementation of the treaty in question, thus they help elevate State adherence to these treaties.<sup>142</sup> As stipulated in the fourth meeting of Chairpersons of Human Rights treaty bodies:

[T]he treaty bodies have an important role in seeking to prevent as well as to respond to human rights violations. It is thus appropriate for each treaty body to undertake an urgent examination of all possible measures that it might take, within its competence, both to prevent human rights violations from occurring and to monitor more closely emergency situations all kinds arising within the jurisprudence of States parties. Where procedural innovations are required for this purpose, they should be considered as soon as possible.<sup>143</sup>

Arab States' reservations and interpretive declarations to human rights treaties are also the subjects of a large number of international objections and condemnations.<sup>144</sup> According to Brems reservations from Muslim Majority States have started in the 1980s with CEDAW and in the first half of the 1990s. However, with increasing ratifications to this Convention and CRC, the number of Islamic reservations Muslim Majority States peaked.<sup>145</sup> It is important to note Article 20 (2) CERD, Article 28 (2) CEDAW, Article 51 (2) CRC, and Article 91 (2) ICRMW prevents reservations which are 'incompatible with the objects and purpose of the Convention[s]', however declarations are permitted to the rest of the provisions in all core international treaties reservations.<sup>146</sup>

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<sup>142</sup> See also, OHCHR 'Human Rights Bodies - Complaints Procedures' <<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#inquiries>> Accessed 4 September 2014.

<sup>143</sup> UN Doc. A/47/628, para. 44. see also , This was also restated in Article 35 of OHCHR Resolution 2003/86 which had mutual consensus without a vote and re-affirmed in 2004 in Resolution 2004/48.

<sup>144</sup> E Brems 'Islamic Reservations to Human Rights Conventions' in *Human Rights: Universality and Diversity* (Martinus Nijhoff Publishers, 2001) 268. The objections regarding reservations to ICCPR, CEDAW and the CRC come from a number of mainly European States (Canada and Mexico): Sweden (25 objections), the Netherlands (20 objections), Germany (17 objections), Norway (17 objections), Finland (17 objections) , Portugal (14 objections), Denmark (14 objections, Austria (10 objections, Ireland (10 objections, Italy (6 objections, Mexico (4 objections), Belgium (3 objections), Slovakia (1 objection), Canada (1 objection). See also Cavanaugh above, n 54, 37.

<sup>145</sup> See above Brems n 144, at 280. Brems also argues that reservations and declarations were not held upon the States ratifications of the 1966 ICCPR and ICESCR, it quickly became prominent with CEDAW and CRC. See above Brems n 144, at 267.

<sup>146</sup> See Cavanaugh above above n 54, at 37 .

Cavanagh's study provides a useful summary on the prevalent problems with Arab States' reservations or declarations. For example, some reservations or declarations do not have any legal effect to the application of the treaty in question.<sup>147</sup> Reservations/declarations may relate to procedural matters,<sup>148</sup> such as compliance with the ICJ, where eight members of the League upheld reservations to Article 22 of CERD.<sup>149</sup>

There are also broad declarations (conditional and interpretive), such as those raised by Algeria, Morocco, Oman and Syria.<sup>150</sup> For example, with the case of Algeria, it upheld interpretive declaration to Article 23, para 4, where it invoked the provision should not interfere with its national law, regarding 'the rights and responsibilities of spouses as to marriage, during marriage and at its dissolution as in no way impairing the essential foundations of the Algerian legal system'.<sup>151</sup> This was also the same with Kuwait, it limited the application of the ICCPR, with some interpretations to Article 8, para 1, and Iraq with its declaration regarding its intention of not joining the ICCPR OP, even though it ratified both the ICCPR and the ICESCR.<sup>152</sup>

Furthermore, it is submitted that many Member States of the Arab League impose Islamic interpretations upon ratifying the following treaties the CRC, CERD, CEDAW, ICCPR and CAT.<sup>153</sup> In some cases these reservations are problematic, particularly to Article 2 of CEDAW, because it limits the implementation of the equality (men and women) provisions promoted in the treaty, especially those relating to personal Status law, (*lexis specialis*).<sup>154</sup> Algeria, Bahrain, Iraq, Morocco, Syrian Arab Republic, Egypt

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<sup>147</sup> *ibid* at 38. Cavanaugh notes that the Arab League Member States have used the first category to uphold a reservation or declaration regarding non-recognition of the State of Israel. This has been the case with Kuwait, Libya, Syria, United Arab Emirates and Yemen with their reservation to CERD. The second category relates to reservation relates to the submission of disputes to the ICJ.

<sup>148</sup> See Cavanaugh n 54, at 38.

<sup>149</sup> These are Bahrain, Egypt, Lebanon, Kuwait, Lebanon, Libya, Morocco, Saudi Arabia, and Yemen. Also non-Arab League Members Israel and Afghanistan also submitted their reservation. See *ibid*.

<sup>150</sup> *ibid*.

<sup>151</sup> Cavanaugh n 54, at 39.

<sup>152</sup> See for example, UNTC, 'Chapter IV Human Rights: 3 . International Covenant on Economic, Social and Cultural Rights' (New York, 16 December 1966 )

<[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-3&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en#EndDec)>

<sup>153</sup> See Cavanaugh n 54, at 40.

<sup>154</sup> See above Cavanaugh n 54, at 41-42. See also SS Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (The Hague: Kluwer Law International, 2000) 252.

and Libya entered reservations to Article 2 of CEDAW.<sup>155</sup> Professor Ali notes that these measures provide ambiguity as to how State parties are implementing the provisions.<sup>156</sup> For example, she argues the Algerian and Iraqi reservation to article 2 does not invoke Shariah as the reason for such a position, whereas, other Arab States such as Egypt and Libya, specifically mention Shariah as the cause for their reservations.<sup>157</sup>

Brems also highlights her concern with regards to Arab States' invocation of national law as grounds for reasoning whilst upholding reservations.<sup>158</sup> It seems Arab States are entering reservations because they are unwilling to change their domestic legislation.<sup>159</sup> These States also use religious principles such as Islam as bases of their reservations. However, some studies (as will be examined further in Chapter 3) suggest these reservations are largely based on political motives and not Islam.<sup>160</sup> For example, the ICCPR and CRC cover the same political rights, but no reservations to CRC have been upheld by Arab or Muslim majority States until recently and are held with reference to national legislations and not Islam.<sup>161</sup>

Overall, Professor Ali takes the view that reservations entered by Muslim majority States are largely motivated by political, socio-economic and religious considerations.<sup>162</sup> She notes that one of the greatest obstacles facing these States that there are no clear or systematic position held apropos Shariah adopted by Muslim States. Especially since 'each jurisdiction presents its own specific blend of an "operative" and "cultural" Islam, distinct from other Muslim jurisdictions'.<sup>163</sup>

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<sup>155</sup> *ibid* Ali at 252-253. For example, with the case of Syria, Austria submits Syria's reservations to Article 2, Article 9 (paragraph 2), Article 15 (paragraph 4), Article 16, (paragraphs 1 (c), (d), (f) and (g)) and article 16 (paragraph 2), discriminates women on the basis of sex- thus contrary to the 'object and purpose of the Convention'. See list of reservations in Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979  
<[https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg\\_no=iv-8&chapter=4&lang=en#33](https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en#33) > accessed 1 January 2015.

<sup>156</sup> *ibid*.

<sup>157</sup> *ibid*.

<sup>158</sup> See Brems above, n 144 at 273.

<sup>159</sup> See above n 144 at 274.

<sup>160</sup> See above Brems n 144, at 275. See also Cavanaugh n 54 at 36.

<sup>161</sup> Brems n 144 at 278. This is also a concern by Professor Ali, as she argues: 'Why then are these same concepts rejected when formulated in the Women's Convention [CEDAW]?' see above Ali n 154 at 264.

<sup>162</sup> See Ali, n 154 at 264.

<sup>163</sup> *ibid*., 264.

International law, as stipulated in the Vienna Convention on Law of Treaties (VCLT), allows reservations by member States of the Convention within the conditions specified by the treaty in question, and these reservations as a general rule should not be held if they are incompatible with ‘the object and purpose of the treaty’.<sup>164</sup> It is also submitted that the principles of VCLT are also applicable to international human rights monitoring bodies as confirmed by the ECtHR (*Golder v. United Kingdom, 1975*) and the Inter-American Commission on Human Rights and Inter-American Court on Human Rights (*Mapiripán Massacre v. Colombia, 2005*).<sup>165</sup>

The VCLT also lays emphasis on *Pacta sunt servanda*, where ‘every treaty in force is binding upon the parties to it and must be performed by them in good faith’ Article 31 (1).<sup>166</sup> This is also supported by the International Court of Justice:

[A] State which has made and maintained a reservation which has been objected to by one or more of the parties to the Convention but not by others, can be regarded as being a party to the Convention if the reservation is *compatible* with the *object and purpose* of the Convention; *otherwise, that State cannot be regarded as being a party to the Convention*.<sup>167</sup>

Although, reservations may have a positive effect to the promotion of international human rights treaties, to attract States to become parties,<sup>168</sup> these reservations may also weaken the purpose of the treaty in question and undermine universal standards.<sup>169</sup>

Furthermore, recognizing world adherence to international human rights treaties remain at minimal, on 15 March 2006, the UN General assembly with resolution 60/251

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<sup>164</sup> *ibid.*, Brems n 144 at 267, Art.19 of the Vienna Convention on the Law of Treaties.

<sup>165</sup> See M Killander, ‘Interpreting Regional Human Rights Treaties’ 13 SUR - Int’l J. on Hum Rts. 145. See case submitted to the Inter-American Commission, Annual Report of the Inter-American Commission on Human Rights 1987-1988, Report Cases No.9777 and 9718, Argentina, March 31, 1988, OEA/Ser.L/V/II.74 doc. 10 rev.1.

<sup>166</sup> Vienna Convention on the Law of Treaties Vienna on 23 May 1969, entered into force on 27 January 1980 in Vienna. The VCLT also defines this as a peremptory norm or *jus cogens*. Article 53 argues the international community is to accept as a norm from which ‘no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character’. See also B G Ramcharan, ‘The Nature and Characteristics of International Human Rights Treaty Law’ in *The Fundamentals of International Human Rights Treaty Law* (Martinus Nijhoff Publishers, 2011) 31.

<sup>167</sup> Emphasis added. Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (1950-1951), Advisory Opinion of 28 May 1951, Advisory Opinion, ICJ Reports 1951, 15.

<sup>168</sup> B Ramcharan, ‘The Nature and Characteristics of International Human Rights Treaty Law’ in *The Fundamentals of International Human Rights Treaty Law* (Martinus Nijhoff Publishers, 2011) 31.

<sup>169</sup> *ibid.*



created the Human Rights Council.<sup>170</sup> The Human Rights Council is an intergovernmental body consisting of 47 States in charge of strengthening, promoting and protecting human rights all over the world. Its main purpose, according to the UN is to address ‘situations of human rights violations and make recommendations on them’.<sup>171</sup> Resolution 60/251 is of particular importance because it affirms the need for all States:

[T]o continue international efforts to enhance dialogue and broaden understanding among civilizations, cultures and religions, and emphasizing that States, regional organizations, non-governmental organizations, religious bodies and the media have an important role to play in promoting tolerance, respect for and freedom of religion and belief,<sup>172</sup>

On 18 June 2007, at its second meeting, the Council adopted its ‘Institution-building package’<sup>173</sup> as a guide for the Human Rights Council. Among the elements included in the package is the new Universal Periodic Review mechanism (UPR), a State-driven process,<sup>174</sup> which assesses the human rights conditions in all 193 UN Member States. As stated by the UN Secretary General Ban Ki-moon, the UPR ‘has great potential to promote and protect human rights in the darkest corners of the world’.<sup>175</sup>

The UPR sessions are held every four years<sup>176</sup> under the supervision of the Human Rights Council, and provide the chance for each State to declare which measures they have taken ‘to improve the human rights conditions in their countries and to fulfil their

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<sup>170</sup> OHCHR, ‘the OHCHR Plan of Action: Protection and Empowerment’ Geneva- May 2005 <<http://www2.ohchr.org/english/planaction.pdf>> accessed 1 January 2015.

<sup>171</sup> OHCHR, ‘The Human Rights Council’ <<http://www2.ohchr.org/english/bodies/hrcouncil/>> accessed 1 January 2015.

<sup>172</sup> UNGA, Human Rights Council: resolution / adopted by the General Assembly, (3 April 2006), A/RES/60/251, <<http://www.refworld.org/docid/4537814814.html>> accessed 13 December 2013.

<sup>173</sup> OHCHR, ‘The Human Rights Council’, <<http://www2.ohchr.org/english/bodies/hrcouncil/>> accessed December 7, 2013. Additionally, a new Advisory Committee is also created that provides the Human Rights Council with proficiency and advice on topical human rights issues. According the UN, this Advisory Committee is the ‘Council’s ‘think tank’. OHCHR, ‘The Human Rights Council’, <<http://www2.ohchr.org/english/bodies/hrcouncil/>> accessed December 7, 2014.

<sup>174</sup> OHCHR ‘Universal Periodic Review’ (2011). <<http://www.ohchr.org/EN/HRbodies/UPR/Pages/UPRMain.aspx>> accessed 15 Dec 2014.

<sup>175</sup> *ibid.*

<sup>176</sup> ‘International Human Rights Terms and Acronyms’ <<http://www.ijrcenter.org/wp-content/uploads/2013/06/Human-Rights-Terms-Acronyms.pdf>>; see also Dublin Statement on the Process of Strengthening of the United Nations Human Rights Treaty Body System (19 November 2009), reprinted in 2010 Neth. Q. Hum. Rts 116, 121.

human rights obligations'.<sup>177</sup> It is a cooperative process, where 193 UN Member States have had their human rights records reviewed.<sup>178</sup> According to the OHCHR:

The UPR is one of the key elements of the Council which reminds States of their responsibility to fully respect and implement all human rights and fundamental freedoms. The ultimate aim of this mechanism is to improve the human rights situation in all countries and address human rights violations wherever they occur.<sup>179</sup>

Like the rest of the UN Member States, all Arab States submitted their national reports for periodic review at least once.<sup>180</sup> Various stakeholders from the international human rights community presented their concerns with treaty adherence by States, including many Arab States. Most concerns are relatively the same they include, for example, a State's lack of cooperation with human rights mechanisms or with Special Procedures.<sup>181</sup> In addition to problems providing protection to key provisions such as: Equality and non-discrimination,<sup>182</sup> Right to life, liberty and security of the person;

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<sup>177</sup> *ibid.*

<sup>178</sup> *ibid.*

<sup>179</sup> *ibid.*

<sup>180</sup> Sessions 1: 7 - 18 April 2008; United Arab Emirates: A/HRC/WG.6/3/ARE/1 (HRC 3rd WG UPR 16/09/2008); Algeria: A/HRC/WG.6/1/DZA/1 – however, second periodic report is overdue: Algeria's 2nd Universal Periodic Review (Review report was due in 2012). Bahrain: A/HRC/WG.6/1/BHR/1; Morocco: A/HRC/WG.6/1/MAR/1; Comoros: Oral presentation; Yemen: A/HRC/WG.6/4/YEM/1; Egypt: A/HRC/WG.6/7/EGY/1; Iraq: A/HRC/WG.6/7/IRQ/1; Qatar: A/HRC/WG.6/7/QAT/1; Kuwait: A/HRC/WG.6/8/KWT/1; Lebanon: A/HRC/WG.6/9/LBN/1; Libya: A/HRC/WG.6/9/LBY/1; Mauritania: A/HRC/WG.6/9/MRT/1; Oman: A/HRC/WG.6/10/OMN/1; Somalia - A/HRC/WG.6/11/SOM/1 ;Sudan - A/HRC/WG.6/11/SDN/1; Syria: A/HRC/WG.6/12/SYR/1; Saudi Arabia: A/HRC/WG.6/17/SAU/1; Mauritius: A/HRC/WG.6/17/MUS/1; Jordan: A/HRC/WG.6/17/JOR/1; Djibouti: A/HRC/WG.6/16/DJI/1; Cameroon: A/HRC/WG.6/16/CMR/1; Session 16: 22 April - 3 May 2013; Cameroon: A/HRC/WG.6/16/CMR/1; Djibouti: A/HRC/WG.6/16/DJI/1; Session 15: 21 January - 1 February 2013; United Arab Emirates: A/HRC/WG.6/15/ARE/1 ; Session 13: 21 May - 4 June 2012; Tunisia: A/HRC/WG.6/13/TUN/1; Morocco: A/HRC/WG.6/13/MAR/1; Algeria: A/HRC/WG.6/13/DZA/1; Bahrain: A/HRC/WG.6/13/BHR/1. UPR, First cycle (2008-2011)  
<<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>>

<sup>181</sup> See for example, one NGO calls for field investigation needed in Iraq by Special Rapporteurs on torture, forced disappearance, extrajudicial executions, independence of the judges and lawyers, women and children, see Iraq (A/HRC/WG.6/7/IRQ/3). Other concerns are found in the following: Comoros A/HRC/WG.6/18/COM/2, Egypt (A/HRC/WG.6/7/EGY/3), Tunisia A/HRC/WG.6/13/TUN/3, the United Arab Emirates A/HRC/WG.6/3/ARE/3, Bahrain A/HRC/WG.6/13/BHR/3, Lebanon, A/HRC/WG.6/9/LBN/3/Rev.1, Saudi Arabia A/HRC/WG.6/17/SAU/3) Yemen. A/HRC/WG.6/18/YEM/3, Morocco A/HRC/WG.6/13/MAR/3, Algeria A/HRC/WG.6/13/DZA/3, Syria A/HRC/RES/19/22, Qatar A/HRC/WG.6/19/QAT/3, Oman, A/HRC/WG.6/10/OMN/3.

<sup>182</sup> For example, the weak legislative framework on gender issues in Comoros; or concern with Jordan with the absence of an efficient State policy promoting equal rights of women and men. A/HRC/WG.6/18/COM/2 (8 November 2013).

Administration of justice including impunity, and the rule of law<sup>183</sup>; Right to social security and to an adequate standard of living; Migrants, refugees and asylum-seekers and Human rights and counter-terrorism.<sup>184</sup>

Furthermore, the Human rights council has been criticized for its weak mandate, limited funding and ineffectiveness to the improvement of the human rights situation worldwide. For example, according to Thomuschat, ‘the instruments set at the Human Rights Council’s disposal for enforcing human rights are of limited scope.’<sup>185</sup> Baluarte and De Vos note while the special rapporteur may play a vital part in pressuring State, it is evident the office has insufficient time and assets to monitor its entire follow-up mandate.<sup>186</sup> They argue that despite repeated requests of the committee for need of greater funding to support the mandate of the special rapporteur there remains ‘far too little financial commitment to both the follow-up part and the treaty body system in general’.<sup>187</sup> This may also be because many States are not supporting these UN treaty bodies.

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<sup>183</sup> For example, the African Commission on Human and Peoples’ Rights (ACHPR) noted that the ‘independence of the judiciary remained a major subject of concern’ in Egypt. Human Rights Council Working Group on the Universal Periodic Review Seventh session Geneva, 8–19 February 2010, Summary prepared by the Office of the High Commissioner for Human Rights, in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1, (25 November 2009) A/HRC/WG.6/7/EGY/3.

<sup>184</sup> Concern by many NGOs, including Alkarama held that, ‘during the Ben Ali era, the judiciary had been under the control of the executive and that the right to a fair trial had been systematically violated’. Human Rights Council Working Group on the Universal Periodic Review, Thirteenth session, Geneva, 21 May–4 June 2012, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Tunisia A/HRC/WG.6/13/TUN/3. The Human Rights Council, Eighth session, Agenda item 1 Organizational and procedural matters, 2-18 June 200 A/HRC/8/52, 106. See for example: UNGA, Human Rights Council Working Group on the Universal Periodic Review , Thirteenth session, Geneva, 21 May - 4 June 2012, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Bahrain, 2, A/HRC/WG.6/13/BHR/3 (8 March 2012).

<sup>185</sup> C Tomuschat, ‘International Covenant on Civil and Political Rights’ *United Nations Audio Visual Library of International Law* (New York, 16 December 1966). In line with this, Rehman asserts how the fourth regular session the council was criticized for terminating the mandates of the Special Rapporteurs for State committing human rights abuses, such as in Belarus and Cuba. See Report to the General Assembly on the fifth session of the Human Rights Council, UN Doc. A/HRC/5/L.11 of 18 June 2007, 38. See Rehman (2009) 68.

<sup>186</sup> DC Baluarte and CM De Vos ‘From Judgment to Justice: Implementing International and Regional Human Rights Decisions’ (2010) Open Society Foundations, 29

<[http://www.soros.org/initiatives/justice/Art\\_s\\_publications/publications/from-judgment-to-justice20101122/from-judgment-to-justice-20101122.pdf](http://www.soros.org/initiatives/justice/Art_s_publications/publications/from-judgment-to-justice20101122/from-judgment-to-justice-20101122.pdf)> accessed 5 September 2014.

<sup>187</sup> *ibid.*

For instance, only a few States in the Arab region have accepted invitation of Special Rapporteurs, such as Jordan,<sup>188</sup> while others have not responded to the invitations. For example, although Algeria, accepted WG on Enforced or Involuntary disappearances, to date it has not accepted the Special Rapporteur (SR) of CAT's requests in 1997 and 2007.<sup>189</sup> Unfortunately, Bahrain (which allegedly proposed to host the Arab League's projected Arab Court of Human Rights) initially agreed to accept the UN Special Rapporteur on Torture, for the second time cancelled the date scheduled for the Rapporteur.<sup>190</sup> Therefore, it would appear that, support and engagement with international human rights treaty bodies remains weak within Arab States.

## 2.3 Regional Support for the Universality of Human Rights

### 2.3.1 Introduction

As this study determines, the universality of human rights is still a subject of long-standing philosophical debate,<sup>191</sup> especially with regards to its content, nature, and prioritization of rights.<sup>192</sup> For example, there are various arguments on whether UN human rights are deemed universal and applicable to all cultures, or if they are intrinsically linked to culture and thus only to be realizable locally.<sup>193</sup> For example, advocates of universalism support human rights to be global in nature regardless of

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<sup>188</sup> See K Cavanaugh 'Narrating Law' in A M. Emon, M Ellis, and B Glahn, *Islamic Law and International Human Rights Law* (Oxford University Press, 2012) 17-51, at 42. OHCHR 'Country Visits E-M' <<http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx>>

<sup>189</sup> OHCHR 'Country Visits A-E' (2014) <<http://www.ohchr.org/EN/HRBodies/SP/Pages/countryvisitsa-e.aspx>> accessed 1 October 2014. See also See (5-9 November 2000) SR on the situation of human rights in Iraq (5- 9/11/2000). Report E/CN.4/2001/42 (A) SRSG on human rights defenders (R in July 1995) WG on enforced and involuntary disappearances SR on the situation of human rights in Iraq (11-15/2/2002). Report E/CN.4/2002/44. See OHCHR, <<http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx>> accessed 1 October 2014.

<sup>190</sup> OHCHR, 'Bahrain / Human rights: Government effectively cancels UN Special Rapporteur on torture's visit' <<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13261&LangID=E#sthash.g5pRpQA9.dpuf>> accessed September 5 2014. For more information on the Egypt's human rights situation see *inter alia*, Human Rights Watch (HRW), *Human Rights Council Membership Requires Steps to Address Violations - A Briefing Paper* by the Egyptian Initiative for Personal Rights (EIPR) and Human Rights Watch (HRW) May 2007, 3-5. See also M Mutua, 'Standard Setting in Human Rights: Critique and Prognosis', 29 Hum. Rts. Q. 547 (2007).

<sup>191</sup> See above Rehman n 37, at 8.

<sup>192</sup> *ibid.*, 8.

<sup>193</sup> A H Robertson and JG Merrills, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*, (Manchester University Press, 1996) 267. See also J Rehman, 'Themes in International Law' in *International Human Rights Law* (London and New York: Longman, 2010) 8.

gender, race, ethnicity, religion, or regional background.<sup>194</sup> Whereas proponents of regionalism promote the establishment of distinct systems, they take a relativist position with regards to human rights, such as the Asian bloc and the OIC,<sup>195</sup> and the Arab League (as evaluated in this study). Although these precepts remain highly debatable, various studies indicate that universal human rights norms and standards can be realized within different legal traditions and regional establishments.<sup>196</sup>

### 2.3.2 The United Nations support for regional establishments

It is important to emphasize that it took many years after the adoption of the UDHR for the international community to identify the need for regional human rights mechanisms.<sup>197</sup> In fact, the UN was not supportive of the idea, as the organisation adopted the position that initially regional approaches to human rights might detract from the work of the UN in promoting and protecting international human rights standards.<sup>198</sup> For that reason, for a long time, ‘regionalism in the matter of human rights was not popular at the United Nations’.<sup>199</sup> According to Shelton, there have been predispositions to regard it as ‘the expression of a breakaway movement, calling the universality of human rights into question’.<sup>200</sup>

However, as mentioned above, Shelton notes that the continual adjournments of work on the two International Human Rights Covenants (to complete the International Bill Of Rights), which took almost twenty years to complete ‘led the UN to rehabilitate, and to be less suspicious (less, jealous, some would say) towards, regionalism in human rights’.<sup>201</sup> These suspicions were even less evident once the two covenants were

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<sup>194</sup> See above Rehman n 37, at 8.

<sup>195</sup> For example, the Islamic States, as represented by the Organisation of the Islamic Conference (OIC), advanced their position that with regards to human rights, primacy should be accorded to the Shariah, even if it conflicts with international human rights norms. This is also brought forward by the Islamic Republic of Iran by the Special Representatives of the Commission, UN Doc. E/CN.4/1987/23 (1987). See also W Schabas, ‘Reservations made by Islamic States to the Convention on the rights of the child’ 18 HRQ (1996) 491, at 472.

<sup>196</sup> See above Robertson and Merrills n 193 at 267.

<sup>197</sup> As discussed above, this may be because the UN was concerned on setting universal human rights for the international community to agree on. See for example the drafting process of the UDHR above.

<sup>198</sup> B H Weston, RA Lukes, KM Hnatt ‘Regional Human Rights Regimes: A Comparison and Appraisal’ (1987) Vol 20, No. 4, Vand. J. Transnat’l L. 590, at 588.

<sup>199</sup> D Shelton, *Regional Protection of Human Rights*, Vol 1 (Oxford University Press, 2010) 111.

<sup>200</sup> *ibid.*

<sup>201</sup> *ibid.*

adopted in 1966.<sup>202</sup> In addition, both the European and American Communities began to create their own human rights systems,<sup>203</sup> at a time when the UN Human Rights Commission was working on the International Bill of Rights. The final text of both Conventions demonstrate, at least to an extent, the regional organisation's ability to draw on universal provisions in a regional document with binding mechanisms for its enforcement.<sup>204</sup> The European Convention on Human Rights (ECHR) was drafted in 1950, two years after the adoption of the UDHR. However, when the ICCPR entered into force, and responding to the growing ratifications of European States to the ICCPR, the drafters of the ECHR expanded the catalogue of rights by incorporating new protocols in order to complement the ICCPR.<sup>205</sup> These protocols have been adopted periodically in recent years.<sup>206</sup>

Furthermore, at that time it seemed States were more willing to delegate powers to regional establishments than to an international body.<sup>207</sup> For example, the Organisation of American States (OAS) Council consulted its Member States in June 1967 in regards to the idea of establishing a human rights Convention that draws on the provisions of the UN Covenants.<sup>208</sup> Ten out of twelve States favoured a regional human rights Convention and a Specialized Inter-American Conference was held in Costa Rica in November 1969,<sup>209</sup> where the inter-American Convention was signed and adopted.<sup>210</sup>

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<sup>202</sup> *ibid.*, See also, K Vasak, *The International Dimensions of Human Rights*, Vol. 2 (Paris, UNESCO and Westport: Greenwood Press 1982) 451.

<sup>203</sup> Weston *et al.*, cited in A Durbach, C Renshaw and A Byrnes, 'A tongue but no teeth?' The emergence of a regional human rights mechanism in the Asia Pacific region' (2009) Vol 31, Sydney L Rev., 224.

<sup>204</sup> See for example, 'Other Treaties' Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82, September 24, 1982, Inter-Am. Ct. H.R. (Ser. A) No. 1 (1982).

<sup>205</sup> The African Charter of Human and Peoples' Rights was also adopted in 1981, following efforts by some States to draft it back in 1960s. See for example, African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), *entered into force* Oct. 21, 1986 D Shelton, *Regional Protection of Human Rights*, Volume 1, (Oxford University Press, 2010) 12.

<sup>206</sup> In fact recently the CoE adopted protocol No. 15 and 16. See for example Protocol No. 15 amending the Convention for the Protection of Human Rights and Fundamental Freedoms, Strasbourg, 24.VI.2013. Protocol No. 16 to the Convention for the Protection of Human Rights and Fundamental Freedoms Strasbourg, 2.X.2013.

<sup>207</sup> Shelton, n 205, at 16.

<sup>208</sup> 'Other Treaties' Subject to the Consultative Jurisdiction of the Court (Art. 64 of the American Convention on Human Rights), Advisory Opinion OC-1/82, September 24, 1982, Inter-Am. Ct. H.R. (Ser. A) No. 1 (1982).

<sup>209</sup> *ibid.*

<sup>210</sup> However, it did not enter in to force until 1978. See T Buergenthal, 'The U.N. Covenants and Regional Human Rights' (1986) Vol. 80, ASIL Proc., 422.

Consequently, on December 19, 1966 resolution 2200 C (XXI) was passed by the General Assembly, which requested the United Nations Commission on Human Rights to study, *inter alia*, ‘the question of establishing of appropriate regional institutions for the purpose of discharging certain functions relating to the observance of the Covenants’.<sup>211</sup> As per resolution 6 (XXIII) of 1967, the Commission set up an ad hoc group to study the possibility of creating a ‘regional human rights commissions within the framework of the United Nations’.<sup>212</sup> Consequently, from April 22 to May 13, 1968,<sup>213</sup> the Economic and Social Council of the United Nations held the International Conference on Human Rights in Tehran to review the progress made in human rights since the adoption of the UDHR.<sup>214</sup> The Conference resulted in the Proclamation of Tehran that:

It is imperative that the members of the international community fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions.<sup>215</sup>

It also emphasised the importance of the UDHR, because it sets ‘a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community’.<sup>216</sup> It recognized the importance of the ICCPR the ICESCR, and other UN conventions and declarations in the field of human rights. As well as, regional intergovernmental organisations that have created ‘new standards and obligations to which [S]tates should conform’. It further proclaims the importance of Member States to ‘effectively’ reaffirm their determination to administer the principles enshrined in all UN instruments that concern ‘human rights and fundamental

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<sup>211</sup> *ibid.*

<sup>212</sup> *ibid.*

<sup>213</sup> Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41, 3.

<sup>214</sup> *ibid.*, see above Shelton n 205 at 16.

<sup>215</sup> Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3.

<sup>216</sup> *ibid.*, The 1968 international conference on human rights ‘urge[d] all people and governments to ‘dedicate themselves to the principles enshrined in the Universal Declaration of Human Rights’ and to ‘redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare’. Thus it gathered the international community to enforce the principles enshrined in the UDHR, and the need for inter-governmental organisation to further this goal, cited from Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968).

freedoms'.<sup>217</sup> However, Forsythe observes that despite this international effort, the legal obligation of member States of the UN to promote and protect human rights was not emphasised, thus States were 'intentionally left obscure whether that obligation was moral or legal'.<sup>218</sup>

The 1968 Conference is particularly significant for the purpose of this study, because Member States of the Arab League were invited to the Tehran Conference, and the idea of the Arab Permanent Commission on Human Rights was proposed at the conference.<sup>219</sup> Within the same year, the Arab League finally established the Arab Permanent Commission on Human Rights at a regional conference in Beirut, in an effort by the League to partake in the International Year of Human Rights.<sup>220</sup> However, unlike other regional human rights establishments, the Commission was not created to monitor the human rights situation of Member States, and it includes a restricted mandate that is politically influenced as will be evaluated in chapter 5.

In 1977, the 32<sup>nd</sup> session of the UN General Assembly saw the adoption of resolution 32/127 entitled: Regional Arrangements for the Promotion and Protection of Human Rights. The Resolution 'appeals' to member States, to create 'regional arrangements in the field of human rights', in areas that do not yet exist and 'suitable regional machinery for the promotion and protection of human rights'.<sup>221</sup> Subsequently, all the succeeding UNGA Resolutions concerning UN support to regional arrangements for the promotion and protection of human rights have been passed unanimously.<sup>222</sup> This seems to illustrate an international agreement that regional arrangements are needed in order to strengthen adherence to international human rights standards.

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<sup>217</sup> *ibid.*

<sup>218</sup> DP Forsythe, 'The UN and Human Rights at Fifty: An Incremental but Incomplete Revolution, The UN and Human Rights at Fifty' *Global Governance*, (Sept.–Dec. 1995) Vol. 1, No. 3, 298.

<sup>219</sup> S Gupta, *Dynamics of Human Rights in the US foreign Policy* (Northern Book Centre, 1 Jan 1998) 43.

<sup>220</sup> *ibid.* More information on this will be provided in the subsequent chapter.

<sup>221</sup> UNGA, Regional arrangements for the promotion and protection of human rights. 16 December 1977, A/RES/32/127.

<sup>222</sup> Also resolution 63/170 of 18 December 2008. See for example, also UNGA, Regional Arrangements for the Promotion and Protection of Human Rights: A/RES/33/167 (20 December 1978), A/RES/34/171 (17 December 1979), A/RES/36/154 (16 December 1981), A/RES/37/171 (17 December 1982), A/RES/41/154 (4 December 1986), A/RES/43/152 (8 December 1988), A/RES/45/167 (18 December 1990), A/RES/47/125 (18 December 1992), A/RES/49/189 (23 December 1994), A/RES/51/102 (12 December 1996), A/RES/55/105 (4 December 2000), A/RES/57/210 (18 December 2002), A/RES/59/196 (20 December 2004), A/RES/61/167 (19 December 2006), A/RES/63/170 (18 December 2008).



Recognizing that some States still had not ratified the international bill of rights and the general lack of adherence to these provisions, in 1989, the UNGA adopted a further resolution, resolution No. 44/156. Resolution 44/156 provided for the need for the all Member States to convene for a world meeting to review and evaluate progress made in the human rights field since the adoption of the UDHR,<sup>223</sup> and to identify obstacles and ways to improve the human rights system.<sup>224</sup>

Many third world States, including many Muslim majority States such as Iran, Indonesia, and Syria attempted to use religious or cultural barriers to reject the notion of universality of human rights.<sup>225</sup> Therefore, in preparation for the 1993 World conference in Vienna, the same year,<sup>226</sup> all Asian States (except Japan) met at a regional conference in March to prepare a declaration (the Bangkok Declaration on Human Rights), consisting of a preamble and 30 paragraphs.<sup>227</sup> However, although the Declaration confirms universal human right principles, with an emphasis on social and economic justice, it also emphasises upon cultural and regional peculiarities that may be in conflict with international human rights standards.<sup>228</sup>

Helgesen and Thomsen argue this ‘non-provocative’ dissent by Asian States was ignored by Western governments.<sup>229</sup> This was largely because of international concern of the human rights violations in these States. Therefore, the UN decided that the 1993

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<sup>223</sup> UNGA ‘World Conference on Human Rights’ A/RES/44/156, C.3 12 A/44/PV.82, 15 Nov. 1989 (without vote) A/44/848.

<sup>224</sup> OHCHR ‘World Conference on Human Rights, 14-25 June 1993, Vienna, Austria’ <<http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx>> Vienna Declaration and Programme of Action, para.5 Excerpted from: DPI /1394/Rev.1/HR-95-93241, April 1995.

<sup>225</sup> E Sciolino, ‘U.S. Rejects Notion That Human Rights Vary With Culture’ New York Times, 15 June 1993, <<http://www.nytimes.com/1993/06/15/world/us-rejects-notion-that-human-rights-vary-with-culture.html>> accessed 1 January 2015.

<sup>226</sup> Regional meetings were held in: Africa, Latin America and the Asia Pacific Regions, with three regional declarations; Africa, A/conf.157/AFRM/14 Tunisia 2-6 November 1992; Latin America and the Caribbean, A/CONF/157/PC/58, San José 18-20 January 1993; Asia Pacific A/CONF.157/ASRM/4 Bangkok 29 March-2 April 1993. No European regional meeting was held for cost reasons. However, the CoE organised ‘a satellite interregional meeting’. See K Boyle, ‘Stock-taking on Human Rights: The World Conference on Human Rights’ (1993) 43, *Political Studies*, 79-95, 81.

<sup>227</sup> G Helgesen and S R Thomsen, *Measuring Political Attitudes in East Asia: The Case of South Korean Democratization* (NIAS Press, 1995) 37. See Bangkok Declaration On Human Rights, adopted by the Regional Meeting for Asia of the World Conference on Human Rights, Bangkok, 29 Mar.-2 Apr. 1993. A/CONF.157/ASRM/8-A/CONF.157/PC/59.

<sup>228</sup> *ibid.*

<sup>229</sup> *ibid.*, See DP Forsythe, *Encyclopaedia of Human Rights*, Vol 1 (Oxford University Press, 2009) 301.

World Conference on Human Rights should concentrate on promoting the universal notions of human rights and ensuring all members of the UN agree to it.<sup>230</sup>

Thus to reaffirm the universality of the UN human rights precepts (as stipulated in the international bill of rights) the UN invited its member States to a World meeting on June 25, 1993. This was the second world conference (the first was held in Tehran in 1968) and included representatives of 171 States, where they agreed on the Vienna Declaration and Programme of Action.<sup>231</sup> The Declaration confirmed 'all human rights are universal, indivisible and interdependent and interrelated' and the international community:

Must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>232</sup>

The Declaration stressed the need for the establishment of 'regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist'.<sup>233</sup> Forsythe states this adjustment of universal principles to different

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<sup>230</sup> See G Helgesen and S R Thomsen, *Measuring Political Attitudes in East Asia: The Case of South Korean Democratization* (NIAS Press, 1995) at 37. The UN also recognised the need for independent and impartial national human rights institutions it adopted the Paris Principles in 1993 to support 'institutional arrangements that function under the national constitutional and legal order to ensure that human rights are protected'. M Nowak, 'Protecting Dignity: an Agenda for Human Rights - Progress report on the eminent Persons (Genf 2008) 73 <<http://www.udhr60.ch/agenda/Nowak-Agenda.pdf>> accessed 1 January 2015. See UNGA Res. 134, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/134 (1993). See G.A. Res. 134, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/134 (1993).

<sup>231</sup> 'World Conference on Human Rights, 14-25 June 1993, Vienna, Austria' OHCHR <<http://www.ohchr.org/EN/ABOUTUS/Pages/ViennaWC.aspx>> accessed 1 January 2015. Vienna declaration on human rights, adopted by the World Conference on Human Rights, Vienna, 14-25 June 1993. They also agreed on Declaration on the Elimination of Violence against Women G.A. res. 48/104, 48 U.N. GAOR Supp. (No. 49) at 217, U.N. Doc. A/48/49 (1993), and UN General Assembly, National institutions for the promotion and protection of human rights, (1993) G.A. Res. 134, U.N. GAOR, 48th Sess., U.N. Doc. A/RES/48/134, 20 December 1993.

<sup>232</sup> Vienna Declaration and Programme of Action, Excerpted from: DPI /1394/Rev.1/HR-95-93241, April 1995.

<sup>233</sup> *ibid* UN Doc A/CONF.157/23 (1993)222. See also statement by United Nations Commissioner for Human Rights Mary Robinson, <<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/2370024D1ECEAC0B8025682A003DE864?openDocument>> >accessed 1 January 2015.

specifics can demonstrate the UN is accepting a form of cultural relativism.<sup>234</sup> Notwithstanding, Professor Rehman provides a useful observation in this regard:

[U]niversal human rights values have now matured to such an extent to defy the justification or rationalisation of such practices as genocide, torture, female genital mutilation or physical amputations; cultural or religious relativism is no longer a shield for protecting theocracies or dictatorial regimes and for the denial of the rule of law.<sup>235</sup>

Delegates from most of the Arab States attended and participated at the World Conference on Human Rights, where the Vienna Declaration and Programme of Action was adopted. These delegates were involved in various discussions regarding cultural relativism and the universality of human rights<sup>236</sup> and were present when the UN adopted the Vienna Declaration.<sup>237</sup> However, as shall be examined in this study, it is unfortunate that these engagements did not influence the human rights discourse of the Arab League or reflected in Arab State practices.

The UN agencies passed many resolutions mandating the UN Office of the High Commissioner for Human Rights (OHCHR) to provide support to advisory services and technical cooperation in the field of human rights. It also called upon the OHCHR to take a larger role in the promotion of human rights ‘through cooperation with Member States and by an enhanced programme of advisory services in the field of human rights’.<sup>238</sup> Thus since 2002, the OHCHR has developed various mechanisms to offer technical assistance to support regional arrangements and enhance capacity building in

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<sup>234</sup> See Forsythe, above, n 229 at 302.

<sup>235</sup> See Rehman, above, n 37 at 9.

<sup>236</sup> The central theme of the Vienna Conference revolved around whether or not human rights were universal or must be understood in light of different cultures and religions. See F G Isa, K de Feyte, *International Protection of Human Rights: Achievements and Challenge* (Universidad de Deusto, 2006) 39.

<sup>237</sup> UNGA, ‘World Conference on Human Rights Vienna’, 14-25 June 1993 para.35.A/CONF.157/24 (Part I) (13 October 1993). Also, it is important to bear in mind that since 1986 the UNGA has passed resolutions to the promotion and strengthening of National Human Rights Institution. see UNGA ‘National institutions for the protection and promotion of human rights’ A/RES/44/64C.3 96a, A/44/PV.78 8 Dec. 1989 without vote A/44/799.

<sup>238</sup> UN Commission on Human Rights, Commission on Human Rights Resolution, 2004/81: Advisory Services and Technical Cooperation in the Field of Human Rights, 21 April 2004, E/CN.4/RES/2004/81.] See also UN GA Resolution 926 (X) of 14 December 1955; and Economic and Social Council decision 1987/147 of 29 May 1987, pursuant to which the Secretary-General established the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights, as well as Commission resolution 2002/87 of 26 April 2002; as well as the Vienna Convention on Human Rights 57/219 of 18 December 2002 and 58/187 of 22 December 2003.

order to monitor and promote universal human rights norms.<sup>239</sup> Furthermore, the former United Nations High Commissioner for Human Rights, Ms. Pillay argued that regional human rights instruments strengthen the recommendations by UN human rights mechanisms and create a sense of ‘regional ownership’, as regional arrangements create a vital contribution to the implementation of international human rights instruments.<sup>240</sup>

Overall, it would appear that only in 2002 the OHCHR began to conduct regional visits and consultations in an attempt to offer greater cooperation between regional and international mechanisms. As well as to provide better protection of victims of human rights abuses;<sup>241</sup> and support human rights mechanisms to realise their mandate more successfully.<sup>242</sup> These engagements of the OHCHR to regional human rights systems are beneficial. However, as this study examines, despite the efforts of OHCHR the human rights system of the Arab League is far from ideal.

### 2.3.3 Effectiveness of Regional Arrangements

As this study determines, the subject of regional human rights institutions is highly complex.<sup>243</sup> However, it is important to discuss their possible effectiveness, especially

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<sup>239</sup> Council on Foreign Relations ‘The Global Human Rights Regime Issue Brief’ (19 June 2013) <<http://www.cfr.org/human-rights/global-human-rights-regime/p27450>>; OHCHR, Annex ‘Bangkok Action Points adopted by Member States’ on 23 April 2010. Para 5. P.12. A/HRC/15/39, 12, <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.39\\_enpdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.39_enpdf)> see also OHCHR, ‘IV. Thematic discussions’, A/HRC/15/39, Report of the High Commissioner containing the conclusion of the 15th Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region (21 to 23 April 2010). Para. 23, 8 <[http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.39\\_enpdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.39_enpdf)> ; Furthermore, resolution A/HRC/23/18 was adopted at the Human Rights Council Twenty-third session. Agenda items 2 and 3; Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Workshop on regional arrangements for the promotion and protection of human rights Report of the United Nations High Commissioner for Human Rights. Distr.: General 8 April 2013.

<sup>240</sup> It was recently seen with GA resolution 63/170 and Human Rights Council resolution 12/15.

OHCHR, International workshop on ‘Enhancing cooperation between regional and international mechanisms for the promotion and protection of human rights’: Statement by Ms. Navanethem Pillay United Nations High Commissioner for Human Rights, (3 May 2010)

<<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10022&LangID=E> > accessed 1 January 2015.

<sup>241</sup> *ibid.*

<sup>242</sup> *ibid.* According to the former UN High Commissioner on Human Rights, these thematic exchanges held on a periodic basis can help to identify thematic priorities to make cooperation strategies that include ‘specific objectives, timelines and expected outcomes’.

<sup>243</sup> See Rehman, above, n 37 at 9.

as this can help enforce international human rights standards at the domestic level. As discussed above, the UN has, over the years, provided minimum standards for a coherent vision of a ‘humane world’.<sup>244</sup> However, the UN failed to provide efficient enforcement mechanisms to monitor the standards set for all States to follow.<sup>245</sup> As such, the UN realized (after its adoption of the ICCPR and ICESCR) compliance mechanisms can be stronger at the regional level.<sup>246</sup> According to Tucker:

Neither sovereign State, which are autonomous, nor supranational human rights organizations, which depend upon voluntary compliance nor private organizations, which lack resources and enforcement mechanisms, however, can adequately protect human rights. A protective mechanism is needed, which will function at an intermediate level, exercising authority which is broader than the sovereign state yet closer to the affected communities than a global supranational organization. This can be achieved through regional human rights organizations.<sup>247</sup>

Therefore, the international community recognised the need of judicial procedures to enforce human rights at the regional level. Regional arrangements can play a pivotal role in promoting and protecting universal human rights norms.<sup>248</sup> Durbach *et.al.* argue that these organisations have a strong rational consensus as a result of geographical, cultural, political and economic ties, as well as shared histories giving human rights organisations strong justifications for their creation – to deliver adequate protection for human rights and a stronger framework for sanction and redress.<sup>249</sup> Durbach *et.al.*, also rightly observe, that most often regional arrangements consider the ‘needs, priorities

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<sup>244</sup> See Viljoen, above, n 25 at 9.

<sup>245</sup> See Shelton, above, n 205, at 16 ; See also D Shelton, ‘Introduction in International Law and Domestic Legal Systems: Incorporation, Transformation and Persuasion’, in D Shelton, P Carozza, *Regional Protection of Human Rights Pack* vol 1 (Oxford University Press, USA, 2013) 111-116, at 111-112.

<sup>246</sup> *ibid* Shelton, ‘The Promise of Regional Human Rights Systems’ 16.

<sup>247</sup> CM Tucker, ‘Regional Human Rights Models in Europe and Africa: A Comparison’ (1983) 10 *Syracuse J. Int'l L. & Com.* 139, cited in BH Weston, RA Lukes, Hnatt KM, ‘Regional Human Rights Regimes: A Comparison and Appraisal’ (1987) *Vand. J. Transnat'l L* Vol 20, 590.

<sup>248</sup> Doebbler also stated the power regional human rights instruments have in implementing human rights beyond the lower international human rights instruments and mechanisms. See Francis and Doebbler ‘Chapter 6 Regional Mechanism for the Protection of Human Rights’ in *International Human Rights law: Cases and Materials*, Vol. I (Tashkent State Institute of Law. Press, Tashkent, Uzbekistan and CD Publishing: Washington, DC, USA 2006) 177.

<sup>249</sup> A Durbach, C Renshaw and A Byrnes, ‘A tongue but no teeth?’ The emergence of a regional human rights mechanism in the Asia Pacific region’ (2009) *Sydney L Rev* Vol 31, 218. See also M Killander, for example, they state ‘Regional human rights courts and quasi-judicial bodies play an important role in providing individual and structural remedies for human rights violations and in the development of international human rights law’. *Interpreting Regional Human Rights Treaties* M Killander, ‘Interpreting Regional Human Rights Treaties’, (2010) 13 *SUR Int'l J. on Hum Rts*, 170 at 145.

and conditions' of a particular region, and instead of it being perceived as derogating from 'the universal application of human rights', can instead be complementary to the UN human rights mechanisms 'by disseminating and enforcing international human rights standards and principles at a regional level'.<sup>250</sup>

Viljoen adds regional human rights provisions provide an advanced level of conjunction and consistency between States, by allowing greater norm-specification at the regional level thus improving implementation of human rights.<sup>251</sup> As such it is argued that '[m]obilization of Shame' is better used and implemented at the regional level,<sup>252</sup> since as Vijeoln asserts, 'most often communities sharing bonds of mutuality [and] are more likely to be attuned to each other than those separated by vast geographical and psychological divides'.<sup>253</sup> These systems are said to be better accessible and informed about domestic issues.<sup>254</sup> Robertson explains:

A [S]tate cannot be forced to submit itself to a system of international control and will do so only if it has confidence in it. It is much more likely to have such confidence if the international machinery has been set up by a group of like-minded countries, which are already its partners in a regional organisation, than if this is not the case. Moreover, it will be willing to give greater powers to a regional organ of restricted membership, in which the other members are its friends and neighbours, than to a worldwide organ in which it and its associates play a relatively smaller part.<sup>255</sup>

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<sup>250</sup> See above Durbach *et. al.*, at 218. The authors also discuss history of the ASEAN human rights and their attempt to create a regional mechanism to monitor and protect human rights. See Durbach *et. al.*, at 218. See for example, *Soering v United Kingdom*, App. No. 14038/88 ECHR (1989) 11 EHRR 439. I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111. *Goodwin v. United Kingdom*. Judgment (Grand Chamber), 11 July 2002, *Mamatkulov and Askarov v Turkey*, App. Nos 46827/99 and 46951/99, Grand Chamber judgement 4 February 2005, ECHR Reports 2005-1. *Goodwin v UK* App. No. no. 17488/90 (1996) 22 EHRR 123, ECtHR (27 March 1996).

<sup>251</sup> F Viljoen, *International Human Rights Law in Africa* (2<sup>nd</sup> edn, Oxford University Press, 2007) 10. In Africa, specifically, the African Charter embodies a more collective 'African conception' of human rights consistent with the 'historical tradition and values of African civilization' by providing for 'peoples' rights' and individual duties. See preamble to the African [Banjul] Charter on Human and Peoples' Rights.

<sup>252</sup> See for example RF Drinan, *Mobilization of Shame: A World View of Human Rights* (New Haven: Yale University Press, 2001), who traces the origins of the term 'mobilization of shame' to early Amnesty International campaigns.

<sup>253</sup> IL Claude, *Swords into Plowshares: The Problems and Progress of International Organization* (New York: Random House Press, 1971) 103.

<sup>254</sup> DS Weissbrodt and C de la Vega, *International Human Rights law: an introduction* (University of Pennsylvania Press 2007) 311.

<sup>255</sup> See Robertson and Merrills (1996) above n 193 at 268-269. Accord Tucker, 'Regional Human Rights Models in Europe and Africa: A Comparison' (1983) *Syracuse J. Int'l L. & Com*, 10, 135, 139, cited in Burns H. Weston, Robin Ann Lukes, Kelly M. Hnatt, 'Regional Human Rights Regimes: A comparison and appraisal' (1987) 20 *Vand. J. Transnat'l L.*

It is submitted that the legislative framework of the Strasbourg human rights system provides the best example of a successful and developed regional human rights regime,<sup>256</sup> especially with regards to its expanding jurisprudence and influence to customary international law.<sup>257</sup> Another key ingredient reason for its success is its adoption of the margin of appreciation doctrine.<sup>258</sup> The doctrine is defined as ‘the line at which international supervision should give way to a State Party’s discretion in enacting or enforcing its laws’.<sup>259</sup> Essentially it means giving national courts more freedom to deal with human rights cases and to interpret the European Convention as they see fit.<sup>260</sup> As such, Macdonald considers it a ‘primary tool of the Court in ensuring the efficacy of the application of Article 8 to 11, 14 and 15 and Article 1 of Protocol No.1’.<sup>261</sup> He asserts, the doctrine is important because:

[T]he margin of appreciation, which is more a principle of justification than interpretation, permits the Court to show the proper degree of respect for the objectives that a Contracting Party may wish to pursue, and the trade-offs that it wants to make [...], while at the same time preventing unnecessary restrictions on the fullness of the protection which the Convention can provide [...].<sup>262</sup>

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<sup>256</sup> *ibid.*

<sup>257</sup> Entrusted within the European Convention are three institutions: the European Commission of Human Rights (now obsolete), the European Court of Human Rights (established in 1959) and the Committee of Ministers of the Council of Europe. See also G Letsas, ‘The ECHR as a Living Instrument: Its Meaning and its Legitimacy’ (March 14, 2012). Available at SSRN: <<http://ssrn.com/abstract=20218362>> ; *Engel v. The Netherlands* Series A, No. 31. A few months after the Tyrer case, in *Marck v Belgium*, (Appl No. 6833/74) *Marckx v Belgium*, the court referred to the evolution of domestic law. JG Merrills and AH Robertson, ‘Human Rights in Europe/A Study of the European Convention on Human Rights’ (4th edn, Manchester University Press, Glasgow, 2001) 204. See also Judgment of 13 June 1979, Series A no. 31

<sup>258</sup> ‘Q&A: Reforming European Court of Human Rights’ *BBC News* (2012), <<http://www.bbc.co.uk/news/world-europe-17748313>> accessed 15 May 2014. The Principle of subsidiarity was also discussed at the 2012 Brighton Conference and listed in the Brighton Declaration, where member states agreed to amend the European Convention, to give prominence to the principles of ‘subsidiarity’ and ‘margin of appreciation’.

<sup>259</sup> See HC Yourow, *The Margin of Appreciation Doctrine in the Dynamics of European Human Rights Jurisprudence* (1996) 13, cited in WM Wong, ‘The Sunday Times Case: Freedom of Expression Versus English Contempt-of-Court Law in the European Court of Human Rights’ (1984) 17 N.Y.U. J. Int’l L. & Pol. 35, at 58.

<sup>260</sup> LR Helfer, ‘Redesigning the European Court of Human Rights: Embeddedness as a Deep Structural Principle of the European Human Rights Regime’ (2008) *Eur J Int Law*, 19(1), 28.

<sup>261</sup> R St. J. Macdonald, ‘The Margin of Appreciation’ in R St J Macdonald *et al.* (eds.) *The European System for the Protection of Human Rights* (Kluwer, The Hague, 1993) 83; See also S Greer, ‘The Margin of Appreciation: Interpretation and Discretion Under the European Convention on Human Rights’ (2000) Council of Europe Publishing, 5-45

<<http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-17%282000%29.pdf>>  
<sup>262</sup> R St. John Macdonald, ‘The Margin of Appreciation in the Jurisprudence of the European Court of Human Rights’, in A Clapham & F Emmert eds., *Collected Courses of the Academy of European Law*, (1992) 1, 95, 160.

However, according to Baderin, the international human rights supervisory mechanism and other regional establishments need to ensure there are efficient treaty bodies to monitor how States are implementing the provisions and to ensure the practice is not arbitrary and exercised in proportion.<sup>263</sup> Thus, he argues, in aiming to ensure that the practice is not applied arbitrarily, the ECtHR searches for a ‘European consensus’ in interpreting the ECHR provisions.<sup>264</sup> For example, Hefler states, the Court generally relies on ‘three distinct factors as evidence of [a European] consensus: legal consensus, as demonstrated by European domestic statutes, international treaties, and regional legislation; expert consensus; and European public consensus’.<sup>265</sup> The Court gives a wide margin of appreciation to the State concerned only if there is no such consensus.<sup>266</sup>

Another reason for the success of the European System is that States are more willing to be part of the human rights treaty regime and of a system of collective enforcement to promote democratic values.<sup>267</sup> Thus, the ECHR is considered the ‘constitutional instrument of European Public Order’.<sup>268</sup> Additionally, one of the three so-called ‘Copenhagen criteria’ for EU membership<sup>269</sup> stipulate the importance of human rights *inter alia*: ‘stability of institutions guaranteeing democracy, the rule of law, human

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<sup>263</sup> M Baderin, *International Human Rights and Islamic Law* (Oxford University Press, 2003) 233. See generally WW Burke-White & A von Staden ‘Private Litigation in a Public Law Sphere: The Standard of Review in Investor-State Arbitrations’ *Yale J. Int’l L*, Vol. 35, 282-3 <<http://www.yjil.org/docs/pub/35-2-burkewhite-vonstaden-investor-state-artibrations.pdf>>

<sup>264</sup> See above Baderin n 263, at 270.

<sup>265</sup> L Hefler, ‘Consensus, Coherence and the European Convention on Human Rights’ (1993) 26 *Cornell Int’l L.J.*, No. 1, 134.

<sup>266</sup> *ibid* Hefler at 139.

<sup>267</sup> J Cerone ‘Legal Implications of the UNGA Vote to Accord Palestine the Status of Observer State’ (2012) Vol.16 No.37, *ASIL*, 122 <<http://www.asil.org/insights/volume/16/issue/37/legal-implications-un-general-assembly-vote-accord-palestine-status>> accessed 23 May 2014. Also ‘The Convention represented the first step towards the collective enforcement of certain of the rights set out in the Universal Declaration’ in CoE, ‘History and development of the Convention system’, A system in continuous evolution, 11 <[http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011_Rapport_Annuel_EN.pdf)> accessed 1 May 2012. As the Preamble of the ECHR affirms: ‘[T]he governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, [were resolved] to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration.’ ECHR Preamble.

<sup>268</sup> See Meron, ‘The Implications of the European Convention on Human Rights for the Development of Public International Law’ (Council of Europe, 2000) 2. See also Rehman (2010) n 37, at 185.

<sup>269</sup> V Miller, ‘Is adherence to the European Convention on Human Rights a condition of European Union membership?’ SN/IA/6577, 25 March 2014, International Affairs and Defence Section, 2 <<http://www.parliament.uk/briefing-papers/SN06577.pdf>>



rights and respect for and protection of minorities’.<sup>270</sup> To elaborate on this membership criteria, the European Commission noted in its 1997 Opinion (on Bulgaria’s EU membership application) that human rights provisions formed “part of the *acquis*: any State wishing to join the European Union must first have ratified” the European Convention and its main additional protocols’.<sup>271</sup> Consequently, respect for ECHR and the case-law of the European Court of Human Rights is considered part of the ‘Union *acquis*’.<sup>272</sup> In addition, Article 6(2) Treaty on European Union (TEU), as amended by the Lisbon Treaty, declares that the European Union ‘shall accede to the European Convention for the Protection of Human Rights and Fundamental Freedoms’.<sup>273</sup>

However, the European Court of Human Rights (ECtHR) does have some limitations. For example, the individual complaints mechanism under the ECtHR is taking too long to resolve,<sup>274</sup> (i.e. in the year 2011, the Court has accepted: 64,500 applications; and delivered only 1,157 judgments).<sup>275</sup> The ECtHR has arguably become ‘a victim of its own success’ and that it now faces ‘a docket crisis of massive proportions’.<sup>276</sup> Many

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<sup>270</sup> European Council In Copenhagen - 21-22 June 1993- Conclusions Of The Presidency - European Council - DOC/93/3, 22/06/1993, press release database <[http://europa.eu/rapid/press-release\\_DOC-93-3\\_en.htm?locale=en](http://europa.eu/rapid/press-release_DOC-93-3_en.htm?locale=en)>

<sup>271</sup> See above Miller n 269, at 2. See also, Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms, restructuring the control machinery established thereby, (ETS No. 155), Strasbourg, 11.V.1999; Protocol No. 12 to the Convention for the Protection of Human Rights and Fundamental Freedom, (ETS No. 177), Rome, 4.XI.2000; Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances, (ETS No. 187), Vilnius, 3.V.2000; Protocol No. 14 to the Convention for the Protection of Human Rights and Fundamental Freedoms, amending the control system of the Convention, (ETS No. 194), Strasbourg, 13.V.2004.

<sup>272</sup> Parliamentary questions, (26 January 2007) E-5000/2006, Answer given by Mr Frattini on behalf of the Commission For further information on this position. (OJ C 293, 05/12/2007)

<<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2006-5000&language=EN>>

<sup>273</sup> Consolidated version Of the Treaty On European Union and the Treaty On The Functioning of the European Union, Charter of Fundamental Rights of the European Union Charter of Fundamental Rights of the European Union (March 2010) <[http://europa.eu/pol/pdf/qc3209190enc\\_002.pdf#page=20](http://europa.eu/pol/pdf/qc3209190enc_002.pdf#page=20)>

<sup>274</sup> L R Helfer, ‘Redesigning the European Court of Human Rights: Embeddness as a Deep Structural Principle of the European Human Rights Regime’(2008) Eur J Int Law 19(1) 159. Where the Court is experiencing backlog- the current burden of the court with regards to its caseload can be evident with the Courts the annual reports. LF Müller, ‘The Most Recent Development in the Reform Process of the Control System of the European Convention on Human Rights – the Additional Protocol No. 14bis’ (2009) 397, <[http://www.zaoerv.de/69\\_2009/69\\_2009\\_2\\_b\\_397\\_402.pdf](http://www.zaoerv.de/69_2009/69_2009_2_b_397_402.pdf)> accessed 1 May 2012. Some of the reports issued by CoE and other relevant institutions will also be looked at in the following paragraphs.

<sup>275</sup> *ibid.*

<sup>276</sup> S Lagoutte, ‘The Future of the European Human Rights Control System: Fighting with its Back to the Wall’ cited in H-O Sano, S Lagoutte, P Scharff-Smith (eds.), *Human rights in turmoil. Facing threats, consolidating achievements* (The Hague: Martinus Nijhoff Publishers, 2007) 127.

academic articles and reports foreshadow the same message: ‘if drastic steps are not taken, the rosy picture of the ECtHR’s efficiency sketched in the previous paragraph may soon be only a historical portrait’.<sup>277</sup>

Another significant problem exists with the provisions of the ECHR; whereas the UDHR attempts to provide a balanced protection of economic, social, and cultural rights as well as civil and political rights, the ECHR prioritizes civil and political rights.<sup>278</sup> Minority rights are also undermined in the ECHR,<sup>279</sup> as well as other core provisions, such as the right to self-determination.<sup>280</sup> According to Robertson and Merrills rights in the Convention are spelt out in considerable detail, whereas others are not explicated to the same extent, for example, freedom from torture (Article 3) and the right to marry and find a family (Article 12) each occupy only two lines.<sup>281</sup> It is also noted that many individuals within contracting states still do not enjoy the fundamental rights of the ECHR.<sup>282</sup> In 2011, the right to a fair trial accounted for 33.72% of cases the highest number of violations by contracting states.<sup>283</sup>

Nevertheless, Professor Rehman rightly observes that the Strasbourg system remains an ‘inspirational force in the consolidation and practical realisation of international human rights norms’.<sup>284</sup> Indeed, its expanding jurisdiction and ability to interpret international human rights has influenced other regional human rights regimes, such as the Inter-American and African Human Rights system.<sup>285</sup> However, none of these systems have reached the success rate of the Strasbourg system, especially in respect to its legislative

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<sup>277</sup> *ibid.*

<sup>278</sup> Rehman n 37, at 185.

<sup>279</sup> Professor Rehman notes that some ‘remedial action’ was taken by CoE to adopt a Framework Convention for the Protection of National Minorities. *ibid.* This convention was open for signature 1 February 1995, entered into force 1 February 1998. E.T.S. 157; 34 I.L.M. (1995) 351. See Gilbert, ‘The Council of Europe and Minority Rights’ 18 HRQ (1996) 160.

<sup>280</sup> Rehman n 37 at 185.

<sup>281</sup> Robertson and Merrills (1996) above n 193 at 29.

<sup>282</sup> *ibid.*

<sup>283</sup> ‘Right to a Fair Trial’ in European Court of Human Rights, “Annual Report 2011” 155

<[http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011_Rapport_Annuel_EN.pdf)> accessed 12 May 2014.

<sup>284</sup> Rehman n 37, at 184. More recently it adopted protocol 15, see Noreen O’Meara ‘Reforming the European Court of Human Rights through Dialogue? Progress on Protocols 15 and 16 ECHR’ (MAY 31, 2013 )

<<http://ukconstitutionallaw.org/2013/05/31/noreen-omeara-reforming-the-european-court-of-human-rights-through-dialogue-progress-on-protocols-15-and-16-echr/>> accessed 1 January 2015.

<sup>285</sup> GL Neuman ‘Import, Export, and Regional Consent in the Inter-American Court of Human Rights’ (2008), Vol. 19 No. 1, EJIL, 101< <http://www.ejil.org/pdfs/19/1/175.pdf>>

and deliberative process.<sup>286</sup> The drafters of the ACHR have used the Council of Europe's human rights system as a model with its composition of the Court and its relationship with the Inter-American Commission on Human Rights.<sup>287</sup> Although the inter-American system has been successful in promoting human rights and exposing massive violations of human rights occurring in the region, it has been less successful in the enforcement of international human rights standards or to persuade States to comply with the decisions adopted.<sup>288</sup> There are similar complaints arising out of the African human rights mechanisms. While the African regional human rights system<sup>289</sup> has gradually improved in recent years, it still suffers from Member States' lack of political will to comply with decisions.<sup>290</sup> As well as existing funding and logistic issues effective enforcement of human rights remains a human rights concern.<sup>291</sup>

As with the case of the Arab League, regional frameworks still face many problems.<sup>292</sup> There are many discussions concerning the theoretical and practical problems existent in regional human rights systems. For example, there are concerns as to how universal schemes for human rights protection can be attained at the regional level without undermining the normative human rights standards.<sup>293</sup> This is a particular issue that the

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<sup>286</sup> *ibid*, see also Weissbrodt and De la Vega, above, n 254, at 311.

<sup>287</sup> See Neuman n 285 at 101.

<sup>288</sup> Weissbrodt and De la Vega n 254, at 311.

<sup>289</sup> African Charter on Human and Peoples' Right, often called the Banjul came into force in 1986 under what was at the time, the Organisation of African Unity (OAU) Charter of the Organization of African Unity, now the African Union (AU). Art. 3 of the Constitutive Act of the African Union states that one of the fundamental objectives of the African Union is: 'to promote and protect human rights and peoples under the African Charter on Human and Peoples Rights, and other instruments related to human rights and peoples'. See Smith 136.

<sup>290</sup> D Donoho, 'Human Rights Enforcement in the Twenty-First Century' (2006) 35, Ga. J. Int'l & Comp. L. 23-4, cited in J Sarkin 'The Role of Regional Systems in Enforcing State Human Rights Compliance: Evaluating the African Commission on Human and People's Rights and the New African Court of Justice and Human Rights with Comparative Lessons from the Council of Europe and the Organization of American States' (2008) 1 *Inter-Am & Eur Hum Rts J*, 212. See also the case brought forth before the African Commission on Human and Peoples' Rights (ACHPR) where the Rwandan mass violations illustrates what Bachmann 'inherent weakness of the current human rights protection regimes'. Also the commission did not prevent the mass human rights violation in Rwanda in 1994 (S Bachmann, *Civil Responsibility for Gross Human Rights Violations: The Need for a Global Instrument* (PULP 2007) xiii.

<sup>291</sup> See Weissbrodt and De la Vega, above n 254, 311. At the time of writing Asia has yet to establish a regional human rights mechanism.

<sup>292</sup> In recent years, using the Vienna Declaration of 1993, Asian States tried to address the absence of a regional human rights instrument in their region. C Heyns, D Padilla and L Zwaak, 'A Schematic Comparison of Regional Human Rights Systems: an update' *Sur, Rev. int. direitos human. vol.3 no.4* (São Paulo June 2006)170.

<sup>293</sup> Another problem regional human rights systems may face is the growth of simultaneous applications from individual applicants at the universal and regional levels. See Robertson and Merrills, (1996) n 193, at 269.

Arab League needs to take into regard because regionalism may prompt States (especially those of the Arab League) to use their argument of cultural relativism.<sup>294</sup> This is also a concern as per Donoho who demonstrates worldwide focus on regionalization of human rights can be a problem and may undermine the efforts of NGOs and the international human rights treaty bodies.<sup>295</sup> He argues that, all regional institutions, beside the European system, ‘suffer from politicized appointment process, lack of financial resources, poorly defined legal authority, failure to utilize full-time professional judges, and flawed fact-finding processes’.<sup>296</sup> His argument may be valid and can reflect, at least to an extent, the problems currently facing the Arab League’s human rights regime, as will be examined further on in this study. This is also a problem with other organisations, such as the South Asian Association of Regional cooperation (SAARC).<sup>297</sup>

Similar to the Arab League, SAARC takes a culturally relative approach to human rights.<sup>298</sup> According to Rehman, the area covered by SAARC suffers from diverse ethnic, religious, and domestic political conflicts that persistently lead to a considerable amount of violations of human rights.<sup>299</sup> The region is also said to contain a high amount of economic and political imbalance, causing abuse of individual and collective rights, as well as ‘poverty, hunger, malnutrition, illiteracy, and environment degradation’.<sup>300</sup> Ultimately, SAARC faces an enormous difficulty in relation to the promotion and protection of human rights.<sup>301</sup> Violations of human rights protected in the UDHR are rising because of several factors, including non-fulfillment of basic guarantees provided by several of the constitutions of the South Asian region.<sup>302</sup> There is still no regional human rights mechanism covering the entire Asian region.<sup>303</sup> Furthermore, concerning human rights treaty ratification, similar to the Arab League,

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<sup>294</sup> See M Baderin, *International Human Rights and Islamic Law* (Oxford University Press, 2003) at 211.

<sup>295</sup> See above Donoho n 290 at 210.

<sup>296</sup> *ibid.*

<sup>297</sup> Rehman n 37 at 9.

<sup>298</sup> SAARC was established in December 1985, and contains eight states, see Rehman (2010) 393.

<sup>299</sup> See above Rehman n 37 at 384.

<sup>300</sup> *ibid.*

<sup>301</sup> *ibid.*

<sup>302</sup> *ibid.*, 386.

<sup>303</sup> S Deuja ‘Establishing a Robust Regional Human Rights Mechanism in South Asia’ (2010) South Asia Regional Human Rights Mechanism Vol 6, 1

<<http://forumasia.org/documents/South%20Asia%20HRM%20-%20Surya's%20Article%20in%20AHRD.pdf>> accessed 1 January 2015.

Asian States' implementation of human rights treaties are restricted by reservations and declarations.<sup>304</sup>

The Association of South-East Asian States (ASEAN)<sup>305</sup> also lacks political support thus undermining the development of human rights.<sup>306</sup> ASEAN States still do not have an intergovernmental regional mechanism for the protection of human rights.<sup>307</sup> Although, they did adopt the ASEAN Human Rights Declaration in November 2012, the Declaration undermines international human rights standards and has been heavily criticized by international NGOs.<sup>308</sup> Concerns arising from the Declaration include the confinement of the enjoyment of fundamental human rights guarantees subject to national laws and lack of inclusion of key provisions, such as the right to be protected from enforced disappearances.<sup>309</sup> More importantly, as Professor Koh, Singapore's Ambassador-at-Large, and a participant in the drafting of ASEAN Charter, argues that one of the major issues that divide ASEAN Member States to agree on an intergovernmental regional human rights treaty is because they find it difficult to reconcile 'the principle of human rights with that of non-interference'.<sup>310</sup> As such, Robertson and Merrills note this is the primary reason in Asia; regional human rights systems may not be successful, because so far ASEAN States show no signs of

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<sup>304</sup> *ibid.*

<sup>305</sup> Association of South-east Asian Nations (ASEAN) is an intergovernmental regional organisation founded on 8 August 1967, by Indonesia, Malaysia, Philippines, Singapore and Thailand. It then grew to include Darussalam, Cambodia, Lao PDR, Myanmar, Brunei and Vietnam. Cited from OHCHR, 'Towards the Establishment of an ASEAN Human Rights System' <<http://bangkok.ohchr.org/programme/asean/Default.aspx>> accessed 1 January 2015.

<sup>306</sup> *ibid.*

<sup>307</sup> See above Durbach *et. al*, n 249 at 224. Although a declaration was proposed in 2012, the ICJ notes its concern regarding the declaration which contradicts international human rights standards, and undermines international human rights by making them subject to regional and national contexts. ICJ, 'ICJ condemns fatally flawed ASEAN Human Rights Declaration' (November 19, 2012) <<http://www.icj.org/icj-condemns-fatally-flawed-asean-human-rights-declaration/>> Association of Southeast Asian Nations (ASEAN), ASEAN Human Rights Declaration, 18 November 2012 <<http://www.refworld.org/docid/50c9fea82.html>> accessed 1 January 2015. V Muntarbhorn, *Unity in Connectivity?: Evolving Human Rights Mechanisms in the ASEAN Region* (Martinus Nijhoff Publishers, 2013) 6.

<sup>308</sup> HRW, 'Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration' (November 19, 2012) <<http://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration>> accessed 1 January 2015.

<sup>309</sup> *ibid.*

<sup>310</sup> N Bahrawi, 'ASEAN's Human Rights Divide' (2008) *MARUAH Singapore* <<http://maruah.org/2008/06/14/prof-tommy-koh-highlights-aseans-human-rights-divide/>> accessed 1 January 2015. See also A Durbach, C Renshaw and A Byrnes, 'A tongue but no teeth?' The emergence of a regional human rights mechanism in the Asia Pacific region' (2009) *Sydney Law Review* Vol 31, 225 <[http://sydney.edu.au/law/slr/slr31/slr31\\_2/Durbach.pdf](http://sydney.edu.au/law/slr/slr31/slr31_2/Durbach.pdf)>

dispositions to accept any form of international control.<sup>311</sup> These discussions are important, and reflect the situation the Arab League faces. Are Arab States also reluctant to enforce international human rights treaties because of fear of international influence and their State sovereignty will be at stake?

## 2.4 Conclusions

This chapter provided a detailed journey of the developments of international human rights instruments and the extent of engagement of Arab States with these instruments.

The United Nations and its various organs have not only endeavored to institutionalize and promote human rights standards, but also issued vital human rights declarations such as the Vienna Declaration and Programme of Action.<sup>312</sup> These declarations and instruments make clear that all member States are to protect the inalienable human rights of all people. At the same time, the United Nations also supported the establishment of regional human rights arrangements, including within the Arab League. The UN human rights treaties also served as bases for all regional human rights conventions. Having said that one may question the degree to which their normative provisions have had on the Arab League system of human rights (as will be discussed in Chapter 5).

On the whole, as highlighted above, there are inherent problems facing regional human rights establishments, these limitations will be elaborated further through an examination of the Arab League and its regional human rights apparatus.

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<sup>311</sup> See above Robertson and Merrills (1996) n 193 at 268.

<sup>312</sup> Vienna Declaration, World Conference on Human Rights, Vienna, 14 - 25 June 1993, U.N. Doc. A/CONF.157/24 (Part I) at 20 (1993).

### **Chapter 3**

## **Shariah and Human Rights**

And what is [the matter] with you that you fight not in the cause of Allah and [for] the oppressed among men, women, and children who say, "Our Lord, take us out of this city of oppressive people and appoint for us from Yourself a protector and appoint for us from Yourself a helper?"<sup>1</sup>

All people are *equal*, as equal as the teeth of a comb. There is no claim of merit of an Arab over a non-Arab, or of a white over a black person or of a *male over a female*. Only Godfearing people merit a preference with God.<sup>2</sup>

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<sup>1</sup> Surat An-Nisā', Quran 4:75 translated in English by Sahih International <<http://quran.com/4/75>>

<sup>2</sup> Quote by Prophet Mohammed (PBUH) to the Muslims on the occasion of the Hajjat-ul-Wida (the last pilgrimage) (originally in Arabic), [emphasis added] see M Abdul-Rauf, *The Islamic View of Women and Family* (Speller, 1977) 21. See also SS Ali, *Conceptualising Islamic Law, CEDAW and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan* (New Delhi, UNIFEM 2006) 338.



### 3.1 Introduction

The Arab League is a regional organisation that governs a region comprised of twenty-two predominantly Arabic speaking States from northern Africa, the Levant and the Arabian Peninsula, extending from the Atlantic Ocean to the Indian Ocean, covering an area of about 8.38 million square miles.<sup>3</sup> The diversity of legal and constitutional structures, political systems, cultural and social factors, and the different level of governance in member States, all contribute to the difficulty of having a common human rights language.<sup>4</sup>

Although there exists diversity of religions in the region, and the Arab League consists of declared Muslim and non-Muslim States, the Islamic culture has a strong heritage that transcends geographical boundaries of the region.<sup>5</sup> It has also been established that Shariah holds an integral position within the legal systems in most of the member States of the Arab League.<sup>6</sup> It is submitted that many States are failing to perform their obligations stipulated in human rights treaties, and when ratifying or adopting treaties many States enter reservations – on the basis that when the provisions of the

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<sup>3</sup> CE Toffolo *The Arab League*, (Infobase Publishing, 2008) 12. The region the League governs can be regarded as ‘the Arab world’ it may also be known as the ‘Middle East’ (Toffolo at 13).

<sup>4</sup> AA An-Na’im, ‘Human Rights in the Arab World: A Regional Perspective’ (2001) 23 Hum. Rts. Q. 732, at 706.

<sup>5</sup> *ibid.*, 709, An-Na’im states, although the majority in the Arab world are Sunni Muslims, there are also majority sects of Shias in Bahrain and Iraq. While minority living in Saudi Arabia, Lebanon and Syria. There are also Christians and Jews living in Palestine, Egypt, Lebanon, Yemen and Sudan. Accordingly Hurewitz states ‘all the countries of North Africa and most of those of the Middle East are Arab and view themselves as belonging to a regional community of States[...] The Arab States, moreover, form part of a bigger yet more deeply fractured Islamic world’, J.C. Hurewitz (ed.), *The Middle East and North Africa in World Politics: A Documentary Record*, (Yale University Press, New Haven, 1975) Vol. 1, xvii. , MA Baderin ‘Identifying Possible Mechanisms within Islamic Law for the Promotion and Protection of Human Rights in Muslim States’ 2004) 22 NHRQ, No. 3, 343. See also A Dawisha, *Arab Nationalism in the Twentieth Century: From Triumph to Despair*, (Princeton University Press, 2009) 16. See also A Hourani, *A History of the Arab Peoples* (New York: Warner Books, 1991).

<sup>6</sup> A An-Na’im, ed., *Islamic Family Law in a Changing World: A Global Resource Book*, (Zed Books, London 2003), 1. As cited in SS Ali, ‘A Comparative Perspective of the Convention on the Rights of the Child and the Principles of Islamic Law’, in UNICEF, *Protecting the World’s Children: Impact of the UN Convention on the Rights of the Child in Diverse Legal Systems*, (Cambridge University Press: New York 2007) 142-208. For example, one report suggests 91% of the people in the region are Muslims. Where Sunni Muslims make up a majority of the Arab League – while Shias make up a large minority in Lebanon, Bahrain, Iraq and Syria. 5%, about 20 million Christians live in Lebanon, Palestine, Sudan, Egypt, Jordan and Syria. There is also a substantial amount of Jews living in North Africa (Algeria, Morocco, and Tunisia) – however, when Israel was created in 1948, a large number were either expelled – or immigrated to Israel. While also other minorities such as the Bahais in Iran, and Iraq or other parts of the Arab region. See Ibp USA, *Arab League (League of Arab States) Investment and Business Guide* (International Business Publications 2007) 16.

Convention are in conflict with the Shariah, that the latter shall prevail.<sup>7</sup> Such an approach has led to considerable uncertainty as to the constitutional and legal commitments and has in some cases allowed failings and omissions in the lack of implementation to human rights treaty obligation by Arab States.

In this context, the study will bring in an understanding of theories behind cultural relativism and the universality of human rights, the history and influence of Shariah in the Arab region and its relationship with human rights.

### 3.2 Cultural Relativism *versus* Universalism

It is submitted that the Arab World compares unfavourably with other regions in terms of adherence to universal human rights norms.<sup>8</sup> The question of how to accommodate international human rights norms with cultural relativity remains to be a centre of long-standing debates.<sup>9</sup> As discussed in chapter 2, theories of cultural relativism have often been used by Arab and Islamic States when they argue international human rights covenants are western constructs that were not sensitive to the needs and concerns of the Islamic world and its socio-legal framework.<sup>10</sup> They often assert a different form of social ordering based on Shariah principles.<sup>11</sup> As such, while cultural relativism arguments are valid, they are often subject to abuse.<sup>12</sup> According to Professor Baderin, they are used ‘to rationalize human rights violations by different regimes’ and if they are not properly managed, can impair the efficacy of human rights.<sup>13</sup> Donnelly also

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<sup>7</sup> K Nundy ‘The Global Status of Legislative Reform Related to the Convention on the Rights of the Child’ (2004) Legislative Reform Initiative Paper Series, 2

<<http://www.scribd.com/doc/53721379/Lagislative-of-Uncrc>> accessed 1 January 2015.

<sup>8</sup> See J Donnelly ‘International Human Rights: Universal, Relative or Relatively Universal?’ in M Baderin and M Ssenyonjo, *International Human Rights Law, International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Publishing, Ltd., 2013) 31-48, at 34.

<sup>9</sup> See J Rehman *International Human Rights Law* (London and New York: Longman 2010) 9-10.

<sup>10</sup> *ibid.* See also J Rehman and S Breau, *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Brill, 2007), 14. This argument has been and still is being used by Member States of the Arab League when upholding reservations contradicting purpose of the treaty in question, see E Brems ‘Islamic Reservations to Human Rights Conventions’ in *Human Rights: Universality and Diversity* (Martinus Nijhoff Publishers, 2001) 268.

<sup>11</sup> *ibid.* Rehman and Breau at 14.

<sup>12</sup> M Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2003) 27. An-Na’im also supports this position, where he argues that cultural relativism is often misused in the Islamic world. A An-Na’im, ‘Religious Minorities under Islamic law and the Limits of Cultural Relativism’ (1987) HRQ 9, 5.

<sup>13</sup> *ibid.*

asserts the ideology behind cultural relativism is problematic.<sup>14</sup> He advances the argument that cultural relativists usually confuse politics with culture, and the spread of human rights ideas are ignored.<sup>15</sup>

Cultural relativism takes the view that ‘rights and rules about morality are encoded in and thus depend on cultural contexts’,<sup>16</sup> thus it is submitted to be a theory where there are ‘no universal standards by which cultures may be judged’<sup>17</sup> and each culture should be analysed on its own terms.<sup>18</sup> While, on the other side of the spectrum, strict universalism is also problematic, according to this theory human rights are believed to be derived from strictly western culture and should be applied universally without taking into account, *inter alia*, the myriad of cultures and religions.<sup>19</sup> This argument is also very problematic and misleading. In this regard, Baderin offers a multicultural or cross-cultural approach towards interpretation and application of human rights:

[U]niversalism in international human rights law demands the evolution or identification of a universal consensus in the interpretation of human rights principles. This calls for a multicultural or cross-cultural approach to the interpretation and application of the international human rights principles in a manner that will not reduce its efficacy but lead to the realization of an inclusive theory of universalism.<sup>20</sup>

Donnelly also supports this, as he states ‘[u]niversal human rights, if properly understood, leave considerable space for national, regional, cultural particularity and other forms of diversity and relativity’.<sup>21</sup> An-Na’im takes the view that ‘[a]ny concept of human rights that is to be universally accepted and globally enforced demands equal respect and mutual comprehension between rival cultures’.<sup>22</sup> Thus, human rights can be

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<sup>14</sup> See above Donnelly (2013) n 8, at 44.

<sup>15</sup> *ibid.*

<sup>16</sup> See H Steiner, P Alston, and R Goodman, *International Human Rights in Context: Law, Politics, Morals : Text and Materials* (rev. edn, Oxford University Press, 2008) 517 .

<sup>17</sup> Howard-Hassmann described substantive cultural relativism as ‘cultural absolutism’, that is culture provides ‘absolute standards of evaluation; whatever a culture says is right is right (for those in that culture)’, cited in Donnelly, n 8, at 44.

<sup>18</sup> See Rehman and Breau, n 10 at 11.

<sup>19</sup> See Baderin (2003) above n 12, at 26. For more details on Cultural relativism see H Steiner, P Alston, and R Goodman, *International Human Rights in Context: Law, Politics, Morals : Text and Materials* (rev. edn, Oxford University Press, 2008) 516- 582.

<sup>20</sup> *ibid.*, Baderin n 12 at 28.

<sup>21</sup> J Donnelly, ‘The Relative Universality of Human Rights’ (2007) HRQ 29, 281.

<sup>22</sup> See A An-Na’im, ‘What do we mean by Universal?’ (1994) Index on Censorship, September / October, Vol 23, 120.

defined relatively and protected in a manner consistent with international principles.<sup>23</sup> In addition, it would appear to Donnelly, human rights can be both universal and relative, because all cultures are generally malleable.<sup>24</sup> In line with this argument, Professors Rehman and Breau submit that States can take a ‘cultural pluralist’ position, as opposed to the cultural relativity stance.<sup>25</sup>

Overall, this study submits that there is a transnational consensus by the UDHR that rises above all else that ‘human rights are essential to protecting their visions of a life of dignity’.<sup>26</sup> In this context, the values of the universal human right system have grown to a level that it is no longer valid for States to use cultural relativism as justification for human rights violations.<sup>27</sup>

As discussed in Chapter 2, soon after the UN adopted its first two Covenants (the ICCPR and ICESCR) in 1966 to complement the UDHR, the UN and its specialized committees grew concerned as to how best to promote and implement international human rights covenants. The most important world conference held in this regard was in 1993 in Vienna, with the presence of 172 member States, an attempt was made to reach an international consensus to support the normative provisions of human rights.<sup>28</sup> The Vienna Declaration adopted at the Conference confirms all human rights (civil and political, and economic, social and cultural rights) should be implemented with equal measures, as well as the importance of regional human rights organisations to promote and protect these fundamental human rights provisions.<sup>29</sup>

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<sup>23</sup> See A An-Na'im, ‘Religious Minorities under Islamic law and the Limits of Cultural Relativism’ (1987) HRQ 9, at 5.

<sup>24</sup> See Donnelly (2013) above n 8 at 34.

<sup>25</sup> See Rehman and Breau above n 10, at 138. Vincent believes different cultures produce their own human rights values based on a plurality, cited in R J. Vincent, *Human Rights and International Relations* (Cambridge University Press, 1987) 38.

<sup>26</sup> See Donnelly (2013) above n 8, at 37.

<sup>27</sup> See Rehman above n 9, at 9. These particular human rights provisions include *inter alia* torture, female genital mutation, and physical amputations. Thus core principals of human rights should not allow derogations.

<sup>28</sup> C Cerna ‘Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts’ (1994) Vol. 16, No. 4, HRQ. 742. For example, see para. 1, 5, 32, 37 of the Vienna Declaration and Programme of Action, adopted by The World Conference on Human Rights 24 June 1993, U.N. Doc. A/Conf. 157/24 (Part 1), at 20-46 (13 Oct. 1993).

<sup>29</sup> *ibid* Cerna at 744.

However, in the Arab region, it is submitted that it was not until in the year 2003 that the Arab governments seemed to be committed towards recognising international human rights.<sup>30</sup> This can be illustrated with a conference held in Beirut, organized by the Cairo Institute for Human Rights Studies (CIHRS) in collaboration with the Association for the Defense of Rights and Freedoms (ADL).<sup>31</sup> Some of the attendees also included officials from the Arab League and the United Nations High Commissioner for Human Rights, as well Arab and international NGOs.<sup>32</sup> The conference led to the adoption of the Beirut Declaration on the Regional Protection of Human Rights in the Arab World.<sup>33</sup> This declaration was important and in contrast to what was previously promoted in the region, such as the UIDHR, the Declaration suggests a universal equation of equality.<sup>34</sup>

Earlier in 2002, the OHCHR and the Secretary General signed a ‘memorandum of understanding’,<sup>35</sup> an agreement that the OHCHR will work with the Arab League within the context of technical assistance and consultative services.<sup>36</sup> Thus documents such as the Beirut Declaration were adopted to enact on the provisions of the memorandum. Although non-binding, the Declaration conveyed the message that – at least to an extent the Arab League was receptive to international human rights, in theory if not in actual practice.

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<sup>30</sup> See for K Cavanaugh ‘Narrating Law’ in A M. Emon, M Ellis, and B Glahn, *Islamic Law and International Human Rights Law* (Oxford University Press, 2012) 96. See also E Mayer, *Islam and Human Rights: Tradition and Politics* (4<sup>th</sup> revised edn, Westview Press, 2007) 18.

<sup>31</sup> *ibid* Mayer, 18.

<sup>32</sup> The conference was also supported by the European Union and held in cooperation with the International Federation for Human Rights and the Euro-Mediterranean Human Rights Network. See Mayer 18.

<sup>33</sup> See Mayor n 30, at 19.

<sup>34</sup> See LAS Council, Beirut Declaration, (Beirut, March 27-28 2002). See also Beirut Declaration on the Regional Protection of Human Rights, ‘Towards an Effective Regional Protection of Human Rights: Which Arab Charter on Human Rights?’ Art. 7 (Beirut, Lebanon: Cairo Institute for Human Rights Studies and the Association for the Defence of Human Rights and Liberty, 2003). See, AM Emon, M Ellis, and B Glahn, *Islamic Law and International Human Rights Law*, (Oxford University Press, 2012) 49.

<sup>35</sup> Arab League (LAS) – General Secretariat, ‘The Arab Charter of Human Rights’ (2006) Informational letter, Information and Communication Sector 2.  
<<http://www.arableague.org.uk/uk/League%20of%20Arab%20State%20and%20Human%20Rights.pdf>> accessed 1 January 2015.

<sup>36</sup> L Zerrougui ‘The Arab Charter on Human Rights’ (2008)  
<<http://projects.essex.ac.uk/ehrr/V7N2/Zerrougui.pdf>> accessed 1 January 2015.

According to Malaki, Arab legal and political tradition lack a theoretical foundation for the concept of the rule of law.<sup>37</sup> This is also supported in the five previous Arab Human Rights Development Reports.<sup>38</sup> It is argued that although all Arab constitutions contain various international human rights guarantees there exists restrictive legislations and a weak enabling environment.<sup>39</sup> He takes the view that since Arab States' interpretation of Shariah are used within governance, enlightened interpretations of and understanding of Shariah are needed without derogating from the general principles of Shariah.<sup>40</sup>

### 3.3 The Influence of the Shariah on the Arab World

Islam grew from the Arab Peninsula to the rest of the region in the 7<sup>th</sup> century A.D, where it established large empires, such as the Umayyad, the Abbasid, and the Ottomans across vast territories that stretch from North Africa to the Gulf.<sup>41</sup> These Empires have built a legacy and heritage that is unique and unmatched in human history.<sup>42</sup> As the Islamic empire expanded, Muslim religious and legal traditions dominated in Central Asian and Middle Eastern States.<sup>43</sup> In the present context, there are around 1.5 billion Muslims in the world; while, Islam is a strong 'value-unifier'<sup>44</sup> within these communities, there exists ethnic variances of culture, customs, language, and political organisations.<sup>45</sup> Therefore, the Islamic community harbours a mosaic of culture, tradition, religious sects and Madhab allegiances.

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<sup>37</sup> See M Malaki, 'From the Law of the Ruler to the Rule of Law' in B Korany, *Arab Human Development in the Twenty-First Century: The Primacy of Empowerment* (I.B.Tauris, 2014) 27-66, at 28.

<sup>38</sup> See all five reports: UNDP 'Arab Human Development Report 2009: Challenges to Human Security in the Arab Countries' (2009) <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2009e.pdf>> ; UNDP, 'The Arab Human Development Report 2005: Towards the Rise of Women in the Arab World' (2006) <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2005e.pdf>> ; UNDP, 'The Arab Human Development Report 2004: Towards freedom in the Arab world' (2004) <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2004e.pdf>>; UNDP 'The Arab Human Development Report 2003: Building a knowledge society' (2003) <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2003e.pdf>> accessed 1 January 2015.

<sup>39</sup> *ibid.*, 37.

<sup>40</sup> *ibid.*, 30. See also A Hourani, *Arabic Thought in the Liberal Age 1798-1939*, (Cambridge University Press, 1962) 167.

<sup>41</sup> EJ Powell and SM Mitchell, 'The International Court of Justice and the World's Three Legal Systems' GSU, 7 <<http://sitemason.vanderbilt.edu/files/ujnB6/PowellMitchell.pdf>> accessed 1 January 2015.

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid.*

<sup>44</sup> See Baderin above (2003) n 12, at 228.

<sup>45</sup> I Lapidus, *Islamic Societies to the Nineteenth Century: A Global History* (Cambridge University Press, 2012) xvii. Projected estimates are that the Muslim populations are still growing, and projected to reach 30% of the global population (J Rehman, *International Human Rights Law* (London and New York:

In the Arab region, Muslims constitute only twenty percent of the total Muslim population.<sup>46</sup> However, as chapter 2 indicates, derogations and reservations have been used by most Arab States,<sup>47</sup> limiting the scope of international human rights treaties to reflect accepted Islamic norms or national law.<sup>48</sup> While States have a sovereign right to apply Shariah within their jurisdictions, there exist ongoing debates as to whether international human rights can be adequately protected within the States own interpretation and application of Shariah.<sup>49</sup> The following analysis critically examines the origins of Islam in the Arab region, the sources of Shariah and the relationship between Shariah and international human rights.

### 3.4 Origins of Islam in the Arab region

The message of Islam was revealed to the Prophet Muhammad (PBUH) in 610 C.E. in Makkah. His message was both religious and ethical, and was a continuity of the previous monotheistic religions<sup>50</sup> (the same message sent down to Abraham, Moses and Jesus),<sup>51</sup> he promoted the oneness of God ('who has neither a son nor a father, categorically from the idols worshipped by the Arabian tribes').<sup>52</sup> Islam was also created to remedy the inhumane practices present in the Arabian society and instigate new laws for all Muslims to adhere to.<sup>53</sup>

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Longman, 2010) 353. Therefore the Islamic Umma is introduced which is defined as a unified community that includes people of all Muslims of all ethnicities and tribes. W Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press, 2009) 32.

<sup>46</sup> For more information on statistics see for example, A Rabasa, *The Muslim World After 9/11* (Rand Corporation, 2004) 31.

<sup>47</sup> For example, all of the following Member States of the Arab league have accessed international human rights treaties with some form of declaration or reservations: Algeria, Kuwait, Tunisia, Qatar, Saudi Arabia, Syria, Oman, United Arab Emirates, Morocco, Libya, Lebanon, Jordan, Iraq and Egypt. See above Brems n 10, at 268. See for example CEDAW, reservations and declarations.

<sup>48</sup> See Emon, Ellis and Glahn, n 34, at 96.

<sup>49</sup> M Baderin, *International Human Rights and Islamic Law* (Oxford University Press, 2003) 3.

<sup>50</sup> According to Hallaq Islam was to represent 'a purer form of the otherwise corrupted versions of Christianity and Judaism' see Hallaq (2009) n 45, at 31.

<sup>51</sup> See Quran, Surat 'Ibrāhīm 14:1 'Alif, Lam, Ra. [This is] a Book which We have revealed to you, [O Muhammad], that you might bring mankind out of darknesses into the light by permission of their Lord - to the path of the Exalted in Might, the Praiseworthy'. Translated by Sahih International, Surat 'Ibrāhīm, <<http://quran.com/14/1>> accessed 1 January 2015.

<sup>52</sup> W Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-fiqh* (Cambridge University press 1999) 31

<sup>53</sup> At the time, the Hejaz city of Makkah was very corrupt, the people worshiped many idols, and there was social, economic and political inequality. See also Hallaq (1999) n 52, at 8. Furthermore, the first verse revealed, emphasised education. Sura'at al alaq (Verse 96) 96.1 'Recite in the name of your Lord who created; 96:2, created man from a clinging substance.; 96:3 Recite, and your Lord is the most Generous; 96:4 Who taught by the pen; 96:5 Taught man that which he knew not. 96:6 o! [But] indeed,

Professor Ali notes that against this context, Islam and the provisions of the Quran would focus on efforts ‘to improve the condition of and strengthen the weaker segments of society’ particularly orphans, slaves, the poor,<sup>54</sup> women, and ban female infanticide.<sup>55</sup> In fact, it is argued that Allah sent down the message of Islam to establish peace, order and to promote the human welfare, as noted in Surat Al-Ĥadīd (57:25), ‘[w]e have already sent Our messengers with clear evidences and sent down with them the Scripture and the balance that the people may maintain [their affairs] in justice’.<sup>56</sup>

The prophethood of Muhammad is divided into two phases in Makkah (610-622) and Medina (622-632). It is argued that these two settings and the context of his experiences during these periods influenced the content and style of the Quranic verses (Surahs).<sup>57</sup> The Prophet first established the theological foundations of Islam in Makkah, there Allah revealed shorter chapters of the Quran.<sup>58</sup> In Makkah he introduced the monotheistic notion of Allah, ‘uncompromising of the faith’,<sup>59</sup> as well as religious and ethical principles of humility and generosity.<sup>60</sup> The message of Islam transformed Arabia, and instigated the core concept of a community (Ummah):

[U]nited in their recognition of a single Supreme Deity and in their acceptance of that deity’s authority in their daily lives; he had conveyed notions of social morality that forbade alcohol and the blood feud and that recognized legal status of women and demanded protection for the less fortunate in society. Muhammad combined in his person the roles of prophet, state builder, and social reformer.<sup>61</sup>

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man transgresses; 96:7 Because he sees himself self-sufficient; 96:8 ‘Indeed, to your Lord is the return.’ Sahih International <<http://quran.com/96>> accessed 1 January 2015.

<sup>54</sup> SS Ali, *Conceptualising Islamic Law, CEDAW and Women’s Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan* (New Delhi, UNIFEM 2006) 24. For example, according to Professor Ali, ‘Among many Arab tribes, the girl child was an unwelcome intruder and was buried alive for reasons of poverty and honour’ see Ali, 26.

<sup>55</sup> *ibid* Ali (2006) at 26. See for example, The Quran, verse 17:31, 16:58-59.

<sup>56</sup> See for example, Ali, n 54, at 120. See Surat Al-Ĥadīd, 57:25, translated in English by Sahih International <<http://quran.com/57/7-25>>

<sup>57</sup> W Cleveland and M Bunton, *A History of the Modern Middle East* (4th edn, Westview press, 2009) 9. i.e. the earliest versus in verse (Surat 112) ‘Say: he is God, One, God, the Everlasting Refuge, who has not begotten, and has not been begot on , and equal to him is not anyone.’

<sup>58</sup> *ibid*.

<sup>59</sup> *ibid*.

<sup>60</sup> Hallaq (2009) n 45, at 19.

<sup>61</sup> Cleveland and Bunton, above n 57, at 12. One of the most important provision is Surat An-Nisā’ 4: 36, ‘Worship Allah and associate nothing with Him, and to parents do good, and to relatives, orphans, the needy, the near neighbor, the neighbor farther away, the companion at your side, the traveler, and those whom your right hands possess. Indeed, Allah does not like those who are self-deluding and boastful’. Cited in Sahih International, <<http://quran.com/4/36>>



Hallaq takes the view that the concept of Ummah instigated a new process where all events ensuing the Muslim community henceforth 'were to be adjudicated according to God's law, whose agent was none other than the Prophet'.<sup>62</sup> As noted by 18<sup>th</sup>-century historian Edward Gibbon:

His [Muhammad (PBUH)] voice invited the Arabs to freedom and victory, to arms and rapine, to the indulgence of their darling passions in this world and the other: the restraints which he imposed were requisite to establish the credit of the prophet, and to exercise the obedience of the people; and the only objection to his success was his rational creed of the unity and perfections of God. It is not the propagation, but the permanency, of his religion, that deserves our wonder: the same pure and perfect impression which he engraved at Mecca [Makkah] and Medina, is preserved, after the revolutions of twelve centuries, by the Indian, the African, and the Turkish proselytes of the Koran[Quran].<sup>63</sup>

By 632 C.E. the year of the Prophet's death, Islam did not gain as many followers, and was still at a nascent state; however, his overall message was complete.<sup>64</sup> He established the fundamental basis of Shariah, in addition to the Quran and Sunna, he also introduced sophisticated knowledge of legal practices (i.e. *ijtihad*, legal reasoning) and the Constitution of Medina.<sup>65</sup> These primary elements of Shariah became a 'cardinal tenet of jurists for centuries to come'.<sup>66</sup> Within a decade, with an efficient administration, Islam expanded through an extensive military campaign.<sup>67</sup> Caliphates conquered territorial grounds with the message of Islam, reaching western China and through the Iberian Peninsula.<sup>68</sup> As observed by Cleveland and Bunton, the speed and extent of the Arab conquests were extraordinary reaching Eastern Mediterranean through North Africa in a span of 100 years.<sup>69</sup> In consort with this territorial expansion,

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<sup>62</sup> Hallaq (2009) n 45, at 33. For more detailed information on the concept of Ummah see, 'Abd al-Hamid Ibn Badis, 'The Principles of Governing in Islam from the Speech of [Abu Bakr] al- Siddiq', in C Kurzman, *Modernist Islam, 1840-1940: A Sourcebook*, (Oxford University Press, 2002) 93-96, at 93. See F M Denny 'Ummah in the Constitution of Medina', JNES, Vol 36, No 1 (Jan.1977), 43.

<sup>63</sup> E Gibbon, *History of the Decline and Fall of the Roman Empire*, with notes by the Rev. H. H. Milman, 1782 (Written), 1845 (Revised) Vol. 5 (Chap. 59).

<sup>64</sup> W Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-fiqh* (Cambridge University press 1999) 8.

<sup>65</sup> *ibid.*, 19, on Constitution of Medina, see R.B. Serjeant, 'The Constitution of Medina,' *Islamic Quarterly*, 8 (1964), 3.

<sup>66</sup> See Hallaq (2009) above, n 45, at 33.

<sup>67</sup> Hallaq (2009) n 45, at 34.

<sup>68</sup> See Hallaq (1999) above at n 52, at 8.

<sup>69</sup> See Cleveland and Bunton, n 57, at 13, 15.

achieved in a short span of three and a half centuries, the religion of Islam developed a sophisticated legal system.<sup>70</sup>

In addition, as a result of the Islamic conquests the Arabic language and Islam are still practiced in various degrees from the Arab peninsula to the eastern Mediterranean, the Balkans and North Africa.<sup>71</sup> This is because of a combination of social, economic, and religious factors that allowed Arab rulers (Caliphs) to be accepted by the local population.<sup>72</sup> For example, because the local inhabitants belonged to monotheistic religions, the message of Islam was not foreign to them, in addition to the Caliphs' application of Shariah in its pure form.<sup>73</sup>

It is argued that initially until 'the dawn of modernity'; Shariah had a distinct structure of authority and cultural practices.<sup>74</sup> There was a structural and systematic unity. This consisted of mechanisms of procedures, substantive laws, values, and the 'ethic of adjunction followed a unified notion of justice'.<sup>75</sup> According to Hallaq there was a 'paradigmatic notion of justice' that was:

[C]onstituted, shaped and defined by a synthesis whose elements ranged from a particular, grounding religious ethic that was overwhelmingly Quranic, to a social ethic that placed primary emphasis on the integrity of community and social harmony; to a fairly unified body of adjectival law; to an undisputable and cohesive body of legal doctrine; to a particular set of assumptions about the moral community as a participant in the law court and legal process; to a particular relationship between legal knowledge and political power; etc.<sup>76</sup>

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<sup>70</sup> Hallaq n 52 (1999) at 8. These transcontinental empires and Islamic states had a common constitutional theory, 'developing and changing over the course of centuries' cited in N Feldman, *The Fall and Rise of the Islamic State*, (Princeton University Press, 2008) 2.

<sup>71</sup> See above Cleveland and Bunton n 57, at 14. With the exception of Spain.

<sup>72</sup> *ibid.*

<sup>73</sup> For example see Surat Al-Kāfirūn [109:1-6]: 'Say, O disbelievers, I do not worship what you worship. Nor are you worshippers of what I worship. Nor will I be a worshipper of what you worship. Nor will you be worshippers of what I worship. For you is your religion, and for me is my religion'. Also, Surat Al-Baqarah [2:256] 'There shall be no compulsion in [acceptance of] the religion. The right course has become clear from the wrong. So whoever disbelieves in Taghut and believes in Allah has grasped the most trustworthy handhold with no break in it. And Allah is Hearing and Knowing'. Translated by Sahih International, Quran 2:256, <<http://quran.com/2>>

<sup>74</sup> 'Structural death refers to the collapse of the organic features that made the Shariah system, in the first place possible, and, in the second, reproductive'. See Hallaq (2009) above n 45, at 15.

<sup>75</sup> See above Hallaq (2009) n 45, at 17.

<sup>76</sup> *ibid.*

Therefore, although there were differences in customs and social norms within legal systems, there was still a ‘structural and systematic unity’.<sup>77</sup> For example, in classical Islamic thought there was an established Shariah framework that had scholarly control over law that encouraged ‘stability, executive restraint, and legitimacy’.<sup>78</sup> Baderin contends ‘the stagnation from the thirteenth century continues to the eclipse’ where Islamic jurists developed Shariah into ‘a most dynamic legal system from which even the west was a borrower in the Middle Ages’.<sup>79</sup> As Feldman provides:

A Muslim ruler governed according to God’s law, expressed through principles and rules of the shari’a [Shariah] that were expounded by scholars. The ruler’s fulfilment of the duty to command what the law required and ban what it prohibited made his authority lawful and legitimate.<sup>80</sup>

In fact, Gibbon once submitted his view of Caliphs’ application of Shariah to include:

The order, the discipline, the temporal and spiritual ambition of the clergy, are known to the Moslems; and the sages of the law are the guides of their conscience and the oracle of their faith. From the Atlantic to the Ganges [river between India and Bangladesh] the Koran [Quran] is acknowledged as the fundamental code, not only of theology but of civil and criminal jurisprudence; and the laws which regulate the actions and the property of mankind are guarded by the infallible and immutable sanctions of the will of God.<sup>81</sup>

It is also noted by a number of scholars that by the nineteenth and early twentieth century, this structural and systematic unity ultimately ‘met their structural death’,<sup>82</sup> and Shariah’s influence ‘would steadily decline’.<sup>83</sup> It is submitted that the doctrines of Shariah were ‘adulterated by disturbances of colonialism’.<sup>84</sup> As a result of colonialism, Arab and Islamic States have imported Secular institutions, which limited the scope of

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<sup>77</sup> Hallaq (2009) n 45, at 17.

<sup>78</sup> See Feldman, *The fall and Rise of the Islamic State*, above n 68 at 42. The core purpose of Shariah, according to Ibn Khaldun is the ‘preservation of civilization through the protection of private property from governmental depredation’. See above Feldman n 68 at 41.

<sup>79</sup> See above Baderin (2003) n 12, at 40.

<sup>80</sup> Feldman n 68, at 2.

<sup>81</sup> E Gibbon, *The Decline and Fall of the Roman Empire* (Chap. 50 (5:325), See Feldman n 68.

<sup>82</sup> ‘Structural death refers to the collapse of the organic features that made the Shariah system, in the first place possible, and, in the second, reproductive’. Hallaq (2009) n 45 at 15. This is also supported where Feldman submits ‘by the nineteenth century, distinctly Islamic government began to falter’ (see above Feldman n 68, at 2).

<sup>83</sup> D J Stewart, ‘Shari’a’ in *The Princeton Encyclopedia of Islamic Political Thought* G Böwering, P Crone, M Mirza (Princeton University Press, 2013) 505. See also M Khadduri and HJ Liebesny, *Origin and Development of Islamic Law: Law in the Middle East*, (The Lawbook Exchange, 1955) 83.

<sup>84</sup> J Rehman, *Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the ‘clash of Civilizations’ in the New World Order* (Hart Publishing, 2005) 24.

the Shariah.<sup>85</sup> After the demise of the Ottoman Empire, independent Muslim States continued to abolish Shariah.<sup>86</sup> Turkey, for example, established a secular republic in the 1920s.<sup>87</sup> In the Arab world, Saudi Arabia, Oman, Sudan, and Yemen are the only countries that mainly govern solely in accordance with Shariah.<sup>88</sup> However, secular and religious principles still coexist in the basic law of Arab States.<sup>89</sup>

Hallaq contends that after the Second World War, '[Shariah] was reduced to little more than altered provisions pertaining to family law, the coverage of this sphere becomes a central concern— a sphere wholly determined by the [S]tate's will-to-power'.<sup>90</sup> He argues that in modern Islamic States, the system of Shariah has become a symbol of modern identity, 'engulfed by modern notions of culture and politics (but, ironically, much less by law)'.<sup>91</sup> This will subsequently be addressed in this Chapter.

### 3.5 Sources of the Shariah

Shariah is an Arabic term defined as 'a watering place, a flowing stream, where both animals and humans comes to drink water'.<sup>92</sup> Shariah is also considered a legal institution and a normative framework containing rules and regulations covering all aspects of a Muslim's life.<sup>93</sup> As such, Islam is regarded as both a religion and legal institution.<sup>94</sup> The first pillar of Islam Shahādātayn represents the 'foundational

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<sup>85</sup> It is submitted that during the period of Colonialism, Great Britain introduced '[A]nglo-[M]uhammadan law' (a mixture of Islamic Law and English Law) and the French established their civil, criminal, and commercial codes. See L Ademic, *Historical Dictionary of Islam* (Scarecrow Press, 11 May 2009) 159.

<sup>86</sup> *ibid.*

<sup>87</sup> *ibid.*

<sup>88</sup> *ibid.*

<sup>89</sup> See W Lee, 'Children's Rights and Islam', cited in UNICEF, *Handbook on Legislative Reform*, (UNICEF unpublished Working Paper, 2000) 33. Nevertheless, when different faiths coexist – personal status laws are enacted to each dominant religions. In fact, it is submitted that Shariah slowly lost its jurisdiction over social affairs, except in family law.

<sup>90</sup> W Hallaq, *Shari'a: Theory, Practice, Transformations* (Cambridge University Press, 2009) 21.

<sup>91</sup> *ibid.*, 499. He also argues, given the endless varieties and factors such as historical, local and regional differences from Morocco to Indonesia 'how can one, without being reductive, speak of Islamic law?'

<sup>92</sup> Thus, Ali asserts, '*Stagnant and standing water* is not Sharia[h]'. See Ali (2006) n 54 at 10.

<sup>93</sup> SS Ali, 'Teaching and Learning Islamic Law in a Globalized World: Some Reflections and Perspectives' (2011) *Journal of Legal Education*, Vol 61, No. 2, 207 <<http://www.swlaw.edu/pdfs/jle/jle612ali.pdf>> ; Some view the Shariah as a 'sacred law of Islam' or the 'law of God' that is universally accepted by Muslims. See Khadduri M, Liebesny HJ, *Origin and Development of Islamic Law: Law in the Middle East* (The Lawbook Exchange, Ltd., 1955) at 105.

<sup>94</sup> D Weissbrodt, J Fitzpatrick and F C, Newman, *International Human Rights: Law, Policy, and Process* (LexisNexis, 2009) 239, 240.

theological pronouncement of faith' and the rest of the duties proscribed takes a vital and prominent place in Islamic legal discourse. The five pillars of Islam are regarded as 'the bedrock of religion and religious practice, melding theological with the legal'.<sup>95</sup> The four main sources of Shariah are: the Qur'an, the Sunna, Ijmaa (judicial consensus), and Ijtihad (analogical reasoning).<sup>96</sup>

The Qur'an is the primary source of Shariah and rightly regarded as the 'Word of God (Allah)', its authoritative nature is unequivocal.<sup>97</sup> The Quran was revealed from Allah to the Prophet Muhammad through the Angel Gabriel in approximately twenty-three years.<sup>98</sup> Professor Bassiouni also provides a useful summary concerning how the Quran was collected: 'it was transcribed from oral transmission of the Prophet's recitations' and recorded by a group of Sahaba (companions), led by Zaid ibn Thabit 'who had a prodigious memory'.<sup>99</sup> The verses of the Quran were revealed over twenty years to the Prophet, and it was not until the last year before his death on (632 CE) that he arranged 6,239 verses into 114 chapters (from the longest to the shortest chapters, with the exception of Sūrat al-Fātiḥah (the Opening)).<sup>100</sup> It is submitted that the transcription by the Zaid Ibn Thabit committee was made 'on the basis of the Prophet's last reading of the completed Qur'an'.<sup>101</sup>

Therefore, the Quran is the most important and authoritative source of Shariah and is regarded as the 'only source of theological and legal prescriptions and proscriptions'.<sup>102</sup> The general rule is, if on any occasion a problem arises and there are any

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<sup>95</sup> Hallaq (2009) n 45, at 225. Islam was built upon five pillars: [a] the double-testimony that there is no god but Allah and that Muhammad (PBUH) is the messenger of Allah (Shahādatayn); [b] prayer (five times a day) (Salāt); [c] payment of alms-tax (Zakat); [d] Hajj, (pilgrimage to Makkah at least once in a Muslim's lifetime (only to those who have the health and monetary means)); and [e] fasting (Sawm) the during month of Ramadan, cited in W Hallaq, *Sharia: Theory, Practice, Transformation* (Cambridge University Press, 2009) 225.

<sup>96</sup> See Rehman (2010) above n 9 at 354. See also M Khadduri, HJ Liebesny, *Origin and Development of Islamic Law: Law in the Middle East* (The Lawbook Exchange, Ltd., 1955) 87. The Qadi (judges) also had a role in applying Shariah in courts, they were appointed by the State cited in Cleveland and Bunton, n 57, at 29.

<sup>97</sup> MC Bassiouni, *The Shari'a and Islamic Criminal Justice in Time of War and Peace* (Cambridge University Press, 2013) 61. See also, G S Reynolds ed., *The Qur'an in its Historical Context* (Oxford, UK, Routledge, 2007) 31. The study indicates that the Quran is the same text today as it was revealed over 14,000 years ago. See also Cleveland and Bunton n 57 at 27.

<sup>98</sup> See above Ali (2006), n 54 at 9.

<sup>99</sup> See Bassiouni (the Shari'a, Islamic Law, and Legal Methods (Ilm Usul al-Fiqh) n 97, at 55.

<sup>100</sup> Bassiouni n 97 at 61.

<sup>101</sup> *ibid.*

<sup>102</sup> *ibid.*, 64.

inconsistencies between a verse of the Quran and a reported Sunnah, the former prevails, because its ‘indubitable authenticity’.<sup>103</sup> This is also affirmed in many of the verses of the Quran, e.g. in Sūratu an-Nahl (16:89): ‘[w]e have sent down to thee the Book explaining all things, a Guide, a Mercy, and Glad Tidings to Muslims’.<sup>104</sup>

The Sunna means the path taken by the Prophet himself, and it contains an outline of the actions, explanations, and sayings (Hadith) of the Prophet.<sup>105</sup> The Imam al-Shafi’i, founder of the Shafi’i school of Islamic Jurisprudence and, the *ex post facto* founder of Usul Al-Fiqh<sup>106</sup> writes:

[T]he *Sunnah* of the Prophet is of three types: first is the *Sunnah* which prescribes the like of what God has revealed in his book; next is the *Sunnah* which explains the general principles of the Qur’an and clarifies the will of God; and last is the *Sunnah* where the Messenger of God has ruled on matters on which nothing can be found in the Book of God.<sup>107</sup>

According to Kamali, the Quran stipulates the importance of obedience to the teachings of the Prophet.<sup>108</sup> This is evidenced in various Surahs of the Quran such as:

Surat An-Nisā 4:65: ‘But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], judge concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission’.<sup>109</sup>

Surat An-Nisā 4:80; ‘He who obeys the Messenger has obeyed Allah;’.<sup>110</sup>

Surat Al-Mā’idah 5:92: ‘And obey Allah and obey the Messenger and beware’.<sup>111</sup>

<sup>103</sup> See above Baderin (2003) n 12, at 36.

<sup>104</sup> See also Sūrat al-An’am (6:38): ‘And there is no creature on [or within] the earth or bird that flies with its wings except [that they are] communities like you. We have not neglected in the Register a thing. Then unto their Lord they will be gathered’. See Sūrat al-An’am translated by Sahih International, <<http://quran.com/6/38>>

<sup>105</sup> It is important in this regard to note, as Bassiouni emphasis, not every word uttered by the Prophet is a hadith, and only those Ahadith (plural hadiths) that are authenticated are those of which the Quran supports (those recorded in a collection of reports), and should not to be taken in the same level of the Quran, as often done by Islamist extremist such as the Taliban, who themselves ‘who distort Islam’. Bassiouni, ‘the Shari’a, Islamic Law, and Legal Methods (Ilm Usul al-Fiqh) 64. See Feldman n 68, at 24, V Knut, *Between God and the Sultan: A History of Islamic Law* (Oxford: Oxford University Press, 2005)

<sup>106</sup> W Hallaq *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-fiqh* (Cambridge University Press 1999) 35.

<sup>107</sup> See M H Kamali, *Principles of Islamic Jurisprudence* (Islamic Texts Society, 1991) 64.

<sup>108</sup> *ibid.*, 63.

<sup>109</sup> Surat An-Nisā, translated by *Sahih International* <<http://quran.com/4>> accessed 1 January 2015.

<sup>110</sup> Surat An-Nisā, translated by *Sahih International* <<http://quran.com/4>> accessed 1 January 2015.

<sup>111</sup> Surat Al-Mā’idah translated by *Sahih International* <<http://quran.com/5/92>> accessed 1 January 2015.

The Ahadith (plural of Hadith), is the custom of the Prophet Muhammad (PBUH), they were compiled after the death of the Prophet as guiding principles in addition to the Quran.<sup>112</sup> Hadith (plural Ahadith) are ‘subject to the ascertainment of the validity of each of the deeds and sayings of the Prophet as being Sahih’.<sup>113</sup> The sources of the hadith mostly follow a technique called ‘Isnād’, which means after it has been orally transmitted and accumulated, it is then relied on one ‘another source or corroboration’.<sup>114</sup> The authentication of Ahadith is a difficult process, however Bassiouni affirms the two authoritative sources relied on by the Sunni School of thought are Ṣaḥīḥ al-Bukhārī collected by Imam Muhammad ibn Ismail al-Bukhārī, containing 7,275 hadith, and Sahih Muslim, collected by Muslim ibn al-Hajjaj, which comprises 7,190 hadith (‘4,000 without repetition’).<sup>115</sup>

On the other hand, the Shi’a sect is different from the Sunni when it comes to Ahadith. The Shias limit the authenticity of Ahadith to those issued by Fatima and through particular family members of the Prophet, as opposed to the Sunni process of Isnād, which also include Fatima, and specific companions of the Prophet.<sup>116</sup> Thus, the second source of Shariah is a major point of divergence between the Sunnis and the Shias, as is the concept of Ijtihad.

Analogical reasoning or ‘Ijtihad’ is another source of Shariah.<sup>117</sup> This was later developed as a legal method of Ijma’a (juristic consensus) and Qiays (legal analogy).<sup>118</sup> Ijtihad permits independent legal reasoning to solve a question that is not found in the Quran and Sunna. This later emerged through the method of Ijma (juristic consensus).<sup>119</sup> The four Sunni schools of thought hold Ijma to be ‘a valid source of laws’ especially with ‘the unanimity of the Companions of the Prophet’, and it was

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<sup>112</sup> See Ali (2006) n 54 at 9.

<sup>113</sup> Bassiouni (2013) n 97, at 64.

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*, 65, he also states there are also , Sunan an-Nasi al Sughr, Sunan Abu Dawud, Sunan al-Tirmidhi and Sunan Ibn Maja, who are among the most authoritative sources.

<sup>116</sup> Bassiouni, n 97, at 66.

<sup>117</sup> *ibid.*

<sup>118</sup> See above Baderin (2003) n 12, at 37.

<sup>119</sup> *ibid.* see also Bassiouni n 97, at 66. For more information on Shariah and its sources, see AA An-na’im ‘Sources and Development of Shariah’ in *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International law* (Syracuse University Press, 1996)19.

through Ijmaa, Abu Bakr As-Siddiq (Radi-Allahu anhu)<sup>120</sup> was selected to be the ‘rightly guided caliph’ after the death of the Prophet.<sup>121</sup> Bassiouni defines Ijtihad to be:

[T]he product of an effort, usually intellectual. It refers to a process of legal interpretation based on the progressive development of law where analogy can never be used in order to address an issue not previously addressed. It is the legal technique used to update theological and legal developments. This technique was formally “closed” by Muslim scholars in the 12th century to the great detriment of the development of Islamic law [Shariah], but *nothing prevents its reopening*, as has been the *de facto* case in many Muslim countries since the late 19th century.<sup>122</sup>

In the Sunni doctrine, the first four caliphs that came after the Prophet had the authority to manage how the sources of Shariah create the basis of law.<sup>123</sup> These scholars were ‘the heirs of the prophets’ and were tasked with both collecting and interpreting the relevant legal materials.<sup>124</sup> These methods were considered subsidiary sources of Shariah, which were under the (Usul al Fiqh) domain. Usul al Fiqh provides doctrines such as Istihsan (juristic preference), Istislah or Maslaha (human welfare), ‘Urf (custom), and Darurah (necessity).<sup>125</sup>

These Islamic legal processes were found in Islam in its early periods and were applied to new cases not specifically covered by the provisions of the Quran or Sunnah.<sup>126</sup> As Baderin notes, these methods ‘facilitated the adequate interpretation and application of those two sources to suit the different and changing circumstances of human life’.<sup>127</sup> As such, while the Prophet completed the Islamic message, and the revealed sources of Shariah, he also introduced the methods of legal reasoning (Ijtihad) and thus legal methods of Islamic law are used as a vehicle ‘by which the jurists would transport the Shariah into the future’.<sup>128</sup> In other words, as per Qadri, while ‘the jurists are emphatic in saying that though God has given us a revelation. He also gave us brains to understand it; and he did not intend to be understood without careful and prolonged

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<sup>120</sup> Means ‘may Allah’s blessings be upon him’.

<sup>121</sup> Bassiouni (2013) n 97, at 268. For detailed information on Qiyas, refer to Hallaq’s study ‘Legal Theory: epistemology, language and legal reasoning’ in *Shariah, Theory, Practice and Transformations* (Cambridge University Press, 2009) 105.

<sup>122</sup> Bassiouni, n 97, at xv. Emphasis added.

<sup>123</sup> Feldman n 68, at 24-25. For more information, see H Abdul-Raof, *Quran and Schools of Qur'anic Exegesis: Genesis and Development* (Routledge 2013) pp. 296.

<sup>124</sup> Feldman n 68 at 26.

<sup>125</sup> See Baderin (2003) n 12 at 37.

<sup>126</sup> *ibid.*

<sup>127</sup> *ibid.*

<sup>128</sup> *ibid.*



study'.<sup>129</sup> Therefore, these careful measures help Muslims understand how to go about their daily lives and ensure that their actions do not violate the provisions of the Quran or Sunna of the Prophet (PBUH).<sup>130</sup> This is another point of convergence between Shias and Sunnis. For example, Hallaq argues that non-Sunni theoreticians often reject Qiyas because they believe the Islamic religion is complete and that the Quran has provided all answers that the Muslim community is (or may be) confronted with.<sup>131</sup>

It is argued that by the thirteenth century, the doctrine of Ijtihad (independent legal reasoning) diminished in the Islamic world, where it was considered by consensus that Islamic law was complete and that independent interpretation was closed and that of legal conformism (Taqlid) was opened.<sup>132</sup> Legal conformism (Taqlid) is a legal method for ensuring that judges 'who are not fully qualified [M]ujtahids may be able to decide cases in the light of precedents laid down by independent jurists'.<sup>133</sup> This does not mean new theories of interpretation should not be developed nor should it prevent qualified jurists from exercising their own independent reasoning.<sup>134</sup> While these theories are challenged by contemporary scholars, they are important and highlight the necessary role played by independent reasoning, as well as the already established rules of Fiqh.<sup>135</sup>

Notwithstanding, Professor Ali contends that the dominant problem prevalent within the Muslim world is that Muslim scholars and jurists have failed to utilise the 'inbuilt dynamism' within Shariah.<sup>136</sup> She takes the view that Shariah has become less amenable to modern times and more averse to developing new legal concepts, particularly to those concerning human rights.<sup>137</sup>

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<sup>129</sup> AA Qadri, *Islamic Jurisprudence in the Modern World* (New Delhi: Taj Co., 1986) 199.

<sup>130</sup> *ibid.*, See also Hallaq n 45, 105, 111-114.

<sup>131</sup> See above Hallaq (1999) n 52 at 105.

<sup>132</sup> See above Baderin (2003) n 12 at 38. See also, Ademic n 85 at 158.

<sup>133</sup> Ibn Rushd, *The Distinguished Jurist's Primer, Bidayat al-Mujtahid wa Nihayat al-Muqtasid* by Ibn Rush , tr. I Nyazee, vol. 1, (Garnet, 2000) xxxv.

<sup>134</sup> *ibid.*

<sup>135</sup> For example, see AA An-Na'im, *Islamic Family Law in a Changing World: A Global Resource Book*, (Zed Books, 2002)130. It is important to note, that the legal theory of Usul Al Fiqh is a very difficult field, and until the 1960s little has been developed in this field. See Hallaq (2009) above n 45, at 72-3.

<sup>136</sup> See Ali (2006) above n 54, at 11. See also SS Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (Kluwer Law International, 2000) 3-4.

<sup>137</sup> *ibid* Ali, (2006), at 10. See also M Khadduri, *The Islamic Conception of Justice* (JHU Press, 28 Nov 2001) 210-219.

### 3.6 Shariah and its different schools of thought

With the expansion of Islam from Arabia to the rest of the world, Shariah became increasingly absorbed by different cultures, thus 500 schools of thought (legal reasoning) appeared.<sup>138</sup> However, by the third century of Islam, these schools either disappeared or merged together.<sup>139</sup> Within the Sunni doctrine and since 1300 AD only four schools of law survived.<sup>140</sup> These different schools of legal thought developed around 'key figures' in specific areas that were under Islamic rule.<sup>141</sup> These are the Hanafi school of thought (named after Abu Hanifa d. 767); the Maliki (named after Malik b. Anas, d. 795); the Shafi'i, (named after Muhammad Ibn Idris al-Shafi'i d. 820) and the Hanbali, (named after Ahmad b. Hanbal, d. in 855).<sup>142</sup> It is important to note that these four schools of thought are not considered as sects because they are all 'alternative explanations of Allah's commands'.<sup>143</sup>

The Hanafi school of thought started in Iraq, and became popular with the early Abbasid Caliphs, (they replaced the Umayyad Dynasty in 749-50).<sup>144</sup> All the major Turkish dynasties adhered and supported the Hanafi school of thought. In fact, in the middle of the 15<sup>th</sup> to the end of the 16<sup>th</sup> century, the Ottoman Empire followed Hanafi guidelines and was determined to 'apply the whole of Islamic practice'.<sup>145</sup> The leaders (Sultans Muhammad II, Bayazid II, Salim I and Sulayman I) at the time also desired to be more pious than their predecessors, the Abbasids.<sup>146</sup> The Hanafi school of thought spread across Central Asia, the Anatolian Peninsula and India.<sup>147</sup> The Arab world, (Iraq

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<sup>138</sup> See above Baderin (2003) n 12, at 37-38.

<sup>139</sup> *ibid.*, See also DJ Stewart, 'Shari'a' in G Böwering, P Crone, M Mirza, *The Princeton Encyclopedia of Islamic Political Thought*, (Princeton University Press, 2013) 498. For in-depth historical analysis of Shariah and the different schools of thought in the Middle East, see Khadduri, and Liebesny, n 83 at 57-84.

<sup>140</sup> See Khadduri and Liebesny, n 83, at 68.

<sup>141</sup> See above Feldman n 68, at 26-27. On schools as institutions, see G Makdisi, *The Rise of the Colleges: Institutions of Learning in Islam and the West* (Edinburgh: Edinburgh University Press, 1981)

<sup>142</sup> See above Stewart, n 83, at 498. There are also Zahiri and Jariri schools, but had died out by the 12<sup>th</sup> century and were absorbed into the Shafi'i school. See also G Makdisi, *the Rise of colleges: institutions of learning in Islam and the West* (Edinburgh University Press (1984) 378 pp.

<sup>143</sup> *ibid.*

<sup>144</sup> GR Hawting, *The First Dynasty of Islam: The Umayyad Caliphate AD 661-750*, (Routledge, 4 Jan 2002) 1. Khadduri and Liebesny, n 83, at 81.

<sup>145</sup> See above Khadduri and Liebesny n 83, at 81.

<sup>146</sup> *ibid.*

<sup>147</sup> See above Stewart, n 83, at 498.

and Syria) predominantly follow this school of thought.<sup>148</sup> The Hanafi doctrine also became the official status in tribunals where Islamic law was administered in Egypt, Libya, and Jordan.<sup>149</sup>

The Maliki School developed in Medina and became very influential in Egypt and through North Africa and sub-Saharan Africa.<sup>150</sup> In the Arab world, this includes Libya, Tunisia, Algeria, and Morocco. The Shafi'i school began in Cairo and became dominant in southern Egypt, the Hijaz (including Makkah), southern Saudi Arabia, Yemen, and Somaliland (presently Somalia).<sup>151</sup> The Hanbali School gained adherents in Palestine, Syria, Iraq and Saudi Arabia.<sup>152</sup> Hanafi Madhabs also exist in these States, especially in the western region.<sup>153</sup>

Furthermore, according to An-Na'im the underlying forces and timing of the emergence of each school influenced their independent views on Shariah.<sup>154</sup> He notes that pre-existing practices and the social and economic experience is more influenced in the teachings of Hanafi and Maliki than it did to the other two Sunni schools.<sup>155</sup> Notwithstanding, to Khadduri and Liebesny '[e]ven within the individual schools and in their relationships with one another consensus [Ijmaa] acts as an integrating principle'.<sup>156</sup> As such, a particular rule (hukum) is often legitimised when a problem or question arises through the principle of Ijmaa.<sup>157</sup>

However, there are divisions present in Islam; this is especially true between the Sunnis and the Shias.<sup>158</sup> The fundamental differences between the two sects are political in nature, for example what the religious dimension of the new ruler is to be and who

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<sup>148</sup> See above Khadduri and Liebesny n 83 at 69.

<sup>149</sup> See above Stewart, n 83, at 498.

<sup>150</sup> See Khadduri M, Liebesny HJ, *Origin and Development of Islamic Law: Law in the Middle East* (The Lawbook Exchange, Ltd., 1955) at 69.

<sup>151</sup> *ibid.*

<sup>152</sup> See above Stewart, n 83, 498.

<sup>153</sup> *ibid.*

<sup>154</sup> A An-Na'im, ed., *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books, London 2003) 6.

<sup>155</sup> *ibid.*

<sup>156</sup> See above Khadduri and Liebesny, n 83, at 71.

<sup>157</sup> AA Na'im (ed.), *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Press 2002) 7.

<sup>158</sup> The Sunnis account for 90% of Muslims. See J Morgan-Foster, 'Third Generation Rights: What Islamic Law Can Teach the International Human Rights Movement' (2005)1 Yale Hum. Rts. & Dev. L.J. Vol. 8., 103

should be the new leader of the Islamic community.<sup>159</sup> The Shias believed it was Ali, the cousin and son-in-law of the prophet, whereas, the Sunnis believe it was Abu Baker, the closest companions of the Prophet.<sup>160</sup> It is submitted that Muslims also accept the Rashidun caliphs as legitimate rulers, such as the Umayyads and the Abbasids.<sup>161</sup> Caliphs are regarded as ‘mortal rulers’ and had ‘temporal authority’ and matters regarding the Islamic doctrine and jurisprudence were left to the Ulama.<sup>162</sup> Therefore, the Sunnis adhere to the Sunna of the Prophet and have their own four schools of law.<sup>163</sup> The Shias translate Ijtihad (one of the sources of Shariah) through the medium of Imams.<sup>164</sup>

Other non-Sunni schools of Jurisprudence also emerged, from within the Shi’a school these are: the Twelver Usuli School of jurisprudence (with the largest Shia adherents)<sup>165</sup> and the dominant school of thought in Iran and has many adherents in Iraq.<sup>166</sup> Zaydi (emerged in Yemen), the Isma’ili (primarily in India) and the Ibadi (gained prominence in Oman and some parts of North Africa).<sup>167</sup>

These issues of varied interpretations of the Quran and Sunna within the two different religious sects and the escalating tensions between the Sunnis and the Shias are key ingredients to the rising instability in the region. The disputes over who should attain position if the Caliph remained for centuries and led to a civil war in Iraq on 661 AD, between supporters of Ali, against the forces of Mu’awiya b. Abi Sufyan, the leader of the Sunni Umayyad Dynasty.<sup>168</sup> Although the dynasty was powerful and the first to emerge in the Middle East, and ruled for 90 years,<sup>169</sup> conflicts arose between the Shi’a inhabitants of Iraq and Syria with the Dynasty rule.<sup>170</sup> In 680 AD Yazid the son of Mu’awiyah replaced his father to attain position of the Ummayad dynasty; however the

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<sup>159</sup> W Cleveland and M Bunton, *A History of the Modern Middle East* (Westview Press, 2009) 31.

<sup>160</sup> *ibid.*, 19.

<sup>161</sup> *ibid.*, 31.

<sup>162</sup> *ibid.*

<sup>163</sup> *ibid.*, See also Khadduri and Liebesny, n 83 at 71. That is why they are called ‘Sunnī’ is derived from the word Sunna, meaning tradition of the prophet see above Cleveland and Bunton, n 57, at 31.

<sup>164</sup> *ibid.*

<sup>165</sup> See Stewart above n 83, at 498.

<sup>166</sup> See Baderin (2003) above n 12, at 37.

<sup>167</sup> *ibid.* Baderin n 12, at 37-38. See also G Makdisi, *The Rise of colleges: institutions of learning in Islam and the West* (Edinburgh University Press, 1984).

<sup>168</sup> Cleveland and Bunton, n 57, at 31.

<sup>169</sup> Hawting, n 144, at 1.

<sup>170</sup> For detailed information on the Dynasty, see Hallaq (2009) above n 45, at 128-130.

Shi'a supporters of Ali convinced Ali's son, Husayn to lead a rebellion against the Umayyad dynasty.<sup>171</sup> According to the Shi'a narrative, Husayn was then killed by the Umayyad forces in Karbala in Iraq.<sup>172</sup> Thus it is submitted that Karbala in Iraq became the holiest shrine for the Shias and the annual rites of the day of Ashura is the most important religious ceremony for the Shias, where they mourn over the death of Husayn (day of Ashourah).<sup>173</sup>

The implications of the Sunni-Shi'a divide are imperative and relevant to the current problems faced by the Arab League. For centuries, rivalries and civil wars have been occurring in the region primarily based on who should be in power and who should lead the religious community.<sup>174</sup> Madhab allegiance influenced political rule, illustrating the precept 'people adopt the religion of their rulers.'<sup>175</sup> Sunnis account as majority in the Arab region, however, there are Shias across the Arab region and account as the majority in Bahrain and Iraq.<sup>176</sup> In addition, there are several Shi'a branches: Druze, Ismailis and Alawis in Syria and Lebanon, as well as Zaydis in Yemen and the Kharijites (Ibadies) of Oman. Fawcett submits, while religious pluralities do exist in Sunni majority States (to some extent), the same is not true with those of Shias majority.<sup>177</sup>

Shias are adherents to the twelver Usuli School of jurisprudence<sup>178</sup> and primarily base their understanding of Shariah on the sixth Imam Jaffari, (named after Jafar al-Sadiq the founder,<sup>179</sup> d. 765).<sup>180</sup> This school is also based on the Quran and Sunna<sup>181</sup>, however, in addition to the 'the statements, deeds, and tacit consent of the Prophet' it also bases its Sunna on the Imams, 'the consensus (ijma') of the Shi'te jurists, and the

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<sup>171</sup> See above Cleveland and Bunton, n 57, at 31, Hallaq (2009) above n 45.

<sup>172</sup> *ibid.*, at 31.

<sup>173</sup> *ibid.*

<sup>174</sup> See for example Dawisha above, n 5 at 128.

<sup>175</sup> D J Stewart, 'Shari'a' in G Böwering, P Crone, and M Mirza, *The Princeton Encyclopedia of Islamic Political Thought* (Princeton University Press, 2013) 498. See also Rehman above (2005) n 84, at 19.

<sup>176</sup> L Fawcett, *International Relations Of The Middle East* (Oxford University Press 2005) 154.

<sup>177</sup> *ibid.*

<sup>178</sup> See Rehman (2005) above n 84, at 19.

<sup>179</sup> *ibid.*

<sup>180</sup> See DJ Stewart, 'Shari'a' in G Böwering, P Crone, M Mirza, *The Princeton Encyclopedia of Islamic Political Thought* (Princeton University Press, 2013) 496-505, at 498.

<sup>181</sup> See Ademic above, n 85, at 158.

application of reason ('Aql)'.<sup>182</sup> The principle of Aql is '[w]hatever is ordered by reason is also ordered by religion'.<sup>183</sup> Furthermore, the four books (al-kutub al-arba'a) are the most important sources of law of Shias.<sup>184</sup>

These divisions increased within the Muslim community, and hampered the effectiveness of the Arab League. For example, in the 20<sup>th</sup> century, the Shias who constitute the majority in Iraq were not supportive of establishing an Arab League or any form of Arab unity, because they thought it would 'render the Shiites [Shias] a minority in an Arab Sunni world'.<sup>185</sup> According to Professor Dawishi, '[t]he Sunni-Shiite divide undermined efforts at national unity both at the Iraqi and Arab levels'.<sup>186</sup> This is also emphasized with the fact that the tribal structure present in Iraq focused on 'primordial loyalty for the people' and resisted all forms of government control.<sup>187</sup> Similar problems were also present in Syria, with its Sunni-Druze- 'Alawite divide, and in areas of Latakia, Jabal Druze, and Jezzira there is long-standing and entrenched 'tribal attitudes' which further impeded national alliance.<sup>188</sup> These tribal communities in Iraq and Syria have had conflicting allegiances with Iran or other communities outside their domestic premises, which conflicts the Arab League's ideal of unity or the Islamic concept of Umma.<sup>189</sup> As Professor Tibi writes:

Neither in the imperial nor in the territorial state were tribes transformed into a homogenous polity; tribal ties have always been the basic element of group reference, despite the fact that they were suppressed and rhetorically renounced. This happened in the past within the framework of a universal Islamic *Umma* and in the present with reference to the secular idea of the nation. Thus, the modern nation-[S]tate, like the classical Islamic [S]tate, is expected to achieve the transition from tribe to nation.<sup>190</sup>

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<sup>182</sup> *ibid.*, 159

<sup>183</sup> *ibid.*

<sup>184</sup> *ibid.*

<sup>185</sup> H Batatu, *The Old Social Classes and the Revolutionary Movements of Iraq: A Study of Iraq's Old Landed and Commercial Classes and of its Communists, Ba'athists and Free Officers* (Princeton, New Jersey: Princeton University Press, 1978) 818; also Y Nakash, *The Shi'is of Iraq* (Princeton, New Jersey: Princeton University Press, 1994) 134, see above Dawisha n 5, at 295.

<sup>186</sup> See Dawisha, above n 5 at 86.

<sup>187</sup> *ibid.*

<sup>188</sup> *ibid.*

<sup>189</sup> *ibid.*

<sup>190</sup> B Tibi, 'The Simultaneity of the Unsimultaneous: Old Tribes and Imposed Nation-States in the Modern Middle East,' in PS Houry and J Kostiner, *Tribes and State Formation in the Middle East* (Berkeley: University of California Press, 1980) 127- 152, at 127.

One of the most important event that intensified regional instability and led to the augmentation of the Sunni-Shia divide was the Iran-Iraq war in 1980-1988. The war was largely based on political rivalry, sectarianism, and conflict over boundary (the Shatt-al-Arab which is the shared waters of the Tigris and Euphrates).<sup>191</sup> Although the Iran-Iraq war was devastating, member States of the Arab League were again divided and unable to stop the war from escalating into a humanitarian concern.<sup>192</sup> Both Iraq and Iran suffered immensely (economically and socially) and cost the lives of almost 1.5 million people.<sup>193</sup> The war lasted eight years and did not end until the UN Security Council passed a number of resolutions calling for ceasefire and withdrawal of both forces 'to recognized international boundaries, and to refrain from aggravating the conflict'.<sup>194</sup> Subsequently, the war ended on 17 July 1988 when Iran accepted UN SC Res. 598 of 20 July 1987.<sup>195</sup>

It is also noted that in January 1981, at the third Islamic Summit, Saddam Hussein tried to persuade Arab States into believing that the Iran was a threat to Arab unity, as he States:

The problem between Iraq and Iran goes back to more than 450 years of history, if we wanted to know its history. It is not a border problem or a secondary question about navigation rights. It is much...bigger. The problem illustrates the expansionist covetousness of Iran in the nearby and bordering Arabian lands.'<sup>196</sup>

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<sup>191</sup> IF Dekker, HH G Post, Nederlands Instituut voor Sociaal en Economisch Recht, *The Gulf War of 1980-1988: The Iran-Iraq War in International Legal Perspective*, (Martinus Nijhoff Publishers, 1992) 7, 51.

<sup>192</sup> See also 'The Arab League called on the Security Council today to seek an end to the Iran-Iraq war.' in The New York Times 'Arab League Asks U.N. Unit To Seek End to Iran-Iraq War' (October 4, 1986) <<http://www.nytimes.com/1986/10/04/world/arab-league-asks-un-unit-to-seek-end-to-iran-iraq-war.html>>. Although most Gulf States and the Arab League were supportive of Iraq, some States were neutral, particularly Qatar and Bahrain. Furthermore, Oman, UAE and Syria, were to some extent supportive of the Syrian regime, see C Marschall, *Iran's Persian Gulf Policy: From Khomeini to Khatami* (Routledge, 2003) 70-75, 77, and 93.

<sup>193</sup> R Hardy, 'The Iran-Iraq war: 25 years on' (22 September 2005) <<http://news.bbc.co.uk/1/hi/4260420.stm>>

<sup>194</sup> IF Dekker, H H G Post, Nederlands Instituut voor Sociaal en Economisch Recht, *The Gulf War of 1980-1988: The Iran-Iraq War in International Legal Perspective*, (Martinus Nijhoff Publishers, 1992) 51.

<sup>195</sup> *ibid* 51. See also 'The Arab League called on the Security Council today to seek an end to the Iran-Iraq war.' in The New York Times 'Arab League Asks U.N. Unit To Seek End to Iran-Iraq War' (October 4, 1986) <<http://www.nytimes.com/1986/10/04/world/arab-league-asks-un-unit-to-seek-end-to-iran-iraq-war.html>> accessed 1 January 2015.

<sup>196</sup> Lecture 23: 'The Address of Saddam Hussein at the 3<sup>rd</sup> Islamic Summit on 28 January 1981 in \*SH-Misc-D-001-304, see W Murray and K Woods, *The Iran-Iraq War: A Military and Strategic History*, (Cambridge University Press, 2014) 34. See also Saddam Hussein, *Statement of H.E. Mr. Saddam Hussein, President of the Republic of Iraq, on the Iraq-Iranian conflict: before the third summit meeting*

It is important to note that this prediction by Saddam has become reality. Iran has expanded its influence in Syria, Iraq, Lebanon, Yemen and Bahrain. The effect of Iran's emergence and support to autocratic regimes such as Syria has produced major repercussions and arguably intensified the sectarian divide.

Although, Shias and the Sunnis have been fighting for decades,<sup>197</sup> the American-led invasion of Iraq in 2003 further increased violent tensions between the Sunni and Shias in Iraq.<sup>198</sup> When Saddam Hussein ('Shia [Shi'a] Iran's most bitter enemy') was removed, the sectarian fight for political power has cost the lives of thousands of Iraqis.<sup>199</sup> The same is in Syria; the uprising that called 'for freedom and justice' has resulted in Sectarian war.<sup>200</sup> There is now growing tensions between Sunni extremist groups, the armed oppositions, and Assad's forces supported by Shi'a Hezbollah and Iran.<sup>201</sup> Bowen argues, 'the most dangerous force, which threatens to define the next decade in the Middle East, is the tension between Shia [Shi'a] and Sunni'.<sup>202</sup> This is also supported by the report of the Council and Foreign Relations which indicates that the presence of tens of thousands of organized sectarian militants are capable of initiating a large-scale conflict and 'Islam's divide will lead to escalating violence and a growing threat to international peace and security'.<sup>203</sup>

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*of the Islamic Conference, 19-22 Rabi'i-al Awal, 1401, 25-28 January, 1981, Saudi Arabia ( the University of Michigan, s.n., 1981 , digitized Aug 2008) 55.*

<sup>197</sup> See for example, Dawisha at n 5, at 294.

<sup>198</sup> J Bowen, 'Sharpening Sunni-Shia schism bodes ill for Middle East' *BBC News* (20 December 2013) <<http://www.bbc.co.uk/news/world-middle-east-25458755>> accessed 1 January 2015.

<sup>199</sup> *ibid.*

<sup>200</sup> *ibid.*

<sup>201</sup> *ibid.*, see also E Pan 'Syria, Iran, and the Mideast Conflict' Council on Foreign Relations (July 18, 2006) <<http://www.cfr.org/iran/syria-iran-mideast-conflict/p11122>> accessed 1 January 2015.

<sup>202</sup> This therefore provides major repercussions, especially when the minority government is not democratic and oppressive; it provides a breeding ground for major human rights violations and 'staging ground for a vicious proxy war between the region's major Sunni and Shia powers'. Council on Foreign Relations, 'The Sunni-Shia divide' <[http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news\\_release-news\\_release-the\\_sunni\\_shia\\_divide-link2-20140715&sp\\_mid=46474712&sp\\_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmxkLmNvbQS2](http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news_release-news_release-the_sunni_shia_divide-link2-20140715&sp_mid=46474712&sp_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmxkLmNvbQS2)> accessed 1 January 2015.

<sup>203</sup> Council on Foreign Relations, 'The Sunni-Shia divide' <[http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news\\_release-news\\_release-the\\_sunni\\_shia\\_divide-link2-20140715&sp\\_mid=46474712&sp\\_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmxkLmNvbQS2](http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news_release-news_release-the_sunni_shia_divide-link2-20140715&sp_mid=46474712&sp_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmxkLmNvbQS2)> accessed 1 January 2015.



Fundamentalism also grew as a product of colonial exploitation, government impunity, poverty, and lack of education.<sup>204</sup> These groups such as ISIS or Al-Qaida have distorted worldview and attempt to interpret the Quran out of context.<sup>205</sup> To Ruthven, all fundamentalists act in desperation ‘resulting from a fear that the modern world is inexorably leaving them behind’.<sup>206</sup> Therefore, it would appear over the course of recent history Shariah has been used as a political tool not just by legislators and policy makers, but also by terror groups and fundamentalists, consequently undermining and contradicting the essence and meaning of Islam and the principles of Shariah.

### 3.7 Shariah and Human Rights

It is submitted that the Arab region compares unfavourably to other more developed areas in the world with regards to promoting and protecting human rights and ensuring due process. Although the region’s history of Colonialism has affected the modern Arab state system and institutional failures, it is argued that States also bear responsibility for this failure.<sup>207</sup> According to Professor Bassiouni, a majority of Muslims (including religious and political leaders) ‘lack sufficient understanding of Islam and its substantive requirements’.<sup>208</sup> He observes that the requirements of the Shariah and Islamic law to address human rights violations and post-conflict justice have been poorly understood.<sup>209</sup> Consequently, to Cammett, there exists a significant governance gap in the region, including lack of public accountability and access to civil and political rights, as well as remedial justice.<sup>210</sup> There are also absence of sufficient

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<sup>204</sup> See J Griffin, *On Human Rights* (Oxford University Press, 2008) 300.

<sup>205</sup> Ruthven submits the reason behind fundamentalism is ‘a desperation resulting from a fear that the modern world is inexorably leaving them behind’ See M Ruthven, *Fundamentalism: the search for meaning* (Oxford, Oxford University Press, 2004) 10-15 cited in J Griffin, *On Human Rights* (Oxford University Press, 2008) 300.

<sup>206</sup> M Ruthven, *Fundamentalism: the search for meaning* (Oxford, Oxford University Press, 2004) 10-15. J Griffin, *On Human Rights* (Oxford University Press, 2008) 300.

<sup>207</sup> See Malaki n 37, at 30. More discussions on the history of the Arab region will follow in the subsequent chapter.

<sup>208</sup> See Bassiouni above n 97, at 285.

<sup>209</sup> *ibid.*, 281. For example, political aspirations of groups and individuals who sought power used violence through assassination of the previous Caliph, in order to reign over the Muslim Ummah or become a new caliph.

<sup>210</sup> M Cammett, ‘The Political Economy of Development in the Middle East’ in E Lust, *The Middle East* (12th edn, CQ Press 2010) 99-142, at 139. See also World Bank, *Unlocking the employment potential in the middle east and north Africa : toward a new social contract* (Washington , D.C.: World Bank , 2004).

legal protection to women and minorities.<sup>211</sup> A recent report submitted by the OHCHR reports the presence of a high level of gender-based inequality in the region,<sup>212</sup> especially in conflict and transition States of the Arab world.<sup>213</sup>

It is unfortunate that political figures failed to prohibit and prevent human rights violations from occurring in the region.<sup>214</sup> Bassiouni notes that the major reasons for this failure '[h]as more to do with the political and social considerations than with the dictates of the sharia[h] and Islamic law itself'.<sup>215</sup> As discussed above a number of scholars also argue that Arab States' interpretations and practices of Shariah (similar with other religions) have been affected by local cultures and politics.<sup>216</sup>

Professor Ali makes the point that Islamic scholars and jurists often interpret Shariah to reflect existing cultural practice; this hinders the ability of Muslim societies to implement international human rights.<sup>217</sup> Ali notes that since Islam's initial expansion, social customs, and institutions have often integrated with religion resulting with a blend of 'cultural Islam'.<sup>218</sup> As such she claims that 'Ahadith' (one of the sources of Shariah), in recent history were 'generated' to buttress 'societal norms and political expediency'.<sup>219</sup> According to Ali, despite the large number of ratifications to CEDAW (as indicated in chapter 2), there exists legal provisions and practices that discriminates against women.<sup>220</sup> It is argued that most of these Muslim majority States cite or

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<sup>211</sup> M Abbott in 'UNDP Human Rights for Development. New York' (UNDP 2011) News Brief Vol. 4 4 <[http://www.undp.org/content/dam/undp/library/Democratic%20Governance/NewsbriefVol4\\_F\\_WEB.pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/NewsbriefVol4_F_WEB.pdf)> accessed 1 January 2015. See above Bassiouni n 97, at 285. See also M Malaki, 'From the Law of the Ruler to the Rule of Law' in B Korany, *Arab Human Development in the Twenty-First Century: The Primacy of Empowerment*, (I.B.Tauris, 2014) 27-66, at 30.

<sup>212</sup> According to the OHCHR 'the lack of gender equality remains a matter of grave concern' OHCHR, 'Field Activities– Middle East And North Africa High Commissioner's Strategic Management Plan 2010-2011' 119 <<http://www.ohchr.org/Documents/Press/SMP2010-2011.pdf>> accessed 1 January 2015.

<sup>213</sup> See UN Women for Arab States & The Committee on Elimination of Discrimination Against Women (CEDAW Committee) Regional Consultation for the Proposed General Recommendation on Women Human Rights in Situations of Conflict and Post Conflict contexts," Amman, January 2013, 32. <<http://www.ohchr.org/Documents/HRBodies/CEDAW/Womenconflictsituations/RegionalConsultationAmmanJan2013.pdf>> accessed 1 January 2015.

<sup>214</sup> Bassiouni., n 97, at 285.

<sup>215</sup> *ibid.*

<sup>216</sup> See for example, Nundy n 7, at 2-3 and Ali (2006) n 54 at 84.

<sup>217</sup> See Ali (2006) above n 54 at 84.

<sup>218</sup> *ibid.*

<sup>219</sup> SS Ali, 'the Conceptual Foundations of Human Rights: a Comparative Perspective' (1997) *Eur Pub L*, Vol 3, No. 2, 267.

<sup>220</sup> See above Ali (2006) n 54 at 2.

interpret Shariah 'as an escape route' for their lack of adherence to domestic and international legal obligations.<sup>221</sup>

That said it is important to emphasise, as Professor Ali rightly observes, that the key premise of the 'Islamic religion was to bring about a social revolution among the people of Arabia and the world at large'.<sup>222</sup> As such, a major component of the Quran focuses on 'protective and corrective injunctions for the advancement of women'.<sup>223</sup> There are many other reformist provisions enhancing women's rights within the Quran, especially with regards to their legal status and economic rights, and for the first time introduced various provisions promoting the status of women as full legal persons.<sup>224</sup> Barlas also notes that '[t]he theme that men and women commenced from a single Self and constitute[d] a pair is integral to Quranic epistemology.'<sup>225</sup> Surat An-Nisā' (4:1) reads:

O mankind, fear your Lord, who created you from one soul and created from it its mate and dispersed from both of them many men and women. And fear Allah , through whom you ask one another, and the wombs. Indeed Allah is ever, over you, an Observer.<sup>226</sup>

See also Surat Al-Baqarah (2:177):

Righteousness is not that you turn your faces toward the east or the west, but [true] righteousness is [in] one who believes in Allah , the Last Day, the angels, the Book, and the prophets and gives wealth, in spite of love for it, to relatives,

<sup>221</sup> See SS Ali and S Mullally, 'Women's Rights and Human Rights in Muslim Countries: A Case Study' in H. Hinds, A Phoenix and J Stacey (eds.), *Working Out: New Directions for Women's Studies* (London: Falmer, 1992) 117.

<sup>222</sup> See above Ali (2006) n 54, at 224.

<sup>223</sup> In fact, according to Professor Ali, Aisha, wife of the Prophet Mohammed was active in political life, most cited and credible narrators of the Ahadith. *ibid* at 199 and 24.

<sup>224</sup> See Hallaq n 45 at 32 (2009). See also the last address of the Prophet Mohammed to the Muslims on the occasion of the Hajjat-ul-Wida (the last pilgrimage). See above Ali (2006) n 54 at 18, 24.

<sup>225</sup> A Barlas, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (University of Texas Press, 2002) 134. 'This reformist position relies on a particular interpretive move: it generalizes specific Quranic pronouncements into broad principles, and then seeks to apply those broad principles into present socio-economic contexts'. Cited in R Bahdi, 'Background Paper on Women's Access to Justice in the MENA Region.' (2007) Prepared for International Development Research Center Women's Rights and Citizenship Program and the Middle East Regional Office Middle East and North African Regional Consultation, Cairo, Egypt, December 9-11, 43, at 17  
<[http://www.uwindsor.ca/law/rbahdi/sites/uwindsor.ca.law.rbahdi/files/womens\\_access\\_to\\_justice\\_in\\_mena-bahdi\\_en.pdf](http://www.uwindsor.ca/law/rbahdi/sites/uwindsor.ca.law.rbahdi/files/womens_access_to_justice_in_mena-bahdi_en.pdf)> accessed 1 January 2015.

<sup>225</sup> Discover Islam, <[http://www.discoverislam.com/poster.asp?poster=DIP2004\\_28&page=1](http://www.discoverislam.com/poster.asp?poster=DIP2004_28&page=1)> accessed 1 January 2015.

<sup>226</sup> Qur'an 4:1; also, Prophet Muhammad (PBUH) stated: 'The most perfect in faith among you believers is he who is best in manner and kindest to his wife.' (Discover Islam, <[http://www.discoverislam.com/poster.asp?poster=DIP2004\\_28&page=1](http://www.discoverislam.com/poster.asp?poster=DIP2004_28&page=1)> accessed 1 January 2015.

orphans, the needy, the traveler, those who ask [for help], and for freeing slaves; [and who] establishes prayer and gives zakah; [those who] fulfill their promise when they promise; and [those who] are patient in poverty and hardship and during battle. Those are the ones who have been true, and it is those who are the righteous.<sup>227</sup>

In fact, Baderin submits that the doctrine of Maslahah, stipulates the object and purpose of Shariah, (Maqasid al-Shariah) to be, ‘the promotion human welfare and prevention of harm’.<sup>228</sup> Professor Hallaq also provides a useful observation in this regard, as he cites Al-Shatibi’s theory of ‘the object and purpose of the Shariah’ (Maqasid al-Shariah), to be, *inter alia*, ‘the original intention of God revealing law (is) to protect the interests of man (both mundane and religious)’.<sup>229</sup> Imam Malik also defines the doctrine of Maslahah to be ‘a deduction of law to be based on general considerations of the public good’.<sup>230</sup> In this regard, Baderin argues that:

While human rights specifically aim at protecting the rights of individuals, the ultimate aim is equally to guarantee the benefit and welfare of human beings as a whole wherever they may be. Protecting the welfare of individuals does ultimately ensure communal/public welfare and vice versa. This makes the doctrine of maslahah very relevant in the discussion of human rights under Islamic law.<sup>231</sup>

Morgan-Foster also contends that Shariah can ‘contribute positively’ to the debate on International Human Rights.<sup>232</sup> For example, he argues that within the Shariah paradigm there are various provisions that strongly support and advance third generation human rights.<sup>233</sup> However, as noted by the author, in the context of the discussions on the universality of human rights, there is little scholarly work on the

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<sup>227</sup> See Surat Al-Baqarah (2:177), translated by Sahih International <<http://quran.com/2>>

<sup>228</sup> Baderin (2003) n 12 at 40. See also SS Ali, ‘Teaching and Learning Islamic Law in a Globalized World: Some Reflections and Perspectives’ (2011) *Journal of Legal Education*, Vol 61, No 2, 210.

<sup>229</sup> *ibid* Baderin 41.

<sup>230</sup> SS Ali, ‘Teaching and Learning Islamic Law in a Globalized World: Some Reflections and Perspectives’ (2011) *Journal of Legal Education*, Vol 61, No 2, 210. See also MH Kamali ‘Have we neglected the Shari’ah- Law Doctrine of Maslahah?’ (1998) 27 *Islamic Studies*, No.4, pp. 287-288.

<sup>231</sup> See Baderin above, n 12, 43.

<sup>232</sup> J Morgan-Foster, ‘Third Generation Rights: What Islamic Law Can Teach the International Human Rights Movement’ (2005) *YHRDLJ*, Vol. 8, Iss. 1, 67.

<sup>233</sup> *ibid* at 69. For example, provisions such as the right to development, water conservation, environmentalism, animal welfare. For example, with regards the right to development and collective duty, one of the five pillars of Islam proscribes for all Muslims to pay Zakat (alms). If the Muslims have the means (financially or to those who are able) to provide Zakat. See MH Kamali, *Principles Of Islamic Jurisprudence* (Islamic Texts Society, 1991) 217. Similarly, ‘Ibn Az-Zubair reported: I heard the Messenger of Allah, peace and blessings be upon him, say, “He is not a believer whose stomach is filled while the neighbor to his side goes hungry’. Narrated by Sahih, Sunan Al-Kubra 19049. See also Morgan-Foster n 232, at 90-100.

examination of ‘the potential of Islamic conceptions of duties to influence our understanding of international human rights law’.<sup>234</sup>

As this study suggests State practice in various parts of the Arab world indicate the existing challenges present within these societies towards promoting and protecting international human rights. It is argued that issues such as, minority rights, the rights of women, and the administration of corporal punishments need to be investigated and promoted within the Islamic discourse for Muslim majority States to consider.<sup>235</sup> An-Na’im contends that although there are various areas of reforms within the Muslim communities, the conflict between the forces of conservatism and modernism are unremitting.<sup>236</sup> He argues that there exists resistance to change and adopting legal reforms in line with Shariah.<sup>237</sup>

Ali also notes that there does exist plurality within the legal tradition in Islam and that through Ijtihad ‘[I]slamic legal doctrine was meant to find its evolutionary path’.<sup>238</sup> As such, there is significant flexibility as to how international human rights are protected within the Islamic framework.<sup>239</sup>

In line with the preceding scholars, Baderin also observes international human rights provisions need to be addressed through the Islamic legal tradition.<sup>240</sup> He proposes States to use a socio-cultural approach to human rights as a framework to remedy the poor human rights situations in Muslim States.<sup>241</sup> States in this framework are urged to realize their international or regional human rights obligations, and it is their responsibility to ‘promote, protect and implement human rights [...] adopt[ing] all

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<sup>234</sup> See above Morgan-Foster (2005) 70.

<sup>235</sup> R Bahdi, ‘Background Paper on Women’s Access to Justice in the MENA Region.’ (2007) Prepared for International Development Research Center Women’s Rights and Citizenship Program and the Middle East Regional Office Middle East and North African Regional Consultation, Cairo, Egypt, December 9-11, 18.

<sup>236</sup> See above An- Na’im n 157 at 130.

<sup>237</sup> *ibid*

<sup>238</sup> SS Ali ‘The Conceptual Foundations Of Human Rights: A Comparative Perspective’ (1997) 2 *Eur Pub L*, Vol 3, 261-282, at 269.

<sup>239</sup> See for example, K Cavanaugh ‘Narrating Law’ in A M. Emon, M Ellis, and B Glahn, *Islamic Law and International Human Rights Law* (Oxford University Press, 2012) 97.

<sup>240</sup> *ibid*.

<sup>241</sup> See above Baderin n 12 at 424.

necessary administrative and legislative measures to ensure the guarantee of relevant human rights within their respective jurisdictions'.<sup>242</sup>

Finally, Bassiouni notes, the divine message stipulated in the Quran and Sunna binds all Muslim states to adhere to their international human rights obligations.<sup>243</sup> This includes States' obligation to prosecute or extradite those who violate these provisions.<sup>244</sup> He argues, in accordance with the maxim *pacta sunt servanda*, Islamic law recognizes the binding nature of treaties.<sup>245</sup> These binding obligations are promoted in various verses of the Quran, such as:

Surat al-Isra (15:34): '[A]nd fulfill [every] commitment. Indeed, the commitment is ever [that about which one will be] questioned.'<sup>246</sup>

Surat Al-Mā'idah (5:1): '[F]ulfill [all] contracts. Lawful for you are the animals of grazing livestock except for that which is recited to you [in this Qur'an] - hunting not being permitted while you are in the state of ihram. Indeed, Allah ordains what He intends'.<sup>247</sup>

Indeed, the Prophet also stated 'the Muslims are bound by their obligations, except an obligation that renders the lawful unlawful, and the unlawful lawful'.<sup>248</sup> Accordingly, a treaty must be incorporated within domestic legislation and precedes over all other laws, however, except when a particular verse in the Quran or hadith [gathered through the principle of Isnad] explicitly prohibits the specific provision/ or the treaty in question.<sup>249</sup> Respect for and observance of any form of treaty or agreement is argued to be a religious obligation and 'not just as an act of political necessity'.<sup>250</sup>

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<sup>242</sup> *ibid.*

<sup>243</sup> See above Bassiouni n 97, at 153.

<sup>244</sup> *ibid.*

<sup>245</sup> *ibid.*

<sup>246</sup> See Surat Al-'Isrā',(15:34) translated by Sahih International < <http://quran.com/17>>accessed 1 January 2015.

<sup>247</sup> See Surat Al-Mā'idah (5:1) translated by Sahih International <<http://quran.com/5>>accessed 1 January 2015. See also Surat al-Baqarah 2:27.

<sup>248</sup> Bassiouni n 97, at 154.

<sup>249</sup> *ibid.*

<sup>250</sup> *ibid.*

### 3.8 Conclusions

Overall, the chapter attempted to provide, within the limited scope provided for this study, an examination on the historical developments and influence of Shariah in the Arab region and the relationship of Shariah with that of the international human rights discourse. Scholarship agrees that that primary principles of Shariah are not the cause of debate of the ongoing human rights violations, but rather it is most often the interpretations and application of these texts that prove to be most difficult in the Arab world.<sup>251</sup>

Furthermore, it noted that the Arab region is not a homogenous community and harbours a mosaic of different ethnicities, religions, and cultures.<sup>252</sup> As discussed above one of the most important challenges facing the Arab League are the ongoing sectarian conflicts between the Shias and Sunnis in Iraq, Syria, Yemen, Bahrain and Lebanon. This division within Islam and Arab communities deeply affects the region's stability and halts the efficacy of the Arab League as a medium to promote and protect human rights. The next chapter will offer a closer look at the history and institutional framework of the Arab League.

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<sup>251</sup> See for example, An-Na'im n 154, at xiv. See also MH Kamali, *Principles of Islamic Jurisprudence* (1991), M Baderin, *International Human Rights and Islamic Law* (Oxford University Press, 2003). M C Bassiouni, *The Shari'a and Islamic Criminal Justice in Time of War and Peace*, (Cambridge University Press, 2013), SS Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man* (The Hague: Kluwer Law International, 2000); SS Ali, *Conceptualising Islamic Law, CEDAW and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan* (New Delhi, UNIFEM 2006); Rehman J, *Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the 'clash of Civilizations' in the New World Order* (Hart Publishing, 2005).

<sup>252</sup> See L Fawcett, *International Relations Of The Middle East* (Oxford University Press 2005), at 154.

**PART III: THE ARAB WORLD’S INNER DYNAMICS AND CULTURAL PARTICULARITY**



(‘Profile: Arab League’ *BBC News* (5 November 2013) <<http://www.bbc.co.uk/news/world-middle-east-15747941>> Accessed 1 January 2014.)



## **Chapter 4 History and Legislative Structure of the Arab League**

We dreamt of the great Arab unity..., but when we passed the palm tree, we quarreled (sic) over the dates ... We boasted that in the United Arab States, the sun would never set, but when we became the rulers, its rays turned into one candle, whose light was unable to illuminate but our own statelets ....<sup>1</sup>

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<sup>1</sup> Quote by Nizar Qabbani (1976), cited in E Podeh, *The Decline of Arab Unity: The Rise and Fall of the United Arab Republic* (Sussex Academic Press, 1999) 196.

#### 4.1 Introduction

Unlike other regional establishments based on geography, such as the Council of Europe, European Union (EU) or the African Union, the Arab League governs countries sharing the same language Arabic.<sup>1</sup> The League aims to provide a platform for decisions to be made in order to establish relationships between them and prevent rivalry.<sup>2</sup> It was also developed to support Arab States to coordinate their policies on various issues including health, legal, political, and social affairs.<sup>3</sup> However, the League failed to unify Arab States to provide efficient collective policies in many (if not all) of the aforementioned issues.

At the outset, although European colonialism was short lived in the Arab region, it has produced a significant impact upon the current social, economic, political and the human rights situation.<sup>4</sup> In addition to decades of external rule, these colonial empires have implemented coercive and administrative systems and fractured geographic entities.<sup>5</sup> As a result, the Arab League hosts a fragmented State system that to date generates inter-State conflicts and ethnic divisions.<sup>6</sup> The study notes how amongst the Arab States, political cooperation has been very difficult and this division strongly disadvantaged the effectiveness of the League.<sup>7</sup> As such, the following analysis will attempt to provide a critical examination of the history of the Arab region and evolution of the Arab League. It will then assess the legal framework of the Arab League and critically analyse the Arab League Summits in order to understand the efficacy of the League with regards to the promotion and protection of human rights in the region and to have knowledge of its limitations.

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<sup>1</sup> See C E Toffolo, *The Arab League* (nfobase Publishing, 2008) 7. See also A Gomaa, *The Foundation of the League of Arab States: Wartime Diplomacy and Inter-Arab Politics* (London, Longman, 1977).

<sup>2</sup> *ibid.*, Toffolo at 8.

<sup>3</sup> *ibid.*, 7.

<sup>4</sup> See F Halliday, *The Middle East in international relations: power, politics and ideology*. *The Contemporary Middle East* (4) (Cambridge University Press, Cambridge, UK 2005) 82, 83. See also E Monroe, *Britain's moment in the Middle East 1914-1971*, (London: Methuen, 1971).

<sup>5</sup> *ibid.*

<sup>6</sup> For a thorough explanation of the history of the 'Arab World' in its cultural and political dimensions, refer to A Dawisha, *Arab Nationalism In The Twentieth Century, From Triumph To Despair* (Princeton University Press, 2003) 14.

<sup>7</sup> According to the BBC, 'the Arab League's effectiveness has been severely hampered by divisions among member states.' BBC 'Profile: Arab League', (Tuesday, 9 August 2011).

<[http://news.bbc.co.uk/1/hi/world/middle\\_east/country\\_profiles/1550797.stm](http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/1550797.stm)>accessed 1 January 2015.

## 4.2 Historical Overview

As noted in the preceding chapter, with the emergence of Islam in 610 AD great Islamic empires were established.<sup>8</sup> The period from 661-750AD Muslim dynasties emerged and conquered the Middle East, North Africa, and Spain.<sup>9</sup> Two of the most important Arab Empires were the Umayyad dynasty (661- 750),<sup>10</sup> and the Abbasid dynasty (750-1258).<sup>11</sup> These empires became centres of ‘dazzling civilizations’ in Syria, Iraq, Egypt, to Cordoba.<sup>12</sup> Islam and the Arab language created and preserved a sense of unity and identity in the region.<sup>13</sup> Therefore, the history of the Arab world prior to the sixteenth century was one of peace and cultural richness. As cited in Hourani’s work of Ibn Khaldun, the fourteenth century great Arab philosopher, the Arab world was:

A world where a family from southern Arabia could move to Spain, and after six centuries return nearer to its place of origin and still find itself in familiar surroundings, had a unity which transcended divisions of time and space; the Arabic language could open the door to office and influence throughout that world; a body of knowledge, transmitted over the centuries by a known chain of teachers, preserved a moral community even when rules changed; places of pilgrimage, Mecca and Jerusalem, were unchanging poles of the human world even if power shifted from one city to another; and belief in a God who created and sustained the world could give meaning to the blows of fate.<sup>14</sup>

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<sup>8</sup> J Yacoub, ‘Multiculturalism is a Reality in the Arab World’ in W Kymlicka, E Pföstl, *Multiculturalism and Minority Rights in the Arab World* (Oxford University Press, 2014) 250- 278, at 252. For a thorough explanation of the ‘Arab World’ in its cultural and political aspect, refer to A Dawisha, *Arab Nationalism in the twentieth century, from triumph to despair* (Princeton University Press, 2003) 14. According to Hallaq, a few centuries prior to the emergence of Islam, the Arabs already expanded their influence through three centres of empires, the byzantine (eastern Mediterranean coast), the Sasanid (Iraq and Persia) and Yeminite (in the southeast of the Arabian Peninsula). These developments would later expedite the conquests of the entire region, including its two major empires. W Hallaq, *Shari’a: Theory, Practice, Transformations* (Cambridge University Press, 2009) 27. See e.g. I Lapidus, *A History of Islamic Societies*, 46.

<sup>9</sup> G. R Hawting, *The First Dynasty of Islam: The Umayyad Caliphate AD 661-750* (2<sup>nd</sup> edn, Routledge 2002).

<sup>10</sup> For details of the Umayyid Dynasty see study conducted by GR Hawting, *The First Dynasty of Islam: The Umayyad Caliphate AD 661-750* (Routledge, 2002).

<sup>11</sup> See Hallaq, n 8 at 556, for a chronological list of the history of Shariah and Islamic Empire, refer to Hallaq n 6, 556-562.

<sup>12</sup> E Rogan, *The Arabs: A History*, (Basic Books, 2012) 3. See also for example, Ibn Khaldun, *The Muqaddimah: An Introduction to History* tr. Franz Rosenthal, ed. N. J. Dawood. (Princeton, 1967) 50-116.

<sup>13</sup> *ibid.*

<sup>14</sup> A Hourani, *A History of the Arab Peoples* (New York: Warner Books, 1991) 4.

The Arabs lived under one political system where the Caliph and his subjects were equally bound by God (Allah) and his sacred law.<sup>15</sup> As such, the believers were deemed satisfied with their political system since they were to serve none other than God, ‘the embodiment of good and justice.’<sup>16</sup> This was particularly strong in the first century of Islam, with first four caliph Abu Bakr (632-34), Caliphate of ‘Umar [I] b. al-Khattab (634-44), Caliphate of ‘Uthman b. Affan (644-56), Caliphate of Ali (656-61). As Hallaq observes, these Caliphs were experts in religious law and exemplars of the ‘virtuous Muslim lifestyle’, thus they regarded ‘heirs of the Prophet’;<sup>17</sup> they followed the Sunna of the Prophet and promoted justice and equality. Although the Ummayyad and Abbasid dynasties attempted to follow suit, they became increasingly concerned with power and politics and gradually distanced themselves from the people they ruled, and as the size of Muslim populations increased, so did the gap between them.<sup>18</sup> Therefore, they began to depart from the egalitarian forms of leadership.<sup>19</sup> However, these dynasties soon realised that in order for them to gain political legitimacy they needed to attain respect from the religious scholars and they needed to enact on the equalitarian message of Islam, (as the first four caliphs have done).<sup>20</sup> Among other critical endeavours, they supported scholars and judges to specialise in the Sunna of the Prophet, and over the years different schools of thought were developed.<sup>21</sup>

Notwithstanding, it is argued that with dominance of the Ottoman Empire in the region in the sixteenth century the Arabs as a unified force and ‘primary bearers of power and culture’ slowly disintegrated.<sup>22</sup> Their empires and civilizations had degenerated and according to Professor Dawisha ‘they lay ready to be devoured by new and aggressive social solidarities eager to expand their power and domain’.<sup>23</sup>

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<sup>15</sup> M Khadduri, *Political Trends in the Arab World: The Role of Ideas in Politics* (Greenwood Press, 1970) 41.

<sup>16</sup> *ibid.*

<sup>17</sup> W Hallaq, *Sharī‘a: Theory, Practice, Transformations* (Cambridge University Press, 2009) 131.

<sup>18</sup> *ibid.* 129.

<sup>19</sup> *ibid.*

<sup>20</sup> *ibid.*, 131.

<sup>21</sup> *ibid.*, 557.

<sup>22</sup> See above Dawisha, n 6, at 17.

<sup>23</sup> Dawisha, n 6, at 17.

The Turkish Ottomans ruled the Arabs for the next five centuries and for four centuries had greater dominance in the Arab region.<sup>24</sup> According to Rogan, the first century after the conquest ‘the Ottoman rules were none too demanding the Arabs had to recognize the authority of the sultan and respect the laws of both God (Shariah) and the sultan’.<sup>25</sup> Furthermore, in return for paying a poll, non-Muslim minorities were protected, and permitted under their own ‘communal leadership and religious laws’ to organize their affairs.<sup>26</sup> As per Anderson, the ‘millet’ system was a ‘clever system’ because the region includes diverse religions and ethnicities.<sup>27</sup> As long as they pledged allegiance to the Sultan and paid their taxes, these diverse communities were allowed to govern themselves.<sup>28</sup> Majid Khadduri once stated:

Before World War I [...] Arab nationalism scarcely aimed beyond the rehabilitation of the Arab race in a multinational empire. Some thinkers called for a restoration of the Arab empire, presumably implying that Arab political leadership should be separated from that of the Turks, but most Arabs were content to remain within the frame of the Ottoman unity, as long as their proper place was recognized by the Turkish rulers.<sup>29</sup>

However, the Arabs in the region grew less fond of the Ottoman rulers and wanted their own form of governments, as observed by Dawisha:

Very soon, Constantinople, not the famed Arab cities, would become Islam’s center of gravity, and in the Friday prayers, the voice of *Mu’azzins* in Arab cities and towns would invoke the blessings of Allah not for Arab rulers, but for the Turkish sultan. At times, the political and military reach of the Ottoman Turks seemed limitless.<sup>30</sup>

On February 8, 1526, the great Ottoman Sultan Sulayman, known as Sulayman the Magnificent (or *Soliman le Magnifique* or *le Grand Seigneur*), would address a letter

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<sup>24</sup> Rogan n 12, at 6.

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*, 7.

<sup>27</sup> S Anderson ‘Why the Middle East’s borders will never be the same again?’ (June 20, 2014)

<<http://edition.cnn.com/2014/06/20/opinion/middle-east-borders-redrawn/>>accessed 1 January 2015.

<sup>28</sup> *ibid.*

<sup>29</sup> Cited in Khadduri, n 15 at 19.

<sup>30</sup> Dawisha, n 6, at 17.

to the King of France to reply to France's request for a Franco- Ottoman alliance which began<sup>31</sup>,

I who am the [S]ultan of [S]ultans, the sovereign of sovereigns, the dispenser of crowns to the monarchs on the face of the earth, the shadow of God on earth, the [S]ultan and sovereign lord of the White Sea and of the Black Sea, of Rumelia and of Anatolia, of Karamania, of the land of Rum, of Zulkadria, of Diarbekir, of Kurdistan, of Azerbaijan, of Persia, of Damascus, of Aleppo, of Cairo, of Mecca, of Medina, of Jerusalem, of all Arabia, of Yemen, and of many other lands [...]: To thee who art Francis, king of the land of France.<sup>32</sup>

By the eighteenth century, European powers experienced political and economic stagnation, and in order to expand their power and influence they increased penetration to the Arab region.<sup>33</sup> It was considered the beginning of 'modern European encroachment' between 1768 to 1774 with the Russian expeditions, then in 1798 with Napoleon's (French) expedition in Egypt, and three years later to Britain's military interference in 1801, in an attempt to weaken the French power in the region.<sup>34</sup>

In the nineteenth century the Ottomans had instigated a period of major reforms that were made to 'quell the challenges from within the empire and to hold at bay the threats of their European neighbours'.<sup>35</sup> Interestingly, this 'age of reforms' gave rise to a new and arguably imported set of rules from Europe, such as modern ideas of citizenship.<sup>36</sup> These new rules attempted to establish full equality to Ottoman Subjects (Turks and Arabs alike) in areas such as military service, administration, and taxes.<sup>37</sup> The Ottoman reforms also inspired the ideas of 'nation' and 'community', the ideas that resonated with Arab nationalists.<sup>38</sup>

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<sup>31</sup> A Nutting, *The Arabs: A Narrative History from Muhammed to the Present* (New York: New American Library, 1964), p. 212. See B Ç Tekin, *Representations and Othering in Discourse: The construction of Turkey in the EU context* (John Benjamins Publishing, 2010) 30. See also, W A Graham, *Divine Word and Prophetic Word in Early Islam: A reconsideration of the Sources, with Special Reference to the Divine Saying or Hadith Qudî* (RSS 7; Paris/ the Hague: Mouton , 1977), 141-2. See Dawisha n 6, at 17.

<sup>32</sup> See 'Relations with France to 1536' in R Merriman, *Suleiman the Magnificent, 1520-1566*. (Cambridge: Harvard University Press, 1966) 325.

<sup>33</sup> J S Ismael and S T Ismael 'The Arab Spring and the Uncivil State' (2013) ASQ Vol. 35 Issue 3, 229 at 232.

<sup>34</sup> *ibid* 232.

<sup>35</sup> Rogan n 12, at 7.

<sup>36</sup> *ibid.*, for more information see W Cleveland and M Bunton 'World War I and the End of the Ottoman Order' in *History of Modern Middle East* (4th edn, Westview press 2009) e.g. 151, 157 .

<sup>37</sup> See above Ismael and Ismael, n 33, 229 at 232.

<sup>38</sup> *ibid.*

However, by 1914, during World War I, the Ottomans joined forces with Germany and Austro-Hungary. This was a strategic and important loss for the Ottoman Empire. According to Anderson, in an attempt to weaken the Ottoman Empire, their lands became known to the rival empires of Great Britain and France, as ‘the Great Loot,’ and ultimately became ‘the last great frontier for European control and economic exploitation’.<sup>39</sup> During that time, some Arab tribes became unsatisfied with their position in the Ottoman Empire and called for independence from Ottoman rule.<sup>40</sup> It is also submitted at this point in time support of Arab Nationalism by Great Britain emerged.<sup>41</sup>

From the years 1915 to 1916, the British have promised in letters exchanged between Sherif Hussein of Mecca (Makkah) and Sir Henry MacMahon (the British High Commissioner in Egypt), British support for Arab independence, specifically the lands of Syria, Palestine, Lebanon and Iraq.<sup>42</sup> Subsequently, the final agreement promulgated in a letter stated ‘Great Britain is prepared to recognize and support the independence of the Arabs in all regions within the limits demanded by the Sherif of Mecca [Makkah]’.<sup>43</sup> Therefore, in return for their self-determination and ‘independence guaranteed by Great Britain’ Sherif Hussein<sup>44</sup> is to led Arab tribes to revolt against the Ottoman rule.<sup>45</sup> However, many Arab-speaking provinces were initially not supportive of the revolt, where some claimed Hussein to be a traitor ‘as dividing the Ottoman-Islamic Empire at a time when unity was needed’.<sup>46</sup> In addition, some were skeptical to his true motivation; they thought his main aim was to establish a hereditary empire in

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<sup>39</sup> S Anderson ‘Why the Middle East’s borders will never be the same again?’ (June 20, 2014) <<http://edition.cnn.com/2014/06/20/opinion/middle-east-borders-redrawn/>>accessed 1 January 2015.

<sup>40</sup> *ibid.*

<sup>41</sup> J Stork, ‘Understanding the Balfour Declaration’ (1972), No. 13, MERIP Reports, 9. See also for more details of the letter see also Cleveland and Bunton, n 36 at 157-161.

<sup>42</sup> *ibid.*, Stork.

<sup>43</sup> *ibid.*

<sup>44</sup> For a more detailed historical account, refer to S M al-Amr, *The Hijaz under Ottoman Rule, 1869-1914: Ottoman Vali, the Sharif of Mecca, and the Growth of British Influence* (Riyad University Publications, 1978).

<sup>45</sup> *ibid.*

<sup>46</sup> However, in 1918, the Arabs supported his victory, which triumphed and weakened the Ottoman Empire’s influence in the region. Cleveland and Bunton n 36 at 161



the Hejaz and not Arab unity.<sup>47</sup> In any event, the Arab revolt was successful and by 1918, the Ottoman Empire left the lands of Arabia.

Contrary to what was agreed, during the revolt in May 1916, the British promises to the Arabs were made 'moot' and the Sykes-Picot agreement was passed.<sup>48</sup> This is a vital document issued between Great Britain and France secretly (with Russia's approval), during World War I in May 1916. This agreement supported partition the Ottoman Empire provinces among the Allied powers,<sup>49</sup> and formally recognised the foundation of the British and French imperial role in the region.<sup>50</sup> In the Arab region, the French and British were to administer the division of Syria, Iraq, Lebanon, and Palestine.<sup>51</sup> This was the opposite of what was agreed between Sherif Hussein and Sir MacMahon, the self-determination of Arab States did not become reality.<sup>52</sup> Additionally, on November 7, 1917 Foreign Secretary Arthur James Balfour issued the Balfour Declaration in a form of a letter to Lord Walter Rothschild, which was an 'open support of the creation of a Jewish homeland in Palestine'.<sup>53</sup> This Declaration created the origin of the current on-going conflicts between the Israelis and the Arabs, and may be the cause of the hostility of the Arabs towards the West. Consequently in 1918 with the fall of the Ottoman Empire, many in the Arab world thought this would bring in a 'threshold of a new age of independence and national greatness'.<sup>54</sup> Unfortunately, their hope for Arab national self-determination, as noted in Wilson's fourteen points, was

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<sup>47</sup> See above Cleveland and Bunton n 36 at 161.

<sup>48</sup> See above Stork, n 41, at 9.

<sup>49</sup> 'The Sykes-Picot agreement' *BBC News* (29 November 2001)  
<[http://news.bbc.co.uk/1/hi/in\\_depth/middle\\_east/2001/israel\\_and\\_the\\_palestinians/key\\_documents/1681362.stm](http://news.bbc.co.uk/1/hi/in_depth/middle_east/2001/israel_and_the_palestinians/key_documents/1681362.stm)> accessed 1 January 2015.

<sup>50</sup> 'Sykes-Picot Treaty' in M Page and P Sonnenburg, *Colonialism, An International Social. Cultural and Political Encyclopedia*, Vol.1, 567, San Remo Conference (1920) and the Treaty of Sevres (1920), see also D Fromkin, *A Peace to End all Peace: the Fall of the Ottoman Empire and the Creation of the Modern Middle East* (New York: Henry Holt 1989).

<sup>51</sup> See above BBC News (2001) n 49.

<sup>52</sup> Stork, n 41, at 9. See also BBC News, 'The Sykes-Picot agreement', (29 November 2001).  
<[http://news.bbc.co.uk/1/hi/in\\_depth/middle\\_east/2001/israel\\_and\\_the\\_palestinians/key\\_documents/1681362.stm](http://news.bbc.co.uk/1/hi/in_depth/middle_east/2001/israel_and_the_palestinians/key_documents/1681362.stm)> accessed 1 January 2015; J Schneer, *The Balfour Declaration: The Origins of the Arab-Israeli Conflict* (Bloomsbury Publishing, 2011 -432 pp). See also UK, Imperial Conference, 'Inter-Imperial Relations Committee: Report, Proceedings and Memoranda' (1926) E (IR/26) Series, (Secret)  
<[http://www.foundingdocs.gov.au/resources/transcripts/cth11\\_doc\\_1926.pdf](http://www.foundingdocs.gov.au/resources/transcripts/cth11_doc_1926.pdf)> accessed 1 January 2015.

<sup>53</sup> See Stork above n 41, at 10. Apparently, this was not a 'humanitarian' gesture but rather political.

<sup>54</sup> Rogan n 12, at 8.

again never realised.<sup>55</sup> This was because their fates, based on the new world order, were in the hands of the European rules, which did not promise them self-determination.<sup>56</sup> Therefore, after the First World War, most States in the region had their borders defined by European powers.<sup>57</sup> In 1919 at the Versailles Peace Conference a series of treaties were agreed.<sup>58</sup> According to Fawcett, this was the first time Arab States entered international relations.<sup>59</sup> The Arab delegations that represented newly independent States of the defeated Ottoman Empire came to Versailles to seek absolute sovereignty.<sup>60</sup>

At the same time, the British and French also took this as an opportunity to apply the ‘modern [S]tate system to the Arab world’, arguably, dividing the Arab world between them.<sup>61</sup> As a result, Fawcett claims the Arab States were in a weak bargaining position.<sup>62</sup> As Bull asserts ‘[n]on-European States entered an originally European club of States and when they measured up to the criteria of admission laid down by the founder members’<sup>63</sup>. The Arabs faced real disparities of structural power in negotiating with the Europeans, mainly because the Arabs themselves were did not initially collaborative with each other.

Additionally, the French and British had their own economic interest interests in Egypt, Palestine, Syria, and Iraq.<sup>64</sup> Thus central and southern lands of Arabia had some form of colonial rule, the French gave their new colonies Syria and Lebanon, a republican

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<sup>55</sup> *ibid.*, For more discussions on Woodrow Wilson’s fourteen points, see E M Dunwalke, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford University Press, 2007) 352 pp.

<sup>56</sup> See Rogan above n 12, at 8.

<sup>57</sup> D Arzi ‘The treatment of religious dissidents under classical and Contemporary Islamic law’ in J D Van der Vy, *Religious Human Rights in Global Perspective: Religious Perspectives*, Vol 1 (Martinus Nijhoff Publishers 1996) 387-453, at 417-418.

<sup>58</sup> P Neville, *Historical Dictionary of British Foreign Policy* (Scarecrow Press 2013) 226. See also C K. Rowley and J Taylor, ‘The Israel and Palestine Land Settlement Problem: An Analytical History, 4000 B.C.E.-1948 C.E.’ *Public Choice*, Vol. 128, No. 1/2, *The Political Economy of Terrorism* (2006), 48.

<sup>59</sup> L Fawcett, *International Relations of the Middle East*, (Oxford University Press, 2005) 18.

<sup>60</sup> *ibid.*, Fawcett 18.

<sup>61</sup> Rogan above n 12, at 8.

<sup>62</sup> Fawcett n 59, at 23.

<sup>63</sup> H Bull and A Watson eds, *The Expansion of International Society* (Oxford: Oxford University 1984) 123, see above Fawcett n 59, at 38.

<sup>64</sup> See above n 59, at 18.

form of government.<sup>65</sup> The French's 'divide and rule' approach, created independent States within Syria, such as Aleppo, Damascus, and in the 'Alawite province, the Jazira, and Jebel Druze.<sup>66</sup> In this respect, to Dawisha 'the tribal competition between Damascus and Aleppo was the most intense and most damaging to the national idea'.<sup>67</sup>

The British ruled indirectly and implemented a 'Westminster model' of constitutional monarchy.<sup>68</sup> Accordingly, all new Arab States were given a national capital, which acted as 'the seat of government'<sup>69</sup> and rulers were pressed to draft constitutions and create parliaments.<sup>70</sup> Borders were artificially created by the European powers and this divide still has major implications to the present day conflict in the Arab region.<sup>71</sup> They also created nations that divided already established Arab provinces, this separated tribe, religious sectarians and ethnic groups.<sup>72</sup> In addition, democratic institutions were imported from Europe without taking into regards the existing conditions of the Arab State.<sup>73</sup> Khadduri notes that at the time the Arab people were not allowed to participate in political processes;<sup>74</sup> and the democratic institutions did not serve the needs of the Arab inhabitants.<sup>75</sup> While intense rivalries developed, especially when the Arab leaders started to attain power through monetary means.<sup>76</sup>

The institutions were politically subjected and were not permitted to function freely in order to serve existing conditions; limitations were imposed whenever foreign interests

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<sup>65</sup> *ibid.*

<sup>66</sup> See A Dawisha, *Arab Nationalism in the twentieth century, from triumph to despair* (Princeton University Press, 2003) 92.

<sup>67</sup> *ibid.*, see H Batatu, *The Old Social Classes and the Revolutionary Movements of Iraq* (Saqi Books; New ed., 2004) 28. RA Hinnebusch, *Authoritarian Power and State Formation in Ba'hist Syria: Army, Party, and Peasant* (Boulder, Colorado: Westview Press, 1990), 21.

<sup>68</sup> *ibid.* However, Palestine was the expectation, because the British promised to create a Jewish homeland (with the Balfour Declaration) which challenged Palestinians' efforts to create their own national government.

<sup>69</sup> See Rogan above n 12, at 8. See generally <<http://www.cfr.org/middle-east-and-north-africa/arab-league/p25967>>accessed 1 January 2015.

<sup>70</sup> Rogan n 12, at 8.

<sup>71</sup> *Ibid* see also 'Abd al-'Aziz Duri, *The Historical Formation of the Arab Nation* (London: Croom also 'Abd al-'Aziz Duri, *The Historical Formation of the Arab Nation* (London: Croom Helm, 1987)

<sup>72</sup> For details of this division, see for example Dawisha n 6 at 34-36.

<sup>73</sup> This has been observed in the League of Nations, art. 22. M Khadduri, *Political Trends in the Arab World: The Role of Ideas in Politics* (Greenwood Press, 1970) 33.

<sup>74</sup> See Khadduri above n 73 at 42.

<sup>75</sup> *ibid.*, 34.

<sup>76</sup> *ibid.*, 42.

appeared.<sup>77</sup> Khadduri asserts the reason behind the corrupt and dysfunctional system was that foreign occupiers wanted to portray to the outside world that the ‘[Arab] peoples [are] not yet able to stand by themselves’.<sup>78</sup> In line with the above, Sati’ al-Husri, a prominent Arab theologian, believed Arab States are artificially created by imperial powers, with imperial interests who ‘proceeded to carve up what essentially was a natural cultural entity with an inalienable right to political sovereignty.’<sup>79</sup> Khadduri provides a useful analysis of the problem western imported democracy has had on the Arabs at the time:

[D]emocracy failed to command the respect of the allegiance of the common people in the way that God’s law and the Islamic system had done in the past. Democracy failed to rehabilitate Islam to repair the injured Arab pride. But apart from the slogan “back to Islam,” the religious groups offered little in the constructive reform programs which might have combined the best of Islamic and western concepts. The conflict between religious and liberal groups remedied unresolved; the liberals denounced the Islam system as incompatible with modern conditions of life, and the religious leaders, witnessing impending breach with Islam-such a breach had actually taken place in turkey- vented their wrath upon those in authority for permitting this change.<sup>80</sup>

As a consequence of the British and French imperial power,<sup>81</sup> the first half of the twentieth century saw national movements emerge within individual colonial States in resistance to foreign occupation. However, their movements were not ‘meaningful’, because of the ethnic diversity and tribal allegiances, and because the Arabs were divided as ‘a community of nations rather than a national community’.<sup>82</sup> Ruthven also

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<sup>77</sup> See above Khadduri n 73, at 34. Unfortunately, as observed by Professor Tibi these Arab nation-States, similar to other States in the third world who have been occupied by colonialists had difficulty developing and attaining social change as Nation-States did in Europe. B Tibi in ‘the Simultaneity of the Unsimultaneous: Old Tribes And Imposed Nation-States in the Modern Middle East, in PS Khoury and J Kostiner in *Tribes and State Formation in the Middle East* (University of California Press, 1990) 127-152, at 146.

<sup>78</sup> Khadduri above n 73, at 33.

<sup>79</sup> A Dawisha, *Arab Nationalism in the Twentieth Century: From Triumph to Despair* (Princeton University Press, 2002) 3. See also B Tibi in ‘the Simultaneity of the Unsimultaneous: Old Tribes And Imposed Nation-States in the Modern Middle East, in PS Khoury and J Kostiner in *Tribes and State Formation in the Middle East* (University of California Press, 1990) 127-152, at 146.

<sup>80</sup> See Khadduri n 73 at 42.

<sup>81</sup> Dawisha n 6, at 77. In fact, many Arabs who initially supported rebellion against the Ottoman Empire felt betrayed by the European powers. See Albert Hourani, *Arabic Thought in the Liberal Age 1798-1939*, (Cambridge University Press, 1962) 297.

<sup>82</sup> See Rogan above n 12 at 8.

submits that the region suffered from arbitrary rule and rising uncertainty about ‘the legitimacy of the boundaries and jurisdictions separating the Arab [S]tates’.<sup>83</sup>

After World War II Arab States including Algeria, Tunisia, Jordan, Kuwait, Sudan, and Libya finally attained sovereignty.<sup>84</sup> Accordingly, the government of each state varies.<sup>85</sup> There have been ‘[s]ocialist-influenced revolutions’ turning kingdoms into republics in Egypt, Yemen, and Iraq.<sup>86</sup> Many States such as Syria and Lebanon still had French military forces; Palestine became increasingly defragmented with Jewish migration. Thus the Arab region in 19<sup>th</sup> century and the beginning of the twentieth century was severely disadvantaged, with fragmented borders there were intense difficulties for these nations to function. In addition, even within Muslim Arabs in the region there were intense doctrinal difference and sectarianism with increasing rivalries and civil wars between the Sunni and Shias, particularly in Iraq and Lebanon.<sup>87</sup>

As the preceding discussion confirms the region has been faced with substantial historical complications. These complications aver to become a recipe for future disasters for the Arab League and its Members.

#### 4.2.1 The Ideal of Unity and the Arab League

The idea of ‘Arab Unity’ or ‘Arab Nationalism’ influenced Arab politicians, educationalists, and various Arab intellectuals.<sup>88</sup> Sati’ Al-Husri, the foremost

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<sup>83</sup> M Ruthven ‘Afterword 2002’ in A H Hourani, A Hourani, M Ruthven, *A History of the Arab Peoples* (Harvard University Press, 2002) 459-473, at 463.

<sup>84</sup> See D Arzt (1996) n 57 at 418. While because of the first intifada of 1948 Palestinians were expelled from their homes, and to date, remain Stateless.

<sup>85</sup> *ibid.*

<sup>86</sup> *ibid.*

<sup>87</sup> See E Lust, *The Middle East* (12th edn, CQ Press 2010) xxxi. *ibid.* They both believe in the Quran and the Prophet, however, they have different interpretations of Shariah (Islamic Law) and different rituals. They share faith in the Quran and the Prophet Mohammed’s sayings and perform similar prayers, although they differ in rituals and interpretation of Islamic law. Council on Foreign Relations, ‘The Sunni- Shia Divide’ <[http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news\\_release-news\\_release-the\\_sunni\\_shia\\_divide-link2-20140715&sp\\_mid=46474712&sp\\_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmxkLmNvbQs2](http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news_release-news_release-the_sunni_shia_divide-link2-20140715&sp_mid=46474712&sp_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmxkLmNvbQs2)> accessed 1 January 2015.

<sup>88</sup> See Dawisha n 6 at 48.

theoretician of Arab Nationalism<sup>89</sup>, defined the ideology to be where ‘[p]eople, who spoke a unitary language,’ he maintained, and ‘have one heart and a common soul. As such, they constitute one nation, and so they have to have a unified [S]tate’.<sup>90</sup> Hourani contends that the Arabs shared a similar culture and history; as such, a union would be inevitable and ‘would not only give them greater collective power but would bring about that moral unity between people and government which would make government legitimate and stable’.<sup>91</sup>

It is also submitted that the idea of Arab unity or Arab Nationalism was launched as a political concept after the First World War by the British to the Arabs, in order to divide the Ottoman Empire.<sup>92</sup> Despite the various arguments regarding its origins and intention,<sup>93</sup> the ideology sparked interests in Iraq, Syria, and Egypt; although there were Arab Nationalism sentiments in other parts of the world, they did not gain as much attractions, because of their weak demographic weight and geographical position in the

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<sup>89</sup> Al-Husri was the Minister of Education in Syria in the 1920s during the reign of Faisal bin Hussein bin Ali al-Hashimi in Syria (who was a member of the Hashemite dynasty); however, King Faisal later was ejected from Syria in 1920, and has been ruling the Hashemite kingdom in Iraq from 1920-1933 (his death). King Faisal II (reigned from 1939-1958, however the Monarchy was overthrown by a military coup by Colonel Abd al-Karim Qasim which in turn collapsed the Hashemite kingdom and the coup assassinated King Faisal II and his family members, as well as Prime Minister Nuri al-Said, cited in G W Morgan and S C Tucker in ‘Iraqi Claims on Kuwait’ in S C Tucker (eds), *Persian Gulf War Encyclopedia: A Political, Social, and Military History*, (ABC-CLIO, 2014) 221,

<sup>90</sup> Dawisha, n 6 at 2. See Abu Khaldun Sati ‘al-Husri, Ara’wa Ahadith fi al-Qawmiya al- ‘Arabiya : Abhath wa Dirasat ‘ala Dhwa’I al-Ahdath wa Dirasat ‘al-Nadhariyat (What is nationalism?: enquiries and studies in light of events and theories) (Beirut: Dar al-‘Ilm li al-Malayeen, 1963) 57.

<sup>91</sup> AH Hourani, and A Hourani, *A History of the Arab Peoples* (Harvard University Press, 2002) 401.

<sup>92</sup> This is illustrated with the various letters of correspondence between the British High Commissioner Sir Henry McMahon to Sharif Hussein of Mecca, ‘The McMahon-Hussein Correspondence’ see His Majesty’s High Commissioner at Cairo and Sherif Hussein of Mecca, 1939, Cmd. 5957, <<http://www.balfourproject.org/wp-content/uploads/2014/08/Map-McMahon-book-title-page.pdf>>accessed 1 January 2015; see also H Hanafi, ‘The Limits of Integration Processes in the Arab World’ Year XXII, Number 1, (March 2009) <<http://www.federalist-debate.org/index.php/current/item/176-the-limits-of-integration-processes-in-the-arab-world>>accessed 1 January 2015. Haddad provides cultural and social dimensions behind the theory of Arab Nationalism. See M Haddad, ‘The Rise of Arab Nationalism Reconsidered’ (1994) *International Journal of Middle East Studies*, 26, 201-222.

<sup>93</sup> For example, initially it was proposed by Nuri Pasha that Syria, Lebanon, Palestine and Transjordan (Jordan) should be reunited into one State, ‘with a measure of autonomy for the Jews in Palestine, and (if they demanded it ) a privileged regime for the Maronites in Lebanon) where at its inception’. See A Hourani, *Arabic Thought in the Liberal Age 1798-1939* (Cambridge University Press, 1962) 94). See also S C Tucker (eds), *Persian Gulf War Encyclopedia: A Political, Social, and Military History*, (ABC-CLIO, 2014) 221, AH Hourani, and A Hourani, *A History of the Arab Peoples*, (Harvard University Press, 2002) 401.

Arab world.<sup>94</sup> Some prominent Islamic scholars in the region, such as the rector of Al-Azhar, Sheikh Muhamed Mustafa al-Muraghi, were not supportive of the idea of Arab Unity or Arab Nationalism because they believed that Islam did not differentiate between an Arab to a non-Arab.<sup>95</sup> While these arguments are valid, to Al-Husri supporting the cause of Arab Nationalism was also in line with Islam, as he States:

[H]ow could someone say that Muslim clerics should endeavour to establish unity amongst the Arab, Iranian, Indian, and Turk, but should not work to unify the Syrian, Egyptian and Hejazi? How can someone hope to effect the unity of Muslim lands speaking different languages, but not the unity of one land, speaking one language, especially the land which speaks the language of the Qur'an?<sup>96</sup>

Arab nationalism did not spark an interest among all Arab States until an influx of Jewish migration increased in Palestine. Jewish immigration soured in Palestine<sup>97</sup>, for example towards the end of 1936 there were about 382, 000 Jewish immigrants, which is a dramatic increase compared to 93,000 in 1922.<sup>98</sup> This created significant problems because Palestine had a limited agricultural potential thus the ownership of 'Arable land' posed a significant problem between the Palestinians and the Jews.<sup>99</sup> Consequently, in 1936-1939 the Palestinians revolted against British rule in Mandatory Palestine and against the British policy of support for Jewish immigration.<sup>100</sup> The Arab revolt was a significant event, and it was the first time the Arabs unified as a collective group.<sup>101</sup>

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<sup>94</sup> See Dawisha above n 6, at 87. See also A H Hourani and A Hourani *A History of the Arab Peoples*, (Harvard University Press, 2002) 125-145.

<sup>95</sup> *ibid* (Dawisha). See Ibn Khaldun Sati' al-Husri, 'Radd 'ala Tasrihat al-Shaykh al-Muraghi' (A response to the declarations of Sheikh al-Muraghi) in *Ara'a wa Ahadith fi al-Wataniya wa al-Qawamiya* (views and discussions on patriotism and nationalism) (Beirut : Marakaz Dirasat al-Wuhda al-'Arabiya, 1984) 105, see Dawisha 84.

<sup>96</sup> Abu Khaldun Sati 'al-Husri,'Radd 'ala Tasrihat al-Shaykh al Muraghi' (A response to the declarations of Sheikh al-Murghi) in *Ara'a wa Ahadith fi al-Wataniya wa al-Qawmiya* (views and discussions on patriotism and nationalism) (Beirut: Markaz Dirasat al-Wuhda al-'Arabiya, 1984) 105. See also W L Cleveland, *The Making of an Arab Nationalist: Ottomanism and Arabism in the life and thought of Sati' al-Husri* (Princeton, 1971).

<sup>97</sup> For more information on statistics of the amount of Jewish migrations from the years 1931-1946, see J McCarthy, *The Population of Palestine: Population History and Statistics of the Late Ottoman Period and the Mandate*. Institute for Palestine Studies Series (New York: Columbia University Press, 1990) 36.

<sup>98</sup> See above Cleveland and Bunton n 36 at 255.

<sup>99</sup> *ibid*.

<sup>100</sup> M Hughes 'From Law and Order to Pacification: Britain's Suppression of the Arab Revolt in Palestine, 1936-39' (2010), *JPS*, Vol. 39, No. 2, 6.

<sup>101</sup> See Dawisha n 6 at 116.

In 1939, the London Conference for Palestinians saw for the first time ‘Arab governments and leaderships, fostering the belief that Arabs, wherever they were, shared similar interests, concerns, and aspirations’.<sup>102</sup> One commentator submits of the role of the Palestinian issue in promoting Arab unity, ‘[Arab States] joined together and united the hearts of the Arabs in all their regions and they are now one nation even if their states are many’.<sup>103</sup> Although to Dawisha this comment is rather an overstatement, it does reflect the popular support within Arab States to the Palestinian question, and to some extent increased awareness by peoples and leaders alike ‘of the possibilities of Arab solidarity’.<sup>104</sup> As Prince Faysal bin Abd al-Aziz (who later became King of Saudi Arabia in 1964), the head of the Saudi Arabian delegation at the conference stated:

[F]or the first time in our history, we witness this clear manifestation of cooperation and solidarity of the Arab countries. For the first time we stand united. Let us hope that this conference may serve as a useful precedent for solving other problems and strengthening the foundations of our unity.<sup>105</sup>

Thus the Palestinian issue and concerns became a longstanding interest that should be a concern of every Arab and Muslim,<sup>106</sup> especially since Al-Aqsa mosque (al-Haram ash-Sharif) is located in east Jerusalem, which is one of the three holiest spots in Islam (after Al-Masjid Al-Haram in Makkah, and Al-Masjid al-Nabawi in Madinah). Therefore, the path towards Arab unity emerged in order to establish Arab support to Palestine’s self-determination.

In the 1930s and early 1940s, Arab regimes were usually ‘[e]ncouraging greater cooperation on a state-to-state basis’.<sup>107</sup> Treaties of friendship, arbitration and extradition were signed between the States at the time from 1931 and onwards.<sup>108</sup> However, no formal treaty that united all sovereign Arab States was established. Arguably, it was not until Great Britain and other political allies supported the idea that

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<sup>102</sup> *ibid.*, 109.

<sup>103</sup> J Jankowski, ‘The Government of Egypt and the Palestine Question, 1936–1939,’ *Middle Eastern Stud.*, Vol. 17, no. 4 (October 1981) 453, at 448.

<sup>104</sup> See Dawisha above n 6 at 109.

<sup>105</sup> Y Porath, *In Search of Arab Unity, 1930–1945*, (Routledge, 1986, reprinted in 2014) 172.

<sup>106</sup> See Dawisha n 6 at 109.

<sup>107</sup> R Owen ‘Arab nationalism and intra-state relations’ in *State, Power and Politics in the Making of the Modern Middle East* (3rd edn, Routledge New York 2004) 61.

<sup>108</sup> *ibid* 61.



the concept of Arab unity became a reality.<sup>109</sup> Nevertheless, this support from the British was not aimed at promoting Arab nationalism but rather to consolidate support against the Axis powers.<sup>110</sup> Consequently, on May 5, 1941, Anthony Eden, British Secretary of State for Foreign Affairs, pledged his full support in the House of Commons on behalf of his Majesty's Government, and on May 29, he stated in a famous speech that:

The Arab world...has made great strides since the settlement reached at the end of the last war, and many Arab thinkers desire for the Arab peoples a greater degree of unity than they now enjoy. In reaching out towards this unity, they hope for our support. No such appeal from our friends should go unanswered. It seems to me both natural and right that the cultural and economic ties, too, should be strengthened. His Majesty's Government for their part will give their full support to any scheme that commands general approval.<sup>111</sup>

In January 1943, in response to the British Secretary of State for Foreign Affairs, Iraq's Prime Minister Nuri al-Sa'id<sup>112</sup> submitted his proposal in a memorandum for a 'Fertile Crescent Union'.<sup>113</sup> The memorandum by Nuri emphasized that 'Iraq was not just a neighbo[u]r to the other Arab countries of the Fertile Crescent; rather it was symbiotically tied to them by fundamental linguistic, national, religious, and economic bonds'.<sup>114</sup> He contended that while Arab States wanted some form of Arab unity, he recognized there are discrepancies between them.<sup>115</sup> He therefore submitted a two-step process for Arab unity, that overall emphasised Iraq's 'political elite of their Arab identity'. According to Dawisha, the plan has much to do with 'Hashemite ambition and Iraq's rivalry with Egypt over Arab leadership'.<sup>116</sup>

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<sup>109</sup> M Khadduri, 'International Affairs towards an Arab Union: The League of Arab States' (1946) *Am. Polit. Sci. Rev.*, Vol. 40, No. 1. 90. See also M Khadduri, 'The Arab League As a Regional Arrangement' (1946) Vol. 40, *Am. J. Int'l L.*, 756, at 756-759.

<sup>110</sup> MM Aljaghoub, IM Alja and MS Bydoon, 'The Arab League' cited in G Zyberi, *An Institutional Approach to the Responsibility to Protect* (Cambridge University Press 2013) 289-311, at 291.

<sup>111</sup> See above Khadduri 'International Affairs towards an Arab Union: The League of Arab States' (1946) 90.

<sup>112</sup> It is important to highlight at this point that Nuri was also the leading figure in the Arab revolt against the Ottomans. See A Dawisha, *Iraq: A Political History*, (Princeton University Press, 2013) 140.

<sup>113</sup> M Eppel, *The Palestine Conflict in the History of Modern Iraq: The Dynamics of Involvement, 1928-1948* (London: Frank Cass, 1994) 128.

<sup>114</sup> See above Dawisha n 6, at 119. See also A Dawisha, *Iraq: A Political History*, 139

<sup>115</sup> See above Dawisha n 6, at 119.

<sup>116</sup> *ibid.*

In addition, Arab unity did not attract much support from the ethnic minorities in Iraq such as the Kurds, who constituted twenty percent of Iraq's population.<sup>117</sup> This is mainly because the Kurds are not of Arab ethnicity and they did not want Iraq to further gain dominance in the region, especially since the Kurds hoped for an independent State of their own.<sup>118</sup> Furthermore, Arab Shiites, who constituted the majority in Iraq, perceived such a union was a plot 'by the minority Sunni group to cement Sunni hegemony and further marginalize the Shi'ites'.<sup>119</sup> As such, internally Iraq did not gain support from its own population, and the plan did not go forward.<sup>120</sup>

Although the Hashemite Government of Iraq supported the idea of Arab Nationalism, it was Egypt that gained more support from other Arab States to lead the path towards unity.<sup>121</sup> Therefore, in response to Eden's statement Prime Minister Nahas Pasha addressed the Egyptian Senate:

When Mr. Eden made his statement, I thought about it and concluded that the best way to achieve it is to let the Arab governments themselves take care of it. I thought that the Egyptian government should take an official initiative by consulting other Arab governments, one by one, then Egypt should coordinate these different views as much as possible. Egypt will then invite Arab representatives to discuss the issue collectively. If an agreement is reached, Egypt will then convene a meeting in Egypt chaired by the Egyptian [P]rime [M]inister.<sup>122</sup>

Notwithstanding these invocations, the idea to form an Arab League took years to materialise.<sup>123</sup> The Egyptian Prime Minister embarked on a series of meetings with leaders of Iraq, Syria, Trans-Jordan, Saudi Arabia, Lebanon, and Yemen regarding the possibility of an Arab League.<sup>124</sup> Thus, it took two years for Egypt to persuade other

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<sup>117</sup> Dawisha n 6, at 91, and 120.

<sup>118</sup> *ibid.*

<sup>119</sup> See Y Nakash, *The Shi'is of Iraq* (Princeton, New Jersey: Princeton University Press, 1994) 133–134. A Dawisha, *Iraq: A Political History*, (Princeton University Press, 2013)140.

<sup>120</sup> See Dawisha (2003) above n 6 at 120.

<sup>121</sup> See Dawisha n 6, at 122.

<sup>122</sup> Submitted in G Salame, 'Inter-Arab Politics: The Return of Geography,' in WB Quandt eds, *The Middle East: Ten Years After Camp David*, (Washington, D.C.: The Brookings Institution, 1988) 319-353, at 338.

<sup>123</sup> See A Goldschmidt, Jr., *A Concise History of the Middle East* (Westview Press 1999) 26. 'Timeline: Arab League' BBC News, 1 <<http://news.bbc.co.uk>>accessed 1 January 2015. In 1942, 'Fertile Crescent' was created as a union by Iraq's Nuri al-Sa'id in 1942, with Iraq, Transjordan, Syria, Lebanon, and Palestine. Which then Saudi Arabia, Egypt and Yemen proposed a larger union "League of Arab States". See also JC Pevehouse, *Democracy From Above: Regional Organizations and Democratization* (Cambridge University Press 2005) 1.

<sup>124</sup> Dawisha n 6 at 122.

Arab States to join its call for Arab unity. However, regardless of Egypt's true motive for Arab unity, the rest of the Arabs approved of Egypt holding a leading role in the Arab Nationalism narrative.<sup>125</sup> Even the Christians of Lebanon supported the Egyptian plan, as it was perceived more moderate than the Iraqi memorandum; as such, they expected a 'less intrusive proposal' on the independence of Lebanon.<sup>126</sup>

Subsequently, on September 25 to October 8, 1944 a conference was held in Egypt, with the attendance of State representatives of Iraq, Syria, Lebanon, Trans-Jordan, Saudi Arabia, Yemen, and with delegates from the Egyptian government and Palestinian delegations. The Conference led to the formulation of the 'Alexandria Protocol'.<sup>127</sup> The year after on 22<sup>nd</sup> of March 1945,<sup>128</sup> the Arab League was established, with its headquarters in Cairo, Egypt.

Initially five heads of Arab State: Iraq, Trans-Jordan, Syria, Lebanon, and Egypt agreed on the 'Charter of the League of Arab States,' a document based on the Alexandria Protocol, however over the years the rest of the twenty-two Arab States joined the Arab League.<sup>129</sup> The Charter includes a preamble, and twenty Articles that define the objectives of the Arab League and the framework of its system of work<sup>130</sup> and three

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<sup>125</sup> For example Abd al-Rahman Azzam, who would subsequently become first secretary general of the Arab League in 1945, wrote extensively 'Egypt was an Arab country before the time of Christ.' Thus, it seems again, like Iraq, Egypt seemed to elevate its status above all Arabs. Dawisha, 123.

<sup>126</sup> Dawisha, n 6, at 123.

<sup>127</sup> *ibid.*

<sup>128</sup> See 'Timeline: Arab League. A chronology of key events' *BBC News Middle East* (15 November 2011) <[http://news.bbc.co.uk/1/hi/world/middle\\_east/country\\_profiles/1550977.stm](http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/1550977.stm)> accessed 1 January 2015. For more information on the political and historical aspect of the formation of the Arab League, see Khadduri, (1946) 97. See also Aljaghoub, Aljazzy and Bydoon above n 110, at 291.

<sup>129</sup> Saudi Arabia signed the original version later on cited in 'Timeline: Arab League. A chronology of key events' *BBC News Middle East* (15 November 2011) <[http://news.bbc.co.uk/1/hi/world/middle\\_east/country\\_profiles/1550977.stm](http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/1550977.stm)> accessed 1 January 2015, For more information on the political and historical aspect of the formation of the Arab League, see Khadduri, (1946) 97.

<sup>130</sup> Mr. Abdel-Rahman Azzam was appointed Secretary-General of the League of Arab States (1945-1952) 'Timeline: Arab League. A chronology of key events'. <[http://news.bbc.co.uk/1/hi/world/middle\\_east/1550977.stm](http://news.bbc.co.uk/1/hi/world/middle_east/1550977.stm)>; On March 22 1945, a ceremony took place in the main hall of Al-Za'faran Palace in Cairo. A report submitted by the Arab League argues, 'the Preparatory Committee decided to call the emerging organization 'The League of Arab States' after exhaustive discussions of three proposals, namely: The "Arab Alliance", "The Arab Federation" and "The Arab League". LAS, 'Highlights in the History of the League of Arab States' <<http://www.arableague.org.uk/league/HIGHLIGHTS%20IN%20THE%20HISTORY%20OF%20THE%20LEAGUE%20OF%20ARAB%20STATES.pdf>> Accessed March 12, 2014.

appendices.<sup>131</sup> One of the most important political goal for the Arab League at that time (until now) is to retain back Palestinian territory and establish an independent State Palestine.<sup>132</sup> Also at the time, Syria, Egypt, and Lebanon still had a significant amount of European Military troops within their countries. Inevitably, the League was to some extent concerned with removing foreign military troops from their territories, and supporting their fellow States towards independence and self-determination.<sup>133</sup> This emphasis was reflected in Annex II of ‘The Pact of the League of Arab States’<sup>134</sup> and its preamble.

As such at its inception, the primary concerns of the Arab League were to promote Arab sovereignty and self-determination.<sup>135</sup> This remains the primary concern to date. There were also debates on whether the League should establish a closer union (particularly Egypt) and those who wanted ‘a looser type of arrangement’ (primarily Lebanon and Saudi Arabia).<sup>136</sup> However, the States reached agreement that was needed was a framework authorising greater cooperation between ‘independent sovereign States’.<sup>137</sup> Consequently, as indicated by Korany, in the twenty Articles of the League of Arab States Charter, ‘the word “State”, in its territorial sense, appears forty-eight times’.<sup>138</sup> Thus, sovereignty and ‘governmental diversity’ is prioritised above all else.<sup>139</sup>

It is submitted that the emphasis on political sovereignty has hindered the League’s ability to achieve unity among its States. Although this was a concern, tensions between

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<sup>131</sup> I Al-Jazy ‘Arab League and Human Rights Protection’ in E Cotran E and AO Sherif (eds.), *Democracy, the Rule of Law and Islam*, (BRILL, 1999) 211- 220) at 291. Charter of the League of Arab States, adopted 22 March 1945, 70 UNTS 237.

<sup>132</sup> See for example, A.D, ‘The Arab League: Development and Difficulties’ (1951) W Today, Vol. 7, No. 5, 188.

<sup>133</sup> I Pogany ‘Arab Attitudes toward International Human Rights Law’ (1987) 2 Con J. Int’l L, 367. See Annex on Co-Operation with Arab Countries Not Members of the Council of the League. Pact of the League of Arab States, March 22, 1945. <[http://avalonlaw.yale.edu/20th\\_century/arableag.asp](http://avalonlaw.yale.edu/20th_century/arableag.asp)>

<sup>134</sup> See Pact of the League of Arab States, March 22, 1945. <[http://avalonlaw.yale.edu/20th\\_century/arableag.asp](http://avalonlaw.yale.edu/20th_century/arableag.asp)>

<sup>135</sup> I Pogany ‘Arab Attitudes toward International Human Rights Law’ (1987) 2 Con J. Int’l L. 367, see also e.g. 369.

<sup>136</sup> *ibid.*

<sup>137</sup> See above Owen (2004) n 107 at 61.

<sup>138</sup> *ibid* 61. See League of Arab States, Charter of Arab League, and 22 March 1945.

<sup>139</sup> *ibid* Art. 2 and Art.5. See also MF El-Khatib, Ph.D. Chief of Research Section, Arab State Delegations cited in Arab Information Center (U.S.), ‘Basic Documents of the Arab Unifications’ (Publisher: New York, Arab Information Center 1958) Document collections #2 4. However, as Clement notes as long as this unification and ‘Arab nationalism’ does not intervene with the internal affairs of member States internal affairs, see F Clements, *Arab Regional Organizations*, Volume 2 xi (Transaction Publishers, 1992).

Arab unity and Arab statehood prevailed during the 1950s and 1960s.<sup>140</sup> Also by then some Arab States started to move towards independence from colonial rule, however, according to Rogan ‘the divisions between Arab States had become permanent’.<sup>141</sup> In fact, it was later realised by the end of the twentieth century, the Arabs were unable to achieve their unity.<sup>142</sup> This may indicate why collective policymaking for the promotion of human rights may be difficult, because Arab States are deeply divided, which severely hampers the effectiveness of the League.<sup>143</sup> This has major repercussions to protecting human rights, as discussed further in this study.

#### 4.2.2 Failed Collective policymaking

It would appear the Arab League’s approach to collective security has been a failure ever since its inception. For example, after the end of the Second World War the UN partition Plan was approved by the UNGA on November 19, 1947, which was opposed by Arab States.<sup>144</sup> Subsequently, a group of Arab States attacked Israel the day after the British left Palestine with their forces on May 14, 1948.<sup>145</sup> Unfortunately, the attack was unsuccessful because Arab States failed to coordinate. This caused a major loss for the Palestinian Arabs, and Israel gained 21 percent more land than the original amount given to them by the UN Partition Plan.<sup>146</sup> It controlled about 80 percent of Palestine, and created (at the time) more than 650, 000 Palestinians refugees.<sup>147</sup> Sati’ al-Husri once responded to the question raised to him by many as to why the Arabs lost the war over Palestine with Israel in 1948-49, especially since they were seven Arab States and Israel was only one, he responded ‘the Arabs lost the war precisely because they were

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<sup>140</sup> See Dawisha above n 6 at 126.

<sup>141</sup> See Rogan above n 12, at 8.

<sup>142</sup> See Dawisha above n 6, at 313.

<sup>143</sup> According to the BBC, ‘the Arab League’s effectiveness has been severely hampered by divisions among Member State’, See BBC ‘Profile: Arab League’ (Tuesday, 9 August 2011).

<[http://news.bbc.co.uk/1/hi/world/middle\\_east/country\\_profiles/1550797.stm](http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/1550797.stm)> Macdonald States that ‘[p]olitical conflicts in the Arab world are frequently reflected in the [Arab] league’ CG Macdonald, Charles G. ‘League of Arab States’ in *Encyclopedia of the Modern Middle East and North Africa*. 2004. Retrieved January 17, 2013 from

<sup>144</sup> See Toffolo above n 1, at 62.

<sup>145</sup> *ibid.*

<sup>146</sup> *ibid.* 62.

<sup>147</sup> Toffolo n 1, at 62. Recent statistics estimate Palestine refugees have risen to around 5 million and are eligible for UNRWA. See UNRWA, ‘Palestine refugees’ <<http://www.unrwa.org/palestine-refugees>> accessed 1 January 2015.

seven [S]tates'.<sup>148</sup> Thus the main reason they lost the war with Israel is because Arab States failed to politically and militarily unite.

One of the primary consequences of the defeat was the growing anger and resentment from Arabs toward their governments.<sup>149</sup> For example, between 1949 and 1950 there have been three Coup d'états in Syria, in 1951 King Abdullah of Jordan was assassinated, in 1952 Free Officer's Revolution took place in Egypt, and in 1954 the Algerian Revolution erupted.<sup>150</sup> Toffolo, also submits these changes transformed some Arab States towards attaining the ideology of Arab Socialism, which is 'combined Arab nationalism with socialism'.<sup>151</sup>

The 1948 Arab-Israeli war also ignited Arab effort to adopt the Joint Defence and Economic Co-operation Treaty on April 13, 1950. Jordan, Syria, Iraq, Saudi Arabia, Lebanon, Egypt, and Yemen signed this treaty.<sup>152</sup> The Preamble of the Treaty declared Arab commitment to *inter alia* 'consolidate relations between the States of the Arab League [...] and to consolidate stability and security and provide means of welfare and development in the countries'.<sup>153</sup> Notwithstanding this effort, it would appear that the 1950 Peace treaty was seldom used. For instance, Winther submits that although the region hosted many interstate conflicts; it took action twice to resolve disputes by military means; the first was in 1961 to resolve the conflict between Iraq and Kuwait and in Lebanon from 1976 to 1983, by the Arab Security Force and later succeeded by the Arab Deterrent Force.<sup>154</sup>

In 1955, the Cold War also increased tensions between Arab States. For example, Iraq, Jordan, Saudi Arabia, and Yemen supported Western States, while Egypt and Syria

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<sup>148</sup> Cited in Abu Khaldun Sati' al-Husri , al-'Uruba Awalan (Arbaism first) (Beirut: Dar al-Ilm li al-Malayeen, 1965) 149; see Dawisha above n 6.

<sup>149</sup> See Toffolo above n 1 at 63.

<sup>150</sup> *ibid.*, Toffolo, 63.

<sup>151</sup> *ibid.*

<sup>152</sup> Joint Defence and Economic Co-operation Treaty Between the States of the Arab League, signed at Cairo 13 April 1970, Am. J. Int'l L, Vol. 49, No. 2, Supplement: Official Documents (Apr., 1955) 51-54.

<sup>153</sup> *ibid.*

<sup>154</sup> D Winther, *Regional Maintenance of Peace and Security Under International Law: The Distorted Mirrors* (Routledge, 2013) 135. See also A Cassese, *UN Peacekeeping Legal Essays* (Leiden: Martinus Nijhoff Publishers, 1978).

were pro-Soviets.<sup>155</sup> In 1956 Egypt was attacked by Britain, France, and Israel, resulting in the Suez war. This military intervention caused great aftershock in the region, and influenced Syria to unify with Egypt to form the United Arab Republic (UAR),<sup>156</sup> and on February 1, 1958, both States were unified into the UAR.<sup>157</sup> This unification came as a surprise, and many hoped this would benefit the Arab region, and influence other Arab States to join. According to Dawisha:

Arabs everywhere heard the news of the merger with stunned amazement, which quickly turned into uncontrolled euphoria. Spontaneous celebrations occurred in many parts of the Arab world, and people congratulated one another in their homes, on the streets, and in their offices.<sup>158</sup>

This unification was largely supported by the Arab public; it would mean among other important endeavours, Syria and Egypt are united and will support each other especially towards enhancing military and economic relations.<sup>159</sup> However, by 1961, this union was abrogated, mainly because of escalating political conflicts. For example, in an Arab League meeting held in Stoura, Lebanon in August 1962, the Syrians accused the Egyptians of intervening with its internal affairs.<sup>160</sup>

Thus, the ideal of Arab unity diminished as Dawisha notes ‘to the nationalist generation these were indeed depressing times. The Arab world was bitterly divided, as far from comprehensive unity as it has ever been’.<sup>161</sup> Palmer believes the failure of the UAR did not extinguish the concept of Arab unity, but it does illustrate the practical problems behind these regimes.<sup>162</sup>

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<sup>155</sup> *ibid* Winther above at 154.

<sup>156</sup> J Paul, ‘Human Rights in Syria’, *Middle East Watch report*, (Human Rights Watch, 1990) 158. See also Dawisha, *Syria and the Lebanon Crisis* (New York: St. martin’s 1980) 56.

<sup>157</sup> See above Dawisha, n 6 at 199.

<sup>158</sup> *ibid*.

<sup>159</sup> M Palmer, ‘The United Arab Republic: An Assessment of Its Failure’, *Middle East Journal*, Vol. 20, No. 1 (Winter, 1966), 50. See also F A. Sayegh, *Arab Unity* (New York: Arab Information Center, 1958) 19.

<sup>160</sup> See above Dawisha n 6 at 234.

<sup>161</sup> *ibid*.

<sup>162</sup> M Palmer, ‘The United Arab Republic: An Assessment of Its Failure’ (1966) Vol. 20, No. 1, *Middle East J*, 67.

Furthermore, the six-day war<sup>163</sup> transpired in 1967, between Israel and Member States of the Arab League (namely, Egypt, Jordan, and Syria, they were then joined by Iraq, Algeria, and Saudi Arabia).<sup>164</sup> This War also ended in failure and proved disastrous for the region; King Hussein of Jordan lost half of his territory in the West Bank, while Hafez al-Assad lost the Golan Plateau (or often called Golan Heights).<sup>165</sup> The six day war is deemed ‘a disaster and humiliation’<sup>166</sup> representing a turning point and the start of permanent instability in the region.

According to Professors Harders and Legrenzi since 1967, the ‘Arab unity projects’ and pan-Arabism declined.<sup>167</sup> Arab States started to place their interests before collective Arab interests.<sup>168</sup> An example of this can be seen when Egypt signed a peace treaty with Israel in 1979 (the Camp David accord)<sup>169</sup> after the Arab- Israeli war in 1973.<sup>170</sup> This caused Egypt to be expelled from the Arab League, and its actions were considered ‘betrayal of the Arab cause’.<sup>171</sup> Although Egypt was expelled for ten years, they regained their status in 1989, and in 1990 the PLO and Jordan also signed peace treaties with Israel.<sup>172</sup> Indeed, one of the most controversial move made by the PLO that also increased tensions between Arab States was when the head of the Palestine Liberation Organisation (PLO) Yasser Arafat and Israel Prime minister Yitzhak Rabin signed the Oslo Peace Accord on 13 September 1993.<sup>173</sup> This was a highly controversial treaty between the PLO Israel. Generally, the treaty was largely

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<sup>163</sup> For in-depth historical analysis of the cause and impact the Six Day War had on the Middle East, refer to MB Oren *Six Days of War: June 1967 and the Making of the Modern Middle East* ( Presidio Press, 2003), or see generally S Dunstan, *The Six Day War 1967: Jordan and Syria* (Osprey Publishing, 2013) 596 pp.

<sup>164</sup> See above Toffolo n 1, at 124.

<sup>165</sup> See Dunstan above n 163 at 80. For more information see M Broyles, *The Six-Day War* (The Rosen Publishing Group, 2003) 64.

<sup>166</sup> *ibid.*

<sup>167</sup> C Harders and M Legrenzi, *Beyond Regionalism?: Regional Cooperation, Regionalism and Regionalization in the Middle East* (Ashgate Publishing, Ltd., 2008) 98.

<sup>168</sup> *ibid.*

<sup>169</sup> ‘The Camp David Accords of 1979’ *BBC News* (Thursday, 29 November, 2001)

<[http://news.bbc.co.uk/1/hi/in\\_depth/middle\\_east/2001/israel\\_and\\_the\\_palestinians/key\\_documents/1632849.stm](http://news.bbc.co.uk/1/hi/in_depth/middle_east/2001/israel_and_the_palestinians/key_documents/1632849.stm)> accessed 2 January 2015

<sup>170</sup> See Harders and Legrenzi, n 167 at 98.

<sup>171</sup> *ibid.* see also ‘The War in October’ *Aljazeera* (06 Oct 2014)

<<http://www.aljazeera.com/programmes/specialseries/2013/10/war-october-2013102172128280627.html>> accessed 2 January 2015.

<sup>172</sup> See Harders and Legrenzi above, n 167.

<sup>173</sup> A Shlaim, ‘It’s Now Clear: The Oslo Peace Accords Were Wrecked By Netanyahu’s Bad Faith’ *The Guardian* (2013) <<http://www.theguardian.com/commentisfree/2013/sep/12/oslo-israel-renege-colonial-palestine>> accessed 1 January 2015.



inefficient and did not benefit the Palestinians because it did not support their independence.<sup>174</sup> These events further divided Arab States and strengthened hostility of Syria against the PLO, Hamas, and other Arab States, especially since Syria lost part of its territory (the Golan Heights) to Israel.<sup>175</sup>

In addition, over the years, violence increased in Palestine especially in the West Bank and Gaza. More recently, because of conflict between Hamas and Israel, there have been more than 1,800 deaths, including 300 children and nearly 10,000 wounded.<sup>176</sup> As a result, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) reports that 12,500 people in the Gaza Strip are displaced following the destruction of their homes by Israeli military operations in Gaza strip.<sup>177</sup> The United Nations Relief and Works Agency for Palestine refugees in the Near East (UNRWA) estimates that since 1948, there are now 5 million Palestinian refugees, and about 1.5 million live in 58 Palestine refugee camps in East Jerusalem, the Gaza Strip, the West Bank, Jordan, Lebanon, and the Syrian Arab Republic.<sup>178</sup>

Arguably, since 1945, the Arab League's mediation attempts did not produce any success.<sup>179</sup> According to Bröning, the League attempted to mediate in only twelve out of twenty minor regional conflicts. It was involved in seven of the thirty-six major interstate wars and intervened in five of the 22 major civil wars in the region.<sup>180</sup> Most notably, it failed to stop the war from escalating between Iran and Iraq that began in 1980 that lasted eight years causing catastrophic events, escalating humanitarian concerns, and death of between half a million and 1.5 million people.<sup>181</sup> The organisation also failed to act collectively to respond to the 1990 Iraqi invasion of

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<sup>174</sup> *ibid.*

<sup>175</sup> See above Harders and Legrenzi, n 167, at 98.

<sup>176</sup> A Fantz 'Why are so many civilians dying in Hamas-Israel war?' *CNN* <<http://edition.cnn.com/2014/08/04/world/meast/gaza-israel-why-civilian-deaths/>> accessed 1 January 2015.

<sup>177</sup> OCHAOPT 'United Nations Office for the Coordination of Humanitarian Affairs - Occupied Palestinian Territory' (2014) <<http://www.ochaopt.org/content.aspx?id=1010137>> accessed 1 January 2015.

<sup>178</sup> UNRWA, 'Palestine Refugees' <<http://www.unrwa.org/palestine-refugees>> accessed 1 January 2015.

<sup>179</sup> M Bröning, 'The End of the Arab League? What the Organization Can Learn From the African Union' (March 30, 2014) <<http://www.foreignaffairs.com/articles/141077/michael-broening/the-end-of-the-arab-league>> accessed 2 January 2015.

<sup>180</sup> *ibid.*

<sup>181</sup> R Hardy 'The Iran-Iraq war: 25 years on' BBC News, (22 September 2005) <<http://news.bbc.co.uk/1/hi/4260420.stm>> accessed 12 December 2014.

Kuwait (which resulted in the Gulf War), caused at considerable amount of casualties, approximately 25,000 to 30,000 soldiers died, and an estimated 100,000 to 200,000 civilians killed.<sup>182</sup> As well as the 2003 US-led War with Iraq.<sup>183</sup> For example, it is noted that when Iraq invaded Kuwait on 2 August 1990, the Kuwaiti Ambassador to Iran stated that ‘Kuwait asked the US, the Soviet Union, the UN and the Arab League, to send troops, but only the US accepted, followed by other allied troops’.<sup>184</sup> As will be discussed in a subsequent chapter the Arab League failed to broker an effective response to end the civil war in Syria, although it unified over Libya a year earlier to impose a no-fly zone.<sup>185</sup>

The region experienced many military interventions, assassinations, kidnappings, and sabotage, and media campaigns from other Arab States and Western States.<sup>186</sup> Some States went so far to provide support for political opponents of another States’ rival regime.<sup>187</sup> These military campaigns have led to the death and displacement of millions of people in the region (specifically, people from Palestine, Lebanon, Iraq and Yemen).<sup>188</sup>

Another essential point in history that has tremendously increased regional instability is the Al-Qaeda terrorist attacks at the World Trade Center and the Pentagon on September 11, 2001. The series of attacks have not only taken the lives of thousands of innocent victims in the United States, but also deeply affected the Arab region. Harders and Legrenzi note, that other former hegemonic powers began to compete for ‘readjustment of their roles on the institutional level, the “securitization” and

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<sup>182</sup> ‘Flashback: 1991 Gulf War’ *BBC News* ( 20 March, 2003)

<[http://news.bbc.co.uk/1/hi/world/middle\\_east/2754103.stm](http://news.bbc.co.uk/1/hi/world/middle_east/2754103.stm)> accessed 2 January 2015. See M Bröning, ‘The End of the Arab League? What the Organization Can Learn From the African Union’ (March 30 2014) <<http://www.foreignaffairs.com/articles/141077/michael-broening/the-end-of-the-arab-league>> accessed 2 January 2015.

<sup>183</sup> *ibid* Bröning.

<sup>184</sup> See C Marschall, *Iran’s Persian Gulf Policy: From Khomeini to Khatami* (Routledge, 2003) 107-108.

<sup>185</sup> See Bröning above n 179.

<sup>186</sup> R Owen ‘Arab nationalism and intra-state relations’ in *State, Power and Politics in the Making of the Modern Middle East* (3rd edn, Routledge New York 2004) 74.

<sup>187</sup> *ibid*.

<sup>188</sup> M Pinfari ‘Regional and Global Axes of Conflict - Nothing But Failure? The Arab League And The Gulf Cooperation Council As Mediators In Middle Eastern Conflicts’ London School of Economics and Political Science, (March, 1 2009) Working Paper no. 45 , 1 <<http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/wp/wpSeries2/WP452.pdf>>; See also MR Sarkees, ‘The Correlates of War Data on War: An Update to 1997’ (2000) 18(1) *CMPS*, 123-144.

militarization of both regional and international politics has weakened regional institutions such as the Arab League'.<sup>189</sup> In addition, the terrorist attacks created a new regional order particularly in Iraq, Lebanon, Israel and Palestine.<sup>190</sup> For example, because of the fall of Saddam Hussein, Iran (Shi'a rival) developed as a 'non-Arab Hegemonic power' in the region.<sup>191</sup> These events triggered regional dynamic and intensified violent 'identity politics' between various ethnic groups in the region, and religious sects, particularly between Sunnis and Shias.<sup>192</sup>

### 4.3 The Arab League Structure

The Charter of the Arab League entails twenty Articles and three Appendices, none of which specifically deal with human rights.<sup>193</sup> This absence of specific references to human rights reveals the level of interest sustained by the organisation on the subject. It establishes three main branches under the provisions of the Charter: the Council of the League of Arab States, the Standing Committees, and the Secretariat.<sup>194</sup> The League's main headquarters are in Egypt, and as per Article 1 of the Charter, with the membership open to all Arab speaking States.<sup>195</sup> It currently has twenty-two members, all of whom are independent Member States of the United Nations (save Palestine).<sup>196</sup>

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<sup>189</sup> See above Harders and Legrenzi, n 167, at 47.

<sup>190</sup> *ibid.*, 47- 48.

<sup>191</sup> *ibid.*, 48.

<sup>192</sup> *ibid.*

<sup>193</sup> See above Aljaghoub, Alja and Bydoon, n 110, at 289. Charter of the League of Arab States, adopted 22 March 1945, 70 UNTS 237. According to the OHCHR, no mention in the Charter or Pact of the Arab League is made of 'the contents or principles of human rights'. See also F Viljoen 'UN Chronicle' <<http://unchronicle.un.org/article/international-human-rights-law-short-history/>>

<sup>194</sup> Cited in LAS 'A Brief History, Arab League', (originally in Arabic)

<[http://www.lasportal.org/wps/portal/las\\_ar/inner!/ut/p/c5/vY3LjoJAEEW\\_xQ-YVLUwKEtMI4KZVrqrHemNwWRifCAkOg701wuJiSt1M7Hurk7uPWCgzTG\\_bDf5eVse8wMswXgr7qdy4UoHkWYexv0JI4IJZzjyWp495gl70f6GbAwJmM2hXHeyqP2YZ51useP44AKEDMz3o\\_SqYtxqj5FouYsiBAIluiu1K6pYru3cmeloD3WtA7\\_vnjYEOma0GsUFzOIT5bQtUpXU6KMsaHPFuM0DPhvPah174Wr\\_0aX80YX-1eXmJTfD1SFvhR-\\_JHfcgVIgOqb/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=5ced5d80425e47cb8f3dff7cf4bbec57](http://www.lasportal.org/wps/portal/las_ar/inner!/ut/p/c5/vY3LjoJAEEW_xQ-YVLUwKEtMI4KZVrqrHemNwWRifCAkOg701wuJiSt1M7Hurk7uPWCgzTG_bDf5eVse8wMswXgr7qdy4UoHkWYexv0JI4IJZzjyWp495gl70f6GbAwJmM2hXHeyqP2YZ51useP44AKEDMz3o_SqYtxqj5FouYsiBAIluiu1K6pYru3cmeloD3WtA7_vnjYEOma0GsUFzOIT5bQtUpXU6KMsaHPFuM0DPhvPah174Wr_0aX80YX-1eXmJTfD1SFvhR-_JHfcgVIgOqb/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=5ced5d80425e47cb8f3dff7cf4bbec57)>.

Although, there are other organs that are under the auspicious of the Arab League that were created under the Treaty of Joint Defence and Economic Cooperation. These include the Joint Defence Council (JDC); Consultative Military Organisation (CMO); the Permanent Military Commission (PMC); the Arab Unified Command (AUC) and the Economic Council (EC), see also Aljaghoub, Alja and Bydoon, n 110 at 292.

<sup>195</sup> For a short time, it relocated to Tunis, Tunisia, after Egypt signed a peace treaty with Israel, which led to its suspension from the Arab League in 1979. However, in 1987, the Arab leaders decided to renew its diplomatic relationship with Egypt and the Arab League moved its headquarters back to Cairo in 1989.

The Charter also includes a separate annex on the issue of Palestine. Therefore, as mentioned above, in addition to promoting the importance of sovereignty and non-interference of Arab States, the League's main concern was the situation of Palestine. It recognizes in its annex, Palestinian independence,<sup>197</sup> and involved it with the decision making of the League, in an attempt to persuade the west to support the Palestinian cause.<sup>198</sup> As Smith notes, '[W]ith this machinery in place, the League . . . undertook to represent the Palestinian Arab case before the Western world and to seek to persuade the [super] powers to deny the achievement of Zionist goals'.<sup>199</sup> Unfortunately, however, the League is weak and internally divided. As such, it failed to achieve Palestine's independence and the situation of Palestinians particularly in the West Bank and Gaza remains an escalating humanitarian concern.

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Child Rights International Network (CRIN) 'Child Rights and the League of Arab States' (04/08/2012) Publication (general) <<http://www.crin.org/resources/infoDetail.asp?ID=18054&flag=report>>

<sup>196</sup> See Aljaghoub, Alja and Bydoon above at n 110, at 292. The State of Palestine at the UN was upgraded from non-member observer entity (as per resolution 3237 (XXIX), 22 November 1974), to a non-member observer 'State status' (4 December 2012, A/RES/67/19). J Cerone 'Legal Implications of the UN General Assembly Vote to Accord Palestine the Status of Observer State' (2012) Vol.16 No.37, ASIL <<http://www.asil.org/insights/volume/16/issue/37/legal-implications-un-general-assembly-vote-accord-palestine-status>> accessed 23 May 2014. See also, Permanent Observer Mission of the State of Palestine to the United Nations' Background Paper Related to Palestine Status of Palestine at the United Nations' <<http://www.un.int/wcm/content/site/palestine/pid/11550>>; see also 'Q&A: Palestinians' upgraded UN status' *BBC News* <<http://www.bbc.co.uk/news/world-middle-east-13701636>> For more information on the Palestinian issue, see J Crawford 'The Creation of the State of Palestine: Too Much Too Soon?' (1990) EJIL 307-313 <<http://ejil.org/pdfs/1/1/1137.pdf>>

<sup>197</sup> The Arab League recognises in its annex 'although the outward manifestations of this independence have remained obscured for reasons beyond her control, this should not be allowed to interfere with her participation in the work of the Council of the League'. League of Arab States, Charter of Arab League, 22 March 1945. See also J Masters 'The Arab League' (2012) Council on Foreign Relation <<http://www.cfr.org/middle-east-and-north-africa/arab-league/p25967>>. Furthermore, see generally: C Tripp, *Regional Organizations in the Arab Middle East, in Regionalism in World Politics: Regional Organization and International Order*, 283-308, at 283, 287 (L Fawcett & A Hurrell eds., Oxford University Press 1995); M Kerr, *The Arab Cold War 1958-1967* (Oxford University Press, 1967) 1; D Peretz, *The Middle East Today* (Praeger 1968) 144.

<sup>198</sup> See Ismael and Ismael n 33, see also C D Smith, *Palestine and the Arab-Israeli Conflict: A History* (Bedford/St. Martin's; 8<sup>th</sup> edn , 2012) 624 pp.

<sup>199</sup> Cited in J Masters 'The Arab League' (2012) <<http://www.cfr.org/middle-east-and-north-africa/arab-league/p25967>> accessed 2 January 2015. For more information on the Palestinian Israeli conflict see C D. Smith, *Palestine and the Arab-Israeli Conflict: A History with Documents Paperback* (8<sup>th</sup> edn , Bedford/St. Martin's, 2012) 624 pp.

### 4.3.1 The Arab League Council

The Arab League Council is the central and the highest executive organ of the Arab League.<sup>200</sup> It is the main decision making body<sup>201</sup> that brings together representatives of Member States, wherein each representative is given a chance to vote on preliminary decisions.<sup>202</sup> The voting procedure does not provide a veto mechanism and calls for unanimity.<sup>203</sup> Decisions taken by a majority only bind those States that agree with the decision, whereas decisions voted by unanimity bind all member States.<sup>204</sup> However, unlike the UN system, resolutions adopted by the League are to be independently enforced by Member States, if they voted for their adoption.<sup>205</sup> The League does not have an effective mechanism to enforce the resolutions it has adopted.<sup>206</sup>

The Council functions as a plenary body – supplemented by meetings of heads of Arab States called the Arab Summits.<sup>207</sup> It is tasked to achieve the recognition of the objectives of the League and to oversee the execution of agreements concluded by Member States.<sup>208</sup> Thus the Council should identify the means of cooperation.<sup>209</sup>

The Council also appoints secretary-general, and assess the League's budgets and approval of finances. As well as developing its own rules of procedure and those of the

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<sup>200</sup> See DP Forsythe, *Encyclopaedia of Human Rights*, Vol 1 ( Oxford University Press, 2009) at 412. See also LAS, 'A brief history of Arab League' (in Arabic) n 193. See generally: C Tripp, *Regional Organizations in the Arab Middle East*, in L Fawcett & A Hurrell eds, *Regionalism in World Politics: Regional Organization and International Order* (Oxford University Press, 1995) 283-308, at 283, 287; M Kerr, *The Arab Cold War 1958-1967* (Oxford University Press, 1967) 1; D Peretz, *The Middle East Today* (Praeger 1968)144.

<sup>201</sup> 'Syria in focus on eve of Arab League meeting' *Gulf News* (March 23, 2013)

<<http://m.gulfnews.com/news/gulf/qatar/syria-in-focus-on-eve-of-arab-league-meeting-1.1162412> >

<sup>202</sup> See Art. III of the League of Arab Charter. File N°10: The Arab Charter on Human Rights, Preliminary Reminder on the League of Arab States, <<http://www.observatoire-avocats.org/wp-content/uploads/File-10-Arab-charter-on-human-rights.pdf>> accessed 2 January 2015.

<sup>203</sup> See above Aljaghoub, *et. al.*, n 110 at 292.

<sup>204</sup> *ibid.*

<sup>205</sup> *ibid.*

<sup>206</sup> *ibid.*

<sup>207</sup> See above Forsythe, n 200 at 412.

<sup>208</sup> Likewise, Art. III, states that the Council shall also 'decide upon the means by which the League is to co-operate with the international bodies' that is to be created in the future 'in order to guarantee security and peace and regulate economic and social relations'. See also Art. III of the Arab League Charter, File N°10: The Arab Charter on Human Rights, Preliminary Reminder on the League of Arab States, <<http://www.observatoire-avocats.org/wp-content/uploads/File-10-Arab-charter-on-human-rights.pdf>> accessed 2 January 2015.

<sup>209</sup> *ibid.*

Standing Committee and Secretariat.<sup>210</sup> It also accepts and expels members, responsible with amending the Charter, mediate disputes that arise from Member States, or between them and non-Member States.<sup>211</sup> With the approval of Council, the Secretary-General, it appoints the Assistant Secretaries and the principal officials of the League.<sup>212</sup> Overall, it serves to assist 'the realisation of the objectives of the League'.<sup>213</sup>

### 4.3.2 Standing Committees

The Charter provides in Article IV, the formation of a number of Standing Committees on various areas of cooperation among member States.<sup>214</sup> It establishes for each question raised in Article II a special committee is to be set up, consisting of representatives of member-State. It also emphasizes that the purpose of the League of Arab States is to strengthen relations between Member State and to coordinate their policies achieve to 'safeguard their independence and sovereignty'.

As per Article IV, the Standing Committees will be charged with the task of setting out the principles and the extent of co-operation. These principles 'shall be formulated as draft agreements' that are then presented to the Council for examination 'preparatory to their submission to the aforesaid State'. Representatives of other Arab countries may partake in the work of the Committees. However, it is up to the Council to determine the conditions 'under which these representatives may be permitted to participate' and 'the rules governing such representation'.<sup>215</sup> Thus, the Committees are to 'expand the

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<sup>210</sup> *ibid*, see e.g. Art. XII of LAS Charter, League of Arab States, Charter of Arab League, 22 March 1945, available at: <<http://www.refworld.org/docid/3ae6b3ab18.html>> accessed 15 December 2013.

<sup>211</sup> See above Aljaghoub *et. al.*, n 110 at 292.

<sup>212</sup> Department of South Asian, Middle East and African Affairs, 'The League of Arab States' (Ministry of Foreign Affairs, Kingdom of Thailand, 2010) <<http://sameaf.mfa.go.th/en/organization/detail.php?ID=200>>.

<sup>213</sup> See above Aljaghoub *et. al.*, n 110 at 292.

<sup>214</sup> LAS (website), 'Structure of the Arab League' (in Arabic) <[http://www.lasportal.org/wps/portal/las\\_ar/inner!/ut/p/c5/vZKxkoIwEIafxQdwkgiilmBQRakSggKNA4gIKCAqYp7-mLG4Sq-5cf9mZ77d\\_ZoFPuhSBE2aBLE0LIITcIEv7fDEohuRChAyU4KLgYYpQUQYK1LHvfdcR5-2dQFsgacAO6i7xv84i4cvikZAqKV5xh4wB\\_9XplbSxEuLHTIdHuN5DkEDLhQ3NnZs1rwnNOMU8Jy2LJQfRhYfTLmtAxKTxsT03aunEGR2061ZMxDaDxBm5mlyvjejlqn94dr8EWX8EUX-leXDvzkVIbdo221KG3x1Uiw6tJwXDzQ7chv\\_dH-ntF9rpuJkuQPOYvzA-rrw7guYb5aeRv\\_7mm4OVjD-pztiThtZoIxPUnJKG4j2m89Q-BxwKHbJEZxUbrdVJhqGUablXK9164wO2qBGcLJ2jGa0qgOI7DCnFpy5PVAdXaalI7J4RXjB-9Es54!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=5ced5d80425e47cb8f3dff7cf4bbec57](http://www.lasportal.org/wps/portal/las_ar/inner!/ut/p/c5/vZKxkoIwEIafxQdwkgiilmBQRakSggKNA4gIKCAqYp7-mLG4Sq-5cf9mZ77d_ZoFPuhSBE2aBLE0LIITcIEv7fDEohuRChAyU4KLgYYpQUQYK1LHvfdcR5-2dQFsgacAO6i7xv84i4cvikZAqKV5xh4wB_9XplbSxEuLHTIdHuN5DkEDLhQ3NnZs1rwnNOMU8Jy2LJQfRhYfTLmtAxKTxsT03aunEGR2061ZMxDaDxBm5mlyvjejlqn94dr8EWX8EUX-leXDvzkVIbdo221KG3x1Uiw6tJwXDzQ7chv_dH-ntF9rpuJkuQPOYvzA-rrw7guYb5aeRv_7mm4OVjD-pztiThtZoIxPUnJKG4j2m89Q-BxwKHbJEZxUbrdVJhqGUablXK9164wO2qBGcLJ2jGa0qgOI7DCnFpy5PVAdXaalI7J4RXjB-9Es54!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=5ced5d80425e47cb8f3dff7cf4bbec57)> accessed 2 January 2015.

<sup>215</sup> Art. IV in League of Arab States, Charter of Arab League, and 22 March 1945

cooperation between Member State, and to draft international agreements for discussion and approval by the League's Council'.<sup>216</sup>

Over the years, the League established more committees. For example, the standing Committees consist of sixteen different issues, such as a Cultural Committee, Health Committee, Social Committee and Information Committee; or Special permanent committees (economics, culture, politics etc.), Specialised and autonomous agencies such as Arab Labour Organisation and the Arab Permanent Commission on Human Rights.<sup>217</sup> The Council of the League of Arab States 'appoints' the Chairman of each committee for two years subject to renewal.<sup>218</sup> The resolutions of the committees are passed by a majority vote and meetings are valid only when attended by the majority of Member State.<sup>219</sup> This method of appointment of the Chairman of each Committee, including that of the Arab Permanent Commission on Human Rights is problematic because it limits the credibility and functioning of the Committee, as will be evaluated below.

### 4.3.3 The Secretariat

The Secretariat, has its headquarters in Cairo,<sup>220</sup> it includes a Secretary General, assistant Secretariats and officials.<sup>221</sup> It is in charge of the follow-up of the implementation of the decisions of the Council Arab League and its Standing Committees, and decides the date of the sessions of the Council of the League.<sup>222</sup> However, the Secretariat remains ineffective, and does not have the power or mechanisms to issue binding resolutions on Member States.<sup>223</sup>

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<sup>216</sup> See above Aljaghoub *et. al* n 110 at 292. The committees met at the permanent seat of the League in Cairo. However, they may also meet in other member States if they received approval by the Secretary – general. Accordingly, there are eleven Committees created as per articles 2 and 4 of the Charter.

<sup>217</sup> See Department of South Asian, 2010., The council and summit meetings are held periodically, p.412. See above Forsythe, n 200 at 190.

<sup>218</sup> LAS 'A Brief History, Arab League', n 193.

<sup>219</sup> *ibid.*

<sup>220</sup> See Aljaghoub, *et. al*, above n 110, at 292. However, there was an 11-year gap where the headquarters moved to Tunis in order to punish Egypt for having signed a separate peace treaty (Camp David Accord) with Israel in 1979. 'Syria in focus on eve of Arab League meeting' *Gulf News* (March 25, 2013) <<http://m.gulfnews.com/news/gulf/qatar/syria-in-focus-on-eve-of-arab-league-meeting-1.1162412>> accessed 2 January 2015.

<sup>221</sup> *ibid.*

<sup>222</sup> LAS 'A Brief History' and n 193. See also Art. XII of the Arab League Charter.

<sup>223</sup> See above Pinfari above n 188 at 18.

#### 4.3.4 Prospects for Reform

The current system of the Arab League is in need of reform, as various studies consulted in this study indicate. Although recently, the Council of the Arab League has adopted resolutions recognizing its need of reform, in practice these reforms have little implications to its human rights establishment. In fact it would appear Pinfari's observation of the Arab League is correct in that the 'gulf between the 1945 Pact and the everyday life of the League is widening'.<sup>224</sup>

It appears, only in 2012 (67 years since inception) that the Council of the Arab League finally passed a resolution to declare its attempt to reform the Arab League in order to improve its function.<sup>225</sup> The idea of reforming the Arab League was first instigated at the 2004 Tunisia Summit, however formalisation of the plan of reform was not considered until March 29, 2012 at the Council's 136th Ministerial level session.<sup>226</sup> This is one example of the long duration for a decision to reach agreement by the Council of ministers. It took another year for the decision to be formalised, and on March 26, 2013, the Doha 34<sup>th</sup> Summit led to the adoption of resolution No. 572.<sup>227</sup> The resolution includes an agreement of the General Secretariat of the Arab League's decision to restructure the Secretariat to improve the methods of their work and improve their performance.<sup>228</sup> However, even then the resolution issued at the Doha Summit requests from the Secretariat to take the necessary steps to discuss plan for modernisation at the ensuing 25<sup>th</sup> session of the Summit of the Arab League Council to be held in Kuwait in 2014.<sup>229</sup> These recent decisions illustrate the slow moving system of the Arab League.

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<sup>224</sup> *ibid.*

<sup>225</sup> See for example M Rishmawi, 'The League of Arab States in the Wake of the "Arab Spring"' (2012) CIHRS, 50 <<http://www.cihrs.org/wp-content/uploads/2013/09/Arab-Leage.pdf>> accessed 1 January 2015.

<sup>226</sup> See, Arab League Council, Ministerial Res.No. 7372, 'The Statute of the Arab Parliament'. Arab League Council, Resolution No. 559 'Approval of the Statute of the Arab Parliament' 23rd Summit, (Baghdad Iraq, 29 March 2012) 60.

<sup>227</sup> Council resolution is also based on the decision of the Arab League Council at the Ministerial level Res. No. 7582 at the 139th session on June 3, 2013 and on the recommendation of the Committee on Political Affairs 60, cited in LAS 'The development of the League of Arab States' <<http://www.lasportal.org/wps/wcm/connect/c24da10040f2884a84a79ca79d151c73/Binder1.pdf?MOD=AJPERES>> accessed 1 January 2015. (Translated from Arabic) see also Arab League Council, 'Doha Declaration', 24th Summit (Doha, 26 March 2013).

<sup>228</sup> *ibid.*

<sup>229</sup> See LAS 'The development of the League of Arab States' n 226, at 5.



Another attempt toward reform is the establishment of an Arab Parliament; the Statute of the Arab Parliament was adopted March 29, 2012 at the Baghdad 23<sup>rd</sup> Summit.<sup>230</sup> Containing twenty-six provisions, the Parliament is a new component of the structure of the League, which was established through an Article added to the League Charter - this provides that '[an] Arab Parliament shall be established in the framework of the League, and its rules of procedure, composition, functions and areas of competence shall be defined'.<sup>231</sup>

The Parliament is mainly established to discuss the issues referred to it from Council decisions (at high-level Summits, or Ministerial level sessions). It may also consult on issues received from the Secretary-General, presidents or directors of specialized Arab organisations, where it may also express an opinion, and make recommendations.<sup>232</sup> However, the proposed Parliament is relatively weak, because it does not have binding power to ensure all its decisions are met.<sup>233</sup>

Thus the Arab League took several years to agree on an Arab Parliament, however, it failed to provide an enforcement mechanism to enforce its agreements or recommendations. It remains to be seen if the Parliament provides for a platform for debate on human rights issues.<sup>234</sup> As stated above, it appears, after sixty-seven years the Arab League finally recognised its need to reform. To date, the system has been very slow, and because of the recent uprisings in the region, and because of political stagnation, the system seems to be at halt. The following will provide an overview of the Summits the League has held so far that concerns promoting and protecting human rights in the region.

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<sup>230</sup> Arab League Council 'Approval of the Statute of the Arab Parliament' 23rd Summit No. 559 (Baghdad 29 March 2012)

<<http://www.lasportal.org/wps/wcm/connect/5b52ad804ac5b008b88cbc526698d42c/%D9%85%D8%AC%D9%84%D8%AF+%D8%A7%D9%84%D9%82%D8%B1%D8%A7%D8%B1%D8%A7%D8%AA+%D8%A7%D9%84%D9%86%D9%87%D8%A7%D8%A6%D9%89.pdf?MOD=AJPERES>> accessed 1 January 2015. (translated from Arabic)

<sup>231</sup> Arab League Council, 'Development of the Joint Arab Collaboration System: Amendments to Some Articles of the Charter of the League of Arab States', Arab League Council, Res. No. 290, 17th Summit, (23 March 2005) and 'Development of the Joint Arab Collaboration System: Establishment of an Interim Arab Parliament', the Summit Res. No. 292, Regular Session 17, (23 March 2005).

<sup>232</sup> LAS Council Resolution No.559, 23rd Summit, 56.

<sup>233</sup> *ibid* 60. See also M Rishmawi, 'The League of Arab States in the Wake of the "Arab Spring"' (2012) CIHRS, 50. <<http://www.cihrs.org/wp-content/uploads/2013/09/Arab-Leage.pdf>> accessed 1 January 2015.

<sup>234</sup> *ibid*.

## 4.4 Overview of Arab League Summits

### 4.4.1 Introduction

Council of the League of Arab States (Arab League Summits) Summits bring together Arab heads of States and officials from the Arab League to discuss issues covering a variety of sectors, such as, legal, economic, social, and political relations. At the outset, there have been 25 Ordinary Arab Summits (the last being the 25<sup>th</sup> regular session in Kuwait on March 25, 2014);<sup>235</sup> and extraordinary Summits due to emergency events and circumstances in the Middle East.<sup>236</sup> The discussion that follows aims to highlight the limited and attenuated concern for human rights issues during the Summits of the Arab League.

It is important to recognize, one of the most significant obstacles for the unification and strengthening of the Arab League, is the subject of Israel. Since the Balfour Declaration, and its aftermath,<sup>237</sup> many, if not all Arab Summits held by the League discussed strategies to support Palestine's self-determination. Still, after three failed Arab-Israeli wars, the State of Israel not only brought in more Arab territory, but also strengthened its financial backing by the United States, who became Israel's long-standing ally. Ultimately, various divisions within the League also developed and became more evident during the years. Thus, it would appear that the concern and establishment of a regional human rights Charter took decades to be adopted by the Arab League.

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<sup>235</sup> See 'BBC inside Arab League summit in Kuwait' *BBC News* (25 March 2014 ) <<http://www.bbc.co.uk/news/world-middle-east-26727681>>; See also Arab League Council resolutions adopted Kuwait Summit 25-26 March 2014 <<http://www.lasportal.org/wps/wcm/connect/1ab1890043680a5c9ae3df45b0f8f28c/%D8%A7%D9%84%D9%82%D8%B1%D8%A7%D8%B1%D8%A7%D8%AA.pdf?MOD=AJPERES>>

<sup>236</sup> Summit schedules are not always set; this is contended to be due to the instability of the region Summits may have extraordinary or normal sessions, based on an emergency situation Department of South Asian, Middle East and African Affairs, 'The League of Arab States' Ministry of Foreign Affairs, Thailand (2010) <<http://sameaf.mfa.go.th/en/organization/detail.php?ID=200>> accessed 1 January 2015.

<sup>237</sup> See for example Toffolo, n 1 at 63.

#### 4.4.2 The Situation of Palestine and Towards a Human Rights Discourse

In March 1946, a year since the Arab League's establishments Arab States met during the six-month war with Israel, in Egypt, to declare '[P]alestine is an Arab [S]tate and her future is an Arab national concern'.<sup>238</sup> It also issued a resolution in December 1946, '[a]ffirming that the League was determined to defend the rights of the Arabs of Palestine'.<sup>239</sup> Therefore, the League since its inception attempted to coordinate Member States' against Israel.<sup>240</sup> The first official Arab League Summit was held on January 13-16, 1964 in Cairo,<sup>241</sup> and formally approved the establishment of the Palestinian Liberation Organization (PLO) as the first representative of the Palestinian State.<sup>242</sup> Subsequently, one of the most important Summits that illustrates the League's stance against Israel at the time was at the League's fourth Summit held in Khartoum in 1967, after its Six Day War with Israel. The Summit discussed the necessary measures Member States need to take 'to regain occupied lands';<sup>243</sup> and declared three nos: '[n]o negotiation with Israel, no treaty, no recognition of Israel'.<sup>244</sup>

Subsequently, other Summits were held to discuss Arab-Israeli relations, such as, the sixth Summit held in Algiers in November 1973 (held after the Arab-Israeli war).<sup>245</sup> At the ninth Summit held in Baghdad on November 1978, the League condemned Egypt because it signed a pact with Israel the same year (the Camp David Accord), and subsequently the League moved its headquarters to Tunis.<sup>246</sup>

As discussed above, the region experienced a series of unfortunate events. For example, the Iran-Iraq war which lasted from 1980-1988 created permanent instability in the

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<sup>238</sup> I Al-Jazy, 'The Arab League and Human Rights Protection' in E Cotran, A O Sherif (eds), *Democracy: The Rule of Law and Islam* (BRILL, 1999) 211-220, at 213.

<sup>239</sup> *ibid.*

<sup>240</sup> See Dunstan above n 163, at 80. For more information see M Broyles, *The Six-Day War* (The Rosen Publishing Group, 2003) 64.

<sup>241</sup> *ibid.* Furthermore, the Council and Summit meetings are held periodically, Forsythe, n 200, at 412.

<sup>242</sup> Toffolo, n 1 at 64, The 3rd Summit, in Casablanca, September 18, 1965 ended with no recognised decisions. N Gunay (2000) 'Arab League Summit Conferences, 1964-2000' POLICYWATCH 496, Policy #496.October 19, 2000, 496 <<http://www.washingtoninstitute.org/policy-analysis/view/arab-league-summit-conferences-19642000>>.

<sup>243</sup> In addition, the 5th LAS Council Summit was to be held in Rabat on December 23, 1969, however, it was adjourned. See *ibid* Gunay (2000).

<sup>244</sup> P Mattar, *Encyclopedia of the Palestinians* (Infobase Publishing, 2005) at 50.

<sup>245</sup> *ibid.*, 51.

<sup>246</sup> *ibid.*

region. Even after the War, many Arab States boycotted the fifteenth Summit held in June 1988 in Casablanca, because like Egypt, the PLO and Jordan planned to establish peace talks with Israel.<sup>247</sup>

In May 1990, The Arab League held its seventeenth Summit in Baghdad (3 months before Iraq invaded Kuwait), although some States did not attend the Summit, Iraq (again) stood strongly against any peace talks with Israel and the Summit ended with the League's concern of the increasing amount of 'Soviet Jewish Immigration' to Israel.<sup>248</sup> The twentieth Summit was held in Cairo in October 2000<sup>249</sup> and discussed how the League plans to support financially Al-Aqsa Intifada (which is the Second intifada) against the Israel's occupation of Gaza Strip and West Bank, and asked Member States to freeze any relations with Israel. In March 2002, at the twenty-second summit, in Beirut, the Saudi Crown Prince Abdullah ibn Abdulaziz (presently king of Saudi Arabia) proposed a Peace Plan with Israel.<sup>250</sup> The 'Arab Peace Initiative' requests Israel to reconsider all its policies, declaring that 'a just peace is a strategic option as well'.<sup>251</sup> This was a fragile consensus, according to Bröning, it appears this was the only time a consensus between Arab States have been received regarding this issue.<sup>252</sup>

It appears because of political interests the Arab League Council first considered the possibility of creating an Arab Charter on Human Rights in 1971.<sup>253</sup> This was also because during the time some Member States from the Arab League became parties to the ICCPR and ICESCR, and the UN commenced its support for regional human rights establishments in 1968. Therefore, the Arab League Council formed a committee of

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<sup>247</sup> *ibid.* This was the same year UNGA adopted resolution on Regional Arrangements for the Promotion and Protection of Human Rights (1988) A/RES/43/152 (8 December 1988).

<sup>248</sup> *ibid.*

<sup>249</sup> The same year the United Nations Millennium Declaration, G.A. Res. 55/2, U.N. GAOR, 55th Sess., Supp. No. 49, at 4, U.N. Doc. A/55/49 (2000)

<sup>250</sup> See Mattar, n 244 at 51.

<sup>251</sup> See Arab League Council, Res. No. 221 'Arab Peace Initiative', 14th Summit (Beirut, 28 March 2002); Arab League Council, *Beirut Declaration* agreed on March 27-28 2002, 77. See also Arab League Council, Res. No. 239 'Arab Child's Rights' 14th Summit, (Beirut, 28 March 2002). See also Council of Foreign Relations, 'Arab Peace Initiative' (March 28, 2002) <<http://www.cfr.org/israel/arab-peace-initiative-2002/p13966>> accessed 5 January 2015.

<sup>252</sup> M Bröning, 'The End of the Arab League? What the Organization Can Learn from the African Union' Council on foreign affairs, (March 30, 2014).

<sup>253</sup> I Al-Jazy 'Arab League and Human Rights Protection' in E Cotran and AO Sherif (eds.), *Democracy, the Rule of Law and Islam*, (BRILL, 1999) 211- 220, at 215.

experts in order to draft an Arab Human Rights Charter.<sup>254</sup> This was a controversial move and caused great debates among the State members of the League.<sup>255</sup> Nevertheless, the Charter was drafted and ready for adoption on 10 July 1971.<sup>256</sup> However, various events happened in the Arab region, and from 1971 to 1981 the Arab League did not hold or partake in any human rights activities.<sup>257</sup>

Recognizing that all Member States of the Arab League are invited to attend the World Conference on Human Rights in Vienna on 25 June 1993, the Council of the Arab League reconvened in February 1993, to discuss the 1971 version of the Arab Charter on Human Rights.<sup>258</sup> After various discussions between Member States, the final version of the Arab Charter was adopted on September 15, 1994, with Resolution 5437.<sup>259</sup> However, the Charter never entered into force.<sup>260</sup> It needed seven ratifications to come into force and all States objected to the Charter because they thought the Charter diverted from the principles set out in the Cairo Declaration.<sup>261</sup> For example, the United Arab Emirates wanted the Charter to be close to the spirit of Cairo Declaration. While Oman and Sudan strongly opposed to the notions of an Arab Charter on Human Rights.<sup>262</sup> Overall, according to Al-Jazy, the League's pre-eminent adoption of the Arab Charter on Human Rights after it was first drafted in 1971, illustrates 'the bureaucratic nature of the Arab League', which ultimately reveals the fragmented politics of the Arab States.<sup>263</sup>

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<sup>254</sup> *ibid.*

<sup>255</sup> *ibid.*, see also for example Arab League Council, Res. No. 2443/48, (3 September 1968).

<sup>256</sup> *ibid.*

<sup>257</sup> A An-Na'im 'Human Rights in the Arab World: A Regional Perspective' (2001) Vol. 23:3 HRQ, 732, at 713. Also on November 11, 1979, the Tenth Arab Summit Conference was held in Tunisia and adopted the principle of holding periodical Summit Conferences in Arab State. 'About the League of Arab States | Highlights in the LAS History Museum with No Frontiers (MWNF) & League of Arab States, 2011-2013' see 1976-1980, (20 November 1979) <<http://www.museumwnf.org/league-of-arab-State/?page=LAS-highlights-in-history.php>> accessed 1 January 2015.

<sup>258</sup> *ibid.* An-Na'im, at 714.

<sup>259</sup> *ibid.*

<sup>260</sup> *ibid.* See H Sahraoui, "'Modernising' the Arab Charter on Human Rights" in ID Seiderman, *Yearbook of the International Commission of Jurists: 2004* (International Commission of Jurists. Intersentia nv 2004) 339- 398, at 343.

<sup>261</sup> See also Arab Organisation for Human Rights (AOHR) 1995 report, pp. 11-15, cited in in I Al-Jazy 'The Arab League and Human Rights Protection' in E Cotran, AO Sheri, *Democracy: The Rule of Law and Islam*, BRILL, 1 Jan 1999) 211-220, at 218.

<sup>262</sup> *ibid.* Al-Jazy 218.

<sup>263</sup> *ibid.*, 215.

It is also submitted that human rights dialogue emerged by the Arab League in order to gain international support for the Palestinian cause.<sup>264</sup> This can be seen in an extraordinary Summit held in Cairo in 2000. This summit saw the leaders of Arab State encourage tolerance, coexistence and negation of all forms of discrimination, as well as 'interaction among cultures and civilizations'.<sup>265</sup> Unfortunately, a year after a series of terrorist attacks in the United States (US) caused major disturbance and catastrophe in the US and within the Arab world. This was because the alleged terrorists came from Islamic and Arab States.

The terrorist attacks committed in September 11 2001, has produced great repercussions, and Arab States increasingly became under external and internal pressure for initiating drastic domestic legislative and political reform.<sup>266</sup> As a consequence, it is argued that the international fight against terrorism also caused an increase of the abandonment of human rights laws.<sup>267</sup> Political instability, torture, extradition, and various other human rights concerns arose. For example, a report by the UNDP indicates that the fight against terrorism ignited serious threat to citizen's security in the Arab region.<sup>268</sup> Especially since States often violated individual human rights and freedoms without legal recourse.<sup>269</sup> The UNDP notes the overall counter-terrorism laws in most of the Arab countries have all too often failed to find the required balance between State security and protection of individual rights and freedoms.<sup>270</sup>

With increasingly international pressure from NGOs, the OHCHR recognised its need to strengthen its relationship with regional organisations in order to establish universal support for the promotion and protection of human rights. This may be the reason why the League recently became concerned with promoting the human rights cause within

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<sup>264</sup> See Mattar above n 244, at 55.

<sup>265</sup> *ibid*

<sup>266</sup> See above Harders and Legrenzi at n 167.

<sup>267</sup> J Rehman, *Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the 'clash of Civilizations' in the New World Order* (Hart Publishing, 2005) 8.

<sup>268</sup> UNDP 'Study on the links between economic and social rights and legal empowerment of the poor in the Arab World' (2010) 24 <[http://204.200.211.31/Update\\_Feb\\_2011/ESC%20and%20LEP\\_6.pdf](http://204.200.211.31/Update_Feb_2011/ESC%20and%20LEP_6.pdf)>

<sup>269</sup> *ibid*.

<sup>270</sup> *ibid*.

the League.<sup>271</sup> For example, in 2002, the OHCHR established a Regional Office for the Middle East (ROME) in Beirut, covering eleven countries: Bahrain, Jordan, Iraq, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, the United Arab Emirates, and Yemen.<sup>272</sup>

Finally, by the 16th ordinary Summit, held in Tunis on May 22-23, 2004, Resolution No.270 was passed to adopt the revised version of the Arab Charter on Human Rights.<sup>273</sup> The League's attempt to redraft the Arab Charter on Human Rights to complement universal human rights was largely influenced by the OHCHR; because of the Memorandum of Intent (or often called Memorandum of Understanding) that aims promote further cooperation between the OHCHR and the Arab League.<sup>274</sup> The Arab Charter on Human Rights subsequently entered into force March 15, 2008. However, as will be discussed further on, the efforts of the OHCHR and the expert committee (charged with helping draft the Charter) did not bode well, and the Arab Permanent Commission on Human Rights, (who themselves are appointed and not an independent body) adopted their version of the Arab Charter on Human Rights, with a weak enforcement mechanism.

In 2011, no Summit was held because of social unrest and political uprisings. The OHCHR regional office was unable to commit to its task in the Arab region, because of the cluster of uprisings in the region.<sup>275</sup> An extraordinary session was held on December 20, 2011 in Cairo, where protocol No. 161 was issued - this contained the legal status and functions of the observer mission of the League of Arab States between

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<sup>271</sup> This is a very important document that subsequently made possible the Arab Charter on Human Rights (2004). This will be explored in depth in the following chapters. See also Report of the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, U.N. Doc. A/CONF.189/12 (2001).

<sup>272</sup> Where it recognises its Regional Office 'prioritizes' gender equality and women's rights in its programs since all states are parties to CEDAW. OHCHR, 'Middle East Regional Office', <<http://www.ohchr.org/EN/Countries/MENARegion/Pages/MenaRegion20122013.aspx>> accessed 10 October 2014. The Assembly then adopted without vote draft resolutions which include: Cooperation between the United Nations and the League of Arab States (document A/65/L.33) and Cooperation between the United Nations and the Council of Europe (document/65/L.41).

<sup>273</sup> LAS 'The Arab Charter on Human Rights' Arab League 16th Summit, Tunisia (Tunis) (May 22-23, 2004) Res. No.270 38, and other promises, ie. 'Tunis Declaration'.

<sup>274</sup> OHCHR, 'Annual report 2003: Implementation of Activities and Use of Funds' (2003) 105 <<http://www.ohchr.org/Documents/AboutUs/annualreport2003.pdf>> accessed 1 January 2015.

<sup>275</sup> OHCHR 'OHCHR in the field: Middle East and North Africa' (2011) 368. <[http://www2.ohchr.org/english/ohchrreport2011/web\\_version/ohchr\\_report2011\\_web/allegati/25\\_MEN A.pdf](http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/25_MEN A.pdf)> accessed 1 January 2015.

the Syrian Arab Republic and the General Secretariat of the League to follow-up on developments of the situation in Syria.<sup>276</sup> Nevertheless, as will be discussed in Chapter 7 the Mission failed, mainly because of its weak institutional mandate, and lack of political support by Member States of the Arab League.

On March 29, 2012, the Arab League Summit resumed in Baghdad (Iraq). The Baghdad Declaration was issued at the end of the Summit, which expressed the Arab League support for the ‘demands for freedom, democracy and peaceful transfer of power for the Syrian people’ and it supports Kofi Annan, the UN-Arab League special envoy to Syria. The Summit also issued recommendations to ‘emphasize on the respect for human rights and ensure political, cultural, religious rights of minorities’.<sup>277</sup> However, as will be seen in chapter 7, all the UN-Arab League special envoys failed, because of the Arab League’s internal political divisions.

On March 26-27 2013, the Arab Summit resumed its 24<sup>th</sup> regular session in Doha. The League advocated its decision to adopt a human rights court and adopted resolution No.573, an agreement to establish an Arab Court on Human Rights in Bahrain.<sup>278</sup>

#### **4.4.3 The Proposed Arab Court on Human Rights**

On September 1, 2013, at the Council’s 140<sup>th</sup> Ministerial level session agreed with the recommendation of the Doha Summit Res. No. 573, of the ‘Preparation of a draft Protocol/ or statute of the Arab Court of Human Rights’.<sup>279</sup> In February 2013, a regional conference was held in Cairo in conjunction with the FIDH, the Arab

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<sup>276</sup> Other declarations issued, i.e. No. 162 on the condemnation of the Israeli occupation authorities aggression on Al-Aqsa Mosque. In addition, Res. No. 7443 to open an office of the League of Arab States in Libya. See the Council of the League of Arab States in its extraordinary session at the level of permanent delegates on 20/12/2011. See, Arab League extraordinary Summit session (December 20, 2011).

<sup>277</sup> The Summit was held without the presence of Syria, as it was suspended in 2011. Gui, ‘Arab league Summit dealing with hr,’ L’Archivio Pace Diritti Umani è stato istituito in base all’Art. 2 della L.R. del Veneto 30 marzo 1988, n18 e successiva L.R. 16 dicembre 1999, 55 (2013) <<http://unipd-centrodirittiumani.it/en/schede/Arab-League-Summits-dealing-with-human-rights/299>>

<sup>278</sup> LAS Council, Resolution No. 7489, ‘Establishment of an Arab Court on Human Rights’, 24th Summit, (26 March 2013) 121.

<sup>279</sup> ‘[...]After studying a note by the Secretariat, and the report of the activities of the General Secretariat between sessions’. See Ministerial level session 140th Res. No. 7655 (September 1-2 2013). LAS Council, decision No. 593 ‘Draft Statute of the Arab Court of Human Rights’, 25th Summit (Kuwait March 25 to 26, 2014).



Organization for Human Rights, the Cairo Institute for Human Rights Studies and the Egyptian Initiative for Personal Rights (and others consisting of more than 50 international, national, and regional human rights NGOs and human rights defenders and experts).<sup>280</sup> There, it is submitted that if an Arab Court for Human Rights is to be established it needs to provide a platform for redress for both victims of human rights violations, as well as violations committed by non-state actors.<sup>281</sup> The report also stressed the need for the Arab Charter on Human Rights to undergo reform to bring it in line with international standards. As well as the need for independent civil society organisations in the region to be consulted before an Arab Court of Human Rights is established.<sup>282</sup> This is necessary in order to ‘adapt to the unprecedented changes in the region and respond to peoples’ demands’.<sup>283</sup>

However, it appears these letters and reports have not been considered by the Arab League. At its 25<sup>th</sup> session, the Summit agreed to continue drafting the Statute of the Arab Court on Human rights on March 17-18 2014 in Cairo, to further the project in hope of it being presented to the upcoming meeting of the Ministerial Council.<sup>284</sup> The Arab League and the Bahrain Human Rights Institution subsequently held a conference on 25 to 26 May 2014, where a draft statute was agreed.<sup>285</sup> However, again, the drafting process of the Statute remained behind closed doors.<sup>286</sup> The ICJ and FIDH are

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<sup>280</sup> FIDH, ‘The establishment of an Arab Court of Human Rights must be consistent with universal standards’ (2013) <<http://www.fidh.org/en/north-africa-middle-east/League-of-Arab-State/The-establishment-of-an-Arab-Court-of-Human-Rights-must-be-consistent-with-13097>> accessed 1 January 2015.

<sup>281</sup> *ibid.*

<sup>282</sup> *ibid.*

<sup>283</sup> *ibid.*

<sup>284</sup> Draft Statute of the Court of the Arab Human Rights, 25<sup>th</sup> session, No. 593, (Kuwait, 25-26 March 2014). Bahrain Ministry of Foreign Affairs <<http://www.mofa.gov.bh/egovservices/achr/InfoEn.aspx>> See decisions No. 572 and 573 of the LAS summit council of 26 March 2013, <<http://www.lasportal.org/wps/wcm/connect/d289c9804f0a09648a349ea79d151c73/%D8%A7%D9%84%D9%82%D8%B1%D8%A7%D8%B1%D8%A7%D8%AA.pdf?MOD=AJPERES>> accessed 1 January 2015.

<sup>285</sup> FIDH ‘Arab League should postpone action to establish a court of human rights’ (2 September 2014) <<http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/15957-arab-league-should-postpone-action-to-establish-a-court-of-human-rights#nb1>>; See also H Toumi ‘Arab Court for Human Rights forum in Bahrain King calls for Arab contributions to international justice, fairness’ *Gulf News* (24 May 2014) <<http://gulfnews.com/news/gulf/bahrain/arab-court-for-human-rights-forum-in-bahrain-1.1338036>> accessed 1 January 2015.

<sup>286</sup> ICJ, ‘Arab League should postpone action to establish a court of human rights’ (2 September 2014) <<http://www.icj.org/arab-league-should-postpone-action-to-establish-a-court-of-human-rights/>> accessed 1 January 2015.

concerned of the lack of transparency of the work of the drafting committees of Statute, and its failure to include NGOs during these important sessions.

The draft Statute does not permit individual victims to petition to the Court, only Member States, thus defeating the purpose of the Arab Court.<sup>287</sup> As noted in chapter 2, the most important benefit of regional human rights system is the individual complaint procedures. As the OHCHR, affirms ‘[i]t is through individual complaints that human rights are given concrete meaning’.<sup>288</sup>

Therefore, a group of 27 regional and international organisations issued a statement of concern addressed to the Arab League with regards to the proposed Statute, as they claim would deny victims justice and ability to seek redress.<sup>289</sup> They also argue that the rules provided for selection of Judges at the Arab Court (provisioned in Articles 7, 8, 15) do not meet international standards.<sup>290</sup> For example, it is submitted that judges are to be elected to represent States; however, the NGOs claim this obstructs the judges’ abilities to act impartial and within their individual capacity. Thus, the League is requested to consult and incorporate the UN Basic Principles on the Independence of the Judiciary, and redraft the Statute. In order to ensure Judges are impartial, guarantee due process, and provide clear criteria and processes for the removal of judges.<sup>291</sup>

Another problem highlighted in the report is the ‘Subject matter jurisdiction of the Court’ (Article 16 of the Arab Court Statute). According to the NGOs, the Arab Charter needs to be amended to meet international standards (this will also be discussed in the subsequent chapter). The concerns include provisions that do not prohibit cruel, inhuman, or degrading punishment, or promote equality between men and women.<sup>292</sup>

They state:

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<sup>287</sup> *ibid.* (ICJ 2014)

<sup>288</sup> OHCHR ‘Human Rights Treaty Bodies – Petitions’ (2013)

<<http://www2.ohchr.org/english/bodies/petitions/individual.htm>> accessed 2 January 2015

<sup>289</sup> HRW, ‘Arab League: Improve Regional Court Proposal, Draft Would Bar Victims from Filing Rights Complaints’ (6 June 2014) <<http://www.hrw.org/news/2014/06/06/arab-league-improve-regional-court-proposal>> accessed 1 January 2015. See also FIDH, ‘Proposed Arab Court of Human Rights: An empty vessel without substantial changes to the draft statute’ (6 June 2014) <http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/15489-proposed-arab-court-of-human-rights-an-empty-vessel-without-substantial>> accessed 1 January 2015.

<sup>290</sup> *ibid.* (HRW 2014).

<sup>291</sup> See FIDH (2013) above n 285.

<sup>292</sup> *ibid.*

Provisions relating to the subject matter jurisdiction and applicable law of the Arab Court should therefore be amended so as to ensure that the Court, when applying the provisions of the Arab Charter does not provide interpretations that have the potential to be inconsistent or conflict with States' other obligations under international law. The Court should apply the most protective standard of human rights law that applies in the State concerned.<sup>293</sup>

Finally, the most important concern from the NGOs is restricting access to individual petitions to the Arab Court (article 19). As discussed in Chapter 2 the main purpose of a regional human rights court is to provide a platform for redress to victims of human rights abuse. However, the Statute only allows State parties to access the Court on behalf of the victim.<sup>294</sup> It also provides discretion to State parties whether or not they allow NGOs to submit a case on behalf of individuals. According to the FIDH *et al.*, if this provision does go through in the final Statute of the Court, it would 'eviscerate the effectiveness of the Court'.<sup>295</sup>

Furthermore, it is equally important to stress that inter-state complaints, of which the Statute promotes, rarely occur in other regional and international human rights apparatus. For example, although the ECHR allows interstate complaints, it seldom ever occurred.<sup>296</sup> Also Article 34 of the ECHR allow individual complaints 'from any person, non-governmental organisation or group of individuals claiming to be the victim of a violation by one of the High Contracting Parties of the rights set forth in the Convention or the protocols thereto'.<sup>297</sup>

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<sup>293</sup> *ibid.*

<sup>294</sup> *ibid.*

<sup>295</sup> *ibid.*

<sup>296</sup> Ireland v. United Kingdom (1978) was the first inter-state case brought before the ECtHR. Ireland v. United Kingdom, (5310/71) [1978] ECHR 1 (18 January 1978). See also Ireland V United Kingdom' (2008) Irish Centre for Human Rights National University of Ireland, Galway <[http://www.nuigalway.ie/human\\_rights/Projects/Project\\_Ireland/ireland\\_v\\_uk.html](http://www.nuigalway.ie/human_rights/Projects/Project_Ireland/ireland_v_uk.html)> There were also several other cases brought before the court of Cyprus v Turkey concerning Northern Cyprus. application No. 38263/08, see Registry of the European Court of Human Rights Strasbourg, 'Annual Report 2011' (2012) Strasbourg 12 <[http://www.echr.coe.int/NR/ronlyres/219E9A92-716A-4337-99DE053358F536B3/0/2011\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/ronlyres/219E9A92-716A-4337-99DE053358F536B3/0/2011_Rapport_Annuel_EN.pdf)> More recently, in 2011 two inter-State cases pending before the Court, Georgia v. Russia (nos. I and II) 12, <[http://www.echr.coe.int/NR/ronlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/ronlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011_Rapport_Annuel_EN.pdf)>

<sup>297</sup> See also Article 32 of ECHR Jurisdiction of the Court: 'The jurisdiction of the Court shall extend to all matters concerning the interpretation and application of the Convention and the protocols thereto which are referred to it as provided in Articles 33, 34, 46 and 47' see ECHR by Protocols No. 11 and No. 14 Rome, 4.XI.1950. See also UN Office of the High Commissioner for Human Rights/ International Bar

Moreover, many are sceptical as to how the Arab Court on Human Rights will function if Bahrain, the alleged host country, is itself under the spotlight for its human rights violations.<sup>298</sup> As such, Romano questions the validity and actual aim of the Arab Court.<sup>299</sup> For example, on 9 September 2013, the former UN High Commissioner for Human Rights, Navi Pillay, was also dissatisfied with the human rights situation in Bahrain. She called on Bahrain ‘to fully comply with its international human rights commitments, including respect for the rights to freedom of expression, peaceful assembly, and association [...]’.<sup>300</sup> Amnesty International claims that Bahrain needs to take the UN’s recommendations ‘at face value and to implement real change is an urgent first step to remedying the dire human rights situation in the Gulf kingdom’.<sup>301</sup>

#### 4.5 Conclusions

This chapter has attempted to highlight the complex history of the Arab region. The fall of Ottoman Empire in the early twentieth century has had a tremendous effect on the Arab region. Documents such as the Sky-Picot agreement and the Balfour Declaration were subsequently adopted and have created permanent instability in the region. The European colonialists divided provinces into States, installed weak democratic institutions that served western interests, influenced tribal, ethnic, and sectarian

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Association, *Human Rights in the Administration Of Justice: A Manual On Human Rights For Judges, Prosecutors and Lawyers*, Professional Training Series Series No.9 (New York- Geneva, UN Publications, 2003) 95- 111. Emphasised.

<sup>298</sup> C PR Romano ‘The Shadow Zones of International Judicialization’ in C Romano, K Alter and Y Shany, *The Oxford Handbook of International Adjudication* (Oxford University Press 2013) 90- 110, at 100-101.

<sup>299</sup> *ibid.*

<sup>300</sup> Opening Statement by Ms. Navi Pillay United Nations High Commissioner for Human Rights at the Human Rights Council 24th Session, 9 September 2013,

<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13687&LangID=E>>;

However, parliament’s human rights committee chairman MP Abdul Hakim Al Shammari described her comments as being dictated by opposition groups: ‘The comments by the UN High Commissioner for Human Rights are clearly one-sided and should not be given any importance’. ‘Bahrain raps UN rights chief’s comments’ *Trade Arabia* (Manama, September 10, 2013)

<[http://www.tradearabia.com/news/LAW\\_242478.html](http://www.tradearabia.com/news/LAW_242478.html)>; See also UN Human Rights Council, Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, Regional arrangements for the promotion and protection of human rights United Nations, Twenty-fourth session Agenda item 3 A/HRC/24/L.35 (23 September 2013).

<sup>301</sup> P Luther, ‘Bahrain: UN human rights review must spur action not hollow pledges’ Middle East and North Africa Programme Director at Amnesty International (19 September 2012)

<<https://www.amnesty.org/en/news/bahrain-un-human-rights-review-must-spur-action-not-hollow-pledges-2012-09-19>> accessed 1 January 2015.

conflicts. In addition, one of the main reasons for this instability is the fact that Arab leaders failed to unify from the beginning, during and since the ousting of the Ottoman Empire against any external influence and support the common Arab and Islamic cause.

Since 1964, the LAS Council at the Summit level has adopted many resolutions and declarations, in order to promote peaceful relations between States,<sup>302</sup> While the human rights situation of Palestinians are important, the Summit failed to provide a coherent and effective policy to promote and protect their human rights, as well as the human rights of all people in the region, including ethnic minorities. This had major repercussions as will be looked at further in chapter 7.

It also seems the Arab League attempted to collaborate with the UN towards promoting international human rights in the region for political reasons.<sup>303</sup> It was not until two decades after the League was established that an Arab Charter on Human Rights was considered, and it took another decade for the League to deliberate on an Arab Court of Human Rights. However, it is submitted that these mechanisms adopted by the League fail to meet international expectations and complement international standards. The following chapter will attempt to critically analyse the history behind Arab League's approach to international human rights and its drafting process of the Arab Charter on Human Rights.

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<sup>302</sup> See Gunay above n 242.

<sup>303</sup> *ibid.* See above discussions.

## Chapter 5

### The Arab Permanent Commission on Human Rights

#### 5.1 Introduction

This chapter presents a critical assessment of the Arab Permanent Commission on Human Rights (the first human rights commission of the Arab League) and examines its efforts to promote and protect universal human rights norms and precepts. The analysis reviews the chronology of events leading to the Arab League's adoption of the Arab Charter on Human Rights. Understanding these evolutionary processes are important, in order to comprehend the current legislative framework the Arab League offers to promote and protect human rights and to have a knowledge of the limitations of the system. It is also recognised at its inception, the Arab Permanent Commission on Human Rights, like the Arab League summits, was mostly concerned with the Israeli-Palestinian situation, rather than human rights violations within other parts of the Arab world. Furthermore, the Commission consists of government appointment representatives as opposed to democratically elected ones; this impedes the work of the Commission and makes it highly politicized. Additionally, the Commission has a very limited mandate and is considered a consultative organ rather than an independent human rights commission with binding decisions. Although the idea of an Arab Human Rights Charter was first promulgated in 1971, it took another decade for the Charter to be adopted (1994). However, the first draft of the charter never came in force and did not meet international standards, nor was there political will by Arab States to adopt the Charter.

Therefore, the following will evaluate the history of the Arab Permanent Human Right Commission towards the promotion and protection of human rights in the region, and asses its limitations. It will attempt to analyse the role (if any) of Arab NGOs that influenced the Commission to adopt a regional human rights Charter. It will also endeavour to critically examine other regional human rights documents established such as the Universal Declaration of Human Rights in Islam (UIDHR) (1981) and the Cairo Declaration of Human Rights (1990), as well as the relationship and influence of Organization of Islamic Cooperation (OIC) (1972) with the Arab league. Finally, it will

critically analyse the first draft of the Arab Charter on human rights adopted in 1994, and attempt to understand why the Charter never came in force.

## 5.2 The Arab Permanent Commission on Human Rights

In order to further its international human rights mandate and support its implementation at the domestic and regional level, the UN issued Resolution No. 2081 on 20 December 1965 at the UNGA 140th plenary meeting. The Resolution inaugurated 1968 as the international year for human rights, and called on regional intergovernmental organisations to commemorate that year and provide details of their ‘accomplishments, programmes and other measures to realize protection of human rights’.<sup>1</sup>

In response to Resolution 2081 of the UN General Assembly, in 1966<sup>2</sup>, accepting the invitation of the United Nations, the Council of the Arab League passed resolution No. 2259 (XLVI)<sup>3</sup> to prepare a program for participation in the international year of human rights.<sup>4</sup> In an attempt to show its position with respect to inaugurating 1968 as the International Year for Human Rights, the Arab League replied:

1 The field of human rights is a vital one for strengthening links among countries, which belong to a regional area.

2 As for the procedure of establishing regional commissions on human rights and specifying their functions, the League of Arab States believes that the proper foundations for setting up such regional commissions are the foundations on which a regional intergovernmental organization is based. Thus the regional commissions should be established within the framework of international or regional intergovernmental organizations.<sup>5</sup>

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<sup>1</sup> UN General Assembly, International Year for Human Rights, 20 December 1965, A/RES/2081, Para.8. Subsequently, on September 27, 1967, the Secretary General of the League of Arab States received a letter from the United Nations, regarding the League’s need of establishing a permanent commission on human rights. The two committees, mentioned above were also notified of this letter, and both committees expressed their views on the report submitted to the Arab League’s Secretary General on the 5th of February 1968. Cited from MA Al-Midani, ‘Human Rights Bodies in the League of Arab States’ (2012) 3 *Jinan Hum. Rts.J.*, 109-135, 112. See also S Marks, « ‘La Commission permanente arabe des droits de l’homme’ (1970) Vol. III, No. 1, *Revue des Droits de l’Homme* (French), 101-108, at 102.

<sup>2</sup> AH Robertson, and JG Merrills, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights*, (4 edn Manchester University press, 1996) 239. Res. No. 1159 (XLI) of 5 August 1966. Arab League Council Res. No. 2304 (XLVII) of 18 March 1967; Arab League Council Res. No. 2443 of 3 September 1968. ‘The creation of the Commission and the Decision s of the Conference were reported to the UN Commission on Human Rights at its twenty-fifth session (document E/CN.4/L1042 of 18 February 1969); See also SP Marks, ‘La Commission Permanente Arabe des Droits de l’Homme’, *Human Rights Review*, III, 1970, p.101.

<sup>3</sup> Resolution No.2259 (XLVI), December 9 1966.

<sup>4</sup> See above Al-Midani n 1 at 112.

<sup>5</sup> Robertson and Merrills n 2 at 239. See also Recommendations 6(XXIII) of 23 March 1967. P. 271.



As such, the Council of the Arab League adopted resolution number 2304/46 on the 18<sup>th</sup> of March, 1967, to establish a guiding committee to collaborate with the Preparation Committee to help organize its participation in Tehran the following year.<sup>6</sup> Among the issues discussed in the report by the Secretariat of the Arab League (dated the 5th of February 1968)<sup>7</sup> were the establishment of a regional commission on human rights and how Member States of the League are to envoy their own representatives to the Commission.<sup>8</sup> The report also stated how the Arab League aimed to grow a relationship with the United Nations, especially with regards to the protection of human rights.<sup>9</sup> This is important to highlight, because it shows the Arab League needed support by the UN in order to create its regional human rights mechanism. It also shows prior to this, a human rights commission has not been considered by the League. Therefore, from its inception, the Commission was created as a political organ to respond to the demand of the UN res. 50/3/11.<sup>10</sup>

Thus further to the above, on 3 September 1968, the Arab League, based on the recommendations of its Political Affairs Committee, passed resolution No. 2243/48 (XLVIII) regarding its approval for the establishment of the Arab Permanent Commission on Human Rights (The Human Rights Commission).<sup>11</sup> The Commission would be created as the permanent technical committee of the Arab League and would be tasked with dealing with all issues related to human rights referred to it either by the

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<sup>6</sup> See B Ghali, *Les dimensions internationales des droits de l'homme* (UNESCO, Paris, 1978) 636 <<http://unesdoc.unesco.org/images/0013/001342/134209fo.pdf>> (translated from French). See also AA An-Na'im, 'Human Rights in the Arab World: A Regional Perspective' (2001) 23 Hum. Rts. Q, 732, at 712; See Arab League Council Resolution No. 2443 of 3 September 1968; A/RES/2441(XXIII); meeting record A/PV.1748 (19 Dec. 1968) (non-recorded A/7433, 'International Year for Human Rights'). The creation of the Commission and the Decisions of the Conference were reported to the UN commission on human rights at its twenty-fifth session (document E/CN.4/L1042 of 18 February 1969). For further discussion, see SP Marks, 'La Commission permanente arabe des droits de l'homme' (1970) Vol. III, No. 1, *Revue des Droits de l'Homme* (French) 101. This was a letter distributed a document by the UN Human Rights Commission on the 19th of February 1968.

<sup>7</sup> See above Al-Midani n 1 at 112

<sup>8</sup> *ibid* at 113.

<sup>9</sup> *ibid.*, The 1968 conference asked the Arab Permanent Commission on Human Rights to actually prepare an Arab Charter on Human Rights (*ibid.*, Al-Midani, 117).

<sup>10</sup> See above Al-Midani n 1 at 113. See Doc. D 50/3/11, p. 107. Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3 (1968).

<sup>11</sup> Al-Midani, above n 1 at 112, 113. Alternatively, often called 'standing committee' (see Zerrougui, L. 'The Arab Charter on Human Rights 2008, University of Essex p.8).

General Secretariat or Member States.<sup>12</sup> Soon after, on December 2-10, 1968,<sup>13</sup> the Secretariat of the League convened in Beirut where it held the region's first Arab regional conference on human rights.<sup>14</sup>

The Council of the Arab League appointed a Chairman of the Arab Permanent Commission for a term of two years<sup>15</sup> and the Commission consisted of representatives of all Member States.<sup>16</sup> However, it has been submitted that the primary reason for the Arab League to consider a human rights commission and even attend the Tehran Conference, was because of the situation in Palestine. They thought attending UN conferences and meetings can support their case of 'censuring Israel over its treatment of the inhabitants of the occupied territories'.<sup>17</sup> Unfortunately, to date an effective resolution between the Arabs and Israel has never been reached.

On September 1969, the Arab Permanent Commission on Human Rights (or often called Standing Committee)<sup>18</sup> prepared a plan of action, which was approved by the Council. The main principle of the plan is that all issues with human rights in the Arab world would fall under the auspicious of the Arab Permanent Commission on Human Rights,<sup>19</sup> such as, promoting respect for human rights and protection of the rights of the individuals.<sup>20</sup> However, unlike other regional or international human rights

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<sup>12</sup> Arab League (LAS) – General Secretariat, (2006) 'The Arab Charter of Human Rights', Informational letter, Information and Communication Sector.  
<<http://www.arableague.org.uk/uk/League%20of%20Arab%20State%20and%20Human%20Rights.pdf>> accessed 12 May 2014.

<sup>13</sup> LAS Council Resolution No. 2443/48, Sept. 3, 1968.

<sup>14</sup> The conference was held in Beirut, 2-10 December 1968. Besides the Arab States, India, Pakistan and the Vatican attended the conference Cited from Al-Jazy 'The Arab League and Human Rights Protection' I *Democracy: The Rule of Law and Islam* edited by E Cotran, A O Sherif (1999) 211-220, at 214. See also An-Na'im (2001) n 6, at 712.

<sup>15</sup> League of Arab States & Human Rights (General Secretariat – 2006. Information Letter, [www.las.int](http://www.las.int).

<sup>16</sup> *ibid*, see also, M Rishmawi 'The League of Arab States in the Wake of the "Arab Spring"' (2012) 51.  
<<http://www.cihrs.org/wp-content/uploads/2013/09/Arab-League.pdf>> accessed 12 May 2014.

<sup>17</sup> AH Robertson and JG Merrills, *Human Rights in the World* (Manchester: Manchester University press, 1977) 198, cited in F Viljoen *International Human Rights Law in Africa*, (2<sup>nd</sup> edn, Oxford University Press 2012) 13.

<sup>18</sup> N Gunay 'Arab League Summit Conferences, 1964–2000' Washington institute (2013)  
<<http://www.washingtoninstitute.org/policy-analysis/view/arab-league-summit-conferences-19642000>> accessed 15 Dec 2013.

<sup>19</sup> D P Forsythe, *Encyclopaedia of Human Rights*, Vol.1 (Oxford University Press, 2009) 412.

<sup>20</sup> *ibid*, see also Library of Congress. Foreign Affairs and National Defence Division, United State. Congress. House. Committee on International Relations. Subcommittee on International Organizations 1977 the University of Michigan Human rights in the international community and in U.S. foreign policy (4 Feb 2009) 1945-76, 58.

commissions, the Arab Permanent Commission on Human Rights was never intended to be a monitoring mechanism.<sup>21</sup>

Since its inception, it held several meetings and participated in a range of seminars and sessions organised by regional and international organisations,<sup>22</sup> however, for the first year of its activity, it ‘it never received a single report by a member State, but rather has issued already 20 recommendations on the rights of the Palestinian People’.<sup>23</sup> The Arab Permanent Commission on Human Rights worked with the United Nations Commission on Human Rights with regards to the concern of the Israeli human rights violations in the occupied territories.<sup>24</sup> It subsequently issued a plan of action, which included ‘receiving reports from the state member of the league regarding human rights achievements, organizing symposiums, participating in conferences and reporting on the Israeli violations of human rights in the occupied territories’.<sup>25</sup>

Accordingly, Rishmawi submits that the Arab Permanent Commission on Human Rights has a restricted mandate that can hinder its ability to engage in human rights concerns more significantly in the region.<sup>26</sup> Unlike the UN Human Rights Council or other regional human rights bodies, the Commission does not have special mechanisms

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<sup>21</sup> Directorate-General for External Policies of the Union, European Parliament, ‘The role of regional human rights mechanisms’, Directorate B Policy Department Study, EXPO/B/DROI/2009/25 /November/ 2010, 85

<<http://www.europarl.europa.eu/committees/en/droi/studiesdownload.html?languageDocument=EN&file=33385>> accessed 12 May 2014.

<sup>22</sup> Europe Aid « Lawyers for Lawyers » File N°10: The Arab Charter on Human Rights 2008 165-110, EuropeAid/126412/C/ACT/Multi,<<http://www.observatoire-avocats.org/wp-content/uploads/File-10-Arab-charter-on-human-rights.pdf>> accessed 12 May 2014. See also T Koraytem (2001) ‘Arab Islamic Developments On Human Rights’ (2001) 16 Arab L.Q.

<sup>23</sup> European Parliament, at n 21. See also B El Din Hassan., ‘Regional protection of Human Rights in Arab State In Statu Nascendi’, in J Symonides (ed.), *Human Rights: International protection, Monitoring, Enforcement*, Ashgate and UNESCO Publishing, Paris 2003, 239-252, at 239. This is also supported by Forsythe, where he argues the Commission was mainly concerned with Palestinian affairs. See Forsythe above n 19, at 412.

<sup>24</sup> See Al-Jazy above n 14, at 491. It is important to reiterate, that since 1981 the UNGA passed resolution 36/226 A&B of December 17, 1981; and in UN SC first passed resolution, on the Situation of the Middle East, See UNGA ‘The situation in the Middle East’ A/RES/44/40C, Plenary 37 A/44/PV.73 ,4 Dec. 1989 147-2-8 A/44/L.49. UNGA, The situation in the Middle East A, 11 December 1992, A/RES/47/63.

<sup>25</sup> See above Al-Jazy n 14, at 215.

<sup>26</sup> See Rishmawi above (2012) n 16, at 51.

that allow the victims of human rights violations to have direct access to the Commission, such as special rapporteurs or working groups.<sup>27</sup>

The Commission has been involved to some extent in Council of Arab League meetings, and many of its recommendations that concern human rights have been eventually passed as resolutions at the Summit level by the Council of the Arab League.<sup>28</sup> However, as evaluated it appears outside of the Palestinian-Israeli conflict the contribution of the Commission has been limited.

As such, Viljoen argues the Commission is a highly politicized body '[a]ccentuated by the method of appointment',<sup>29</sup> composed of government representatives as opposed to independent experts.<sup>30</sup> This is also supported by Robertson and Merrills, when they note that the commission may only submit 'recommendations' to the Council of the Arab League.<sup>31</sup> Therefore, as supported by Al-Midani, the institutional framework of the Commission represents a drawback in the effective functioning and the credibility of its decisions.<sup>32</sup> He argues, unlike the American or African Commission, the Arab Permanent Commission on Human Rights does not appoint elected members based on their competence from a list of names nominated by the Member States in accordance to their knowledge, experience and expertise in international law and human rights.<sup>33</sup> Furthermore, the Chairman of the Commission is also appointed by the Arab Council for two-year terms.<sup>34</sup>

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<sup>27</sup> *ibid.*

<sup>28</sup> This has been seen with the Council of Arab League Summits in the previous Chapter. The most significant and beneficial (to some extent) was the report submitted to the LAS Council. Report and recommendations of the Arab Permanent Human Rights Committee, Decision No. 6898, 127th Ministerial Level session (28-31 January 2008). This will also be assessed below.

<sup>29</sup> F Viljoen, 'International Human Rights Law: A Short History' (2009) UN Chronicle. Vol. XLVI No. 1 & 2 <<http://unchronicle.un.org/article/international-human-rights-law-short-history/>> accessed 1 January 2015.

<sup>30</sup> AH Robertson and JG Merrills, *Human Rights in Europe* (Manchester Univ. Press, 1977) 198-199.

<sup>31</sup> *ibid.* Robertson and Merrills, (1977) 198-199.

<sup>32</sup> See above Al-Midani (2012) n 1, at 121.

<sup>33</sup> *ibid.*

<sup>34</sup> Arab League (LAS) – General Secretariat 'The Arab Charter of Human Rights', Informational letter, Information and Communication Sector, (2006) <<http://www.arableague.org.uk/uk/League%20of%20Arab%20State%20and%20Human%20Rights.pdf>> accessed 1 January 2015. See also LAS, History of the Arab League, 'B – Standing Committees'. (translated from Arabic).

This was despite the many opportunities the Arab League had to establish an effective human rights commission, like that of the European, Inter-American or African counterpart. For example, the Arab Permanent Commission attended many meetings organised by the UN on regional human rights establishments.<sup>35</sup> Such as in 1969, when Member States were invited to a conference in Cairo, held by the UN Division of Human Rights in cooperation with the Government of the United Arab Republic (Syria and Egypt). The seminar studied the ‘prospect of a regional commission on human rights’ with particular reference to Africa, ultimately the conference resulted in the foundation of the African system of Human Rights.<sup>36</sup>

Therefore, early on since its establishment the League failed to reproduce what it has learned from other regional human rights organisations, such as the African Human Rights Model.<sup>37</sup> The African Commission on Human and Peoples' Rights is much more established than the Arab Permanent Commission on Human Rights and includes democratically elected representatives.<sup>38</sup> The mandate of the African Commission on Human and Peoples' Rights is clearly stipulated ‘[t]o promote human and peoples' rights and ensure their protection in Africa’.<sup>39</sup> The African Charter on Human and Peoples' rights establishes 14 provisions (Art. 45-59) for its procedure on how the Commission works.<sup>40</sup> The African commission is able to receive communications from state parties, NGOs and individuals<sup>41</sup> about human rights violations committed by a state party; the commission can issue resolutions on specific human rights situations in

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<sup>35</sup> R Gittleman, ‘The African Charter on Human and Peoples' Rights: A Legal Analysis’ (1982) Va. J. Int'l L Vol. 22:4, 671. See Seminar on the Regional Commissions on Human Rights with Special Reference to Africa, U.N. Doc. ST/TAO/HR/39 (1969) (held in Cairo, United Arab Republic, Sept. 2-15, 1969). See chapter 2, and 1968 Tehran Conference.

<sup>36</sup> *ibid.* See above Al-Midani (2012) n 1, at 121.

<sup>37</sup> See above Al-Midani (2012) n 1, at 121.

<sup>38</sup> *ibid.*

<sup>39</sup> Art. 30. African (Banjul) Charter on Human And Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986). See for example, Rules of Procedure of the African Commission on Human and Peoples' Rights, adopted on October 6, 1995, 9 Hum.Rts L.J. 326 (1988) <[http://www.achpr.org/english/\\_onfo/rules\\_en.html](http://www.achpr.org/english/_onfo/rules_en.html)>

<sup>40</sup> See Arts 46-59 (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

<sup>41</sup> The Arab Commission on the other hand does not have the capacity or framework to receive individual communications.

countries and adopt ‘urgent resolutions’ on particular human rights issues; it can also publish press releases and State parties’ ‘urgent appeals’.<sup>42</sup>

Notwithstanding, to assist the Arab Permanent Human Rights Commission, the Arab League constituted the Human Rights Department, under the authority of the Secretary General and is supervised by the Assistant Secretary General for Legal Affairs.<sup>43</sup> The Human Rights Department acts as the Secretariat of the Arab Permanent Commission on Human Rights. It conducts meetings, drafts agendas and prepares reports and recommendations.<sup>44</sup> According to the Arab League, its foundation is based on the League’s affirmation of the principles of the UN Charter and the Universal Declaration of Human Rights. As well as the provisions of ICCPR and ICESCR, taking into account the Arab Charter of Human Rights and the Cairo Declaration on human Rights in Islam.<sup>45</sup>

Thus it seems the Arab League attempted to convey its universal approach to human rights, however, this department works under the mandate of the Arab Permanent Commission on Human Rights, which itself is inept and highly politicized, as this study suggests. Both the Commission and the Department are not provided with sufficient means and power to have any effect to influence domestic policies to monitor and protect human rights in Arab States.<sup>46</sup> This supports the research; the institutions provided by the Arab League to promote and protect human rights seem to be created as a political front as opposed to practical effect.

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<sup>42</sup> International Federation for Human Rights (FIDH) ‘The Arab League and Human Rights: Challenges Ahead’ (Regional Seminar held in Cairo 16-17 February 2013) 22

<[http://www.fidh.org/IMG/pdf/arab\\_league\\_human\\_rights\\_challenges.pdf](http://www.fidh.org/IMG/pdf/arab_league_human_rights_challenges.pdf)> accessed 1 January 2015. See also Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, Adopted by the 2nd Ordinary Session of the Assembly of the Union, Maputo, CAB/LEG/66.6 (Sept. 13, 2000); reprinted in 1 Afr. Hum. Rts. L.J. 40, *entered into force* Nov. 25, 2005.

<sup>43</sup> *ibid*, FIDH, at 16.

<sup>44</sup> See LAS, ‘The Arab Human Rights Department’

<[http://www.lasportal.org/wps/portal/las\\_ar/inner/!ut/p/c5/vZJLj4IwFIV\\_Cz\\_>](http://www.lasportal.org/wps/portal/las_ar/inner/!ut/p/c5/vZJLj4IwFIV_Cz_>); See also Al-Midani n 1, at 215.

<sup>45</sup> *ibid* LAS, ‘The Arab Human Rights Department’.

<sup>46</sup> This is supported by many, including the International Federation for Human Rights (FIDH) where it adds the department of human rights is deficient in its finance and human resources, FIDH (2013) n 42, at 16. This is also in line with Al-Midani’s arguments, see above n 1, at 215.

### 5.3 Towards an Arab Human Rights Charter

As discussed in chapter 2, the UN completed its bill of rights in 1966, during this time there was international pressure for States to ratify these key international instruments. However, instead of the Arab Permanent Commission on Human Rights supporting Member States to ratify these key instruments and align their legal systems to satisfy these provisions, the League decided to task its commission to create its own regional human rights treaty. On March 11, 1970, the Committee of Experts (composed of government representatives) were created by recommendation of the Arab Permanent Commission on Human Rights.<sup>47</sup> On May 13, 1970, the Commission adopted a recommendation to form a drafting Committee to begin the drafting of an ‘Arab Declaration of Human Rights’.<sup>48</sup> The Committee convened from April 24 to July 10, 1971 and prepared a draft of the ‘Declaration on the Rights of Citizens of Arab States and Countries,’ consisting of 31 Articles covering civil and political rights and economic, social, and cultural rights. However, the committee received only nine responses from Arab States to its draft, ‘varying between support, reservations, and total opposition’.<sup>49</sup> This illustrates that although the Arab Permanent Commission on Human Rights had an intention to create a regional human rights treaty, there was absence of a political will.<sup>50</sup> At the time, many States were preoccupied with their own domestic affairs, and some have still not gained full sovereignty.

For the next ten years (from 1971 to 1981), the Council of the League of Arab States did not partake in any human rights activities – other than to continue support the Arab Permanent Commission.<sup>51</sup> However, ‘human rights talk’ became gradually an integral part of the UN and international relations.<sup>52</sup> Thus, it seems the League was influenced

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<sup>47</sup> See also the BB Ghali, ‘The League of Arab States,’ in K Vasak, *The International Dimensions of Human Rights*, Vol. 2 (Paris, UNESCO and Westport: Greenwood Press 1982) 575-581, at 575 See also AH Robertson, *Human Rights in the World* (Manchester: Manchester Univ, Press, 1972), 147.

<sup>48</sup> See An-Na’im above n 6 (2001) 713.

<sup>49</sup> *ibid.*

<sup>50</sup> *ibid.*

<sup>51</sup> *ibid.*, An-Na’im 713. Also on November 11, 1979, the Tenth Arab Summit Conference was held in Tunis and adopted the principle of holding periodical Summit Conferences in Arab State. ‘About the League of Arab States | Highlights in the LAS’ History’ Museum With No Frontiers (MWNF) & League of Arab States, 2011-2013 see 1976-1980, 20/11/1979 <<http://www.museumwnf.org/league-of-arab-State/?page=LAS-highlights-in-history.php>> accessed 1 January 2015.

<sup>52</sup> See Forsythe above n 19, at 413. See discussion on the Helsinki Accord in 1974, which ignited further attention on human rights international affairs. See also Organization for Security and Co-operation in

by the UN and other regional groupings that have already established human rights mechanisms such as the Council of Europe (CoE), Organization of American State (OAS), Organisation of African States (AU). The Arab League therefore decided to gain international approval and establish an Arab Human Rights Charter.<sup>53</sup>

From 19-21 May 1979, the next phase of human rights development in the Arab region occurred when the Secretariat of the Arab Union of Jurists summoned in Baghdad, Iraq.<sup>54</sup> The seminar of 1979 called for the renewal of the Permanent Arab Commission and the establishment of a draft Arab treaty on human rights.<sup>55</sup> According to An-Na'im, the Arab Permanent Commission on Human Rights and the Permanent Legal Commission then examined the draft.<sup>56</sup> However, as discussed above, the Arab Permanent Commission on Human Rights is created to serve the political needs of the Arab League and does not seem to have any effect to further UN human rights standards in the region. Even with the Commission, Forsythe believes the Arab League was not supportive of the idea of a regional human rights treaty; this can be due to the presence of authoritarian regimes in the region and the fact that the League became increasingly disunited since the 1967 Arab-Israeli war.<sup>57</sup>

Notwithstanding on March 31 1983<sup>58</sup>, the Council of the League agreed to reconvene to study an Arab convention on human rights, and decided to allow member States to look at the draft and share their views.<sup>59</sup> The draft Charter on Human Rights was postponed

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Europe (OSCE), *Conference on Security and Co-operation in Europe (CSCE): Final Act of Helsinki*, 1 August 1975.

<sup>53</sup> See Forsythe above n 19, at 413.

<sup>54</sup> See above An-Na'im (2001) n 6, at 712.

<sup>55</sup> *ibid.*

<sup>56</sup> H Chekir, 'La modernisation de la Charte arabe des droits de l'homme', *Jura Gentium Rivista di filosofia del diritto internazionale e della politica globale*, (2004) [originally in French] <<http://www.juragentium.org/topics/islam/rights/fr/chekir.htm>.

<sup>57</sup> See above Forsythe n 19, at 413. Nevertheless, member States agreed at the Arab Summit in Tunis in 1983 to adopt an 'Arab Declaration on the Right of the Child'. This was six years prior to the UN convention on the Rights of Child. Where CRC was adopted by the UNGA in 1989, subsequently becoming the most ratified treaty in the world.

<sup>58</sup> Resolution 4458/83 on March 28, 1985.

<sup>59</sup> An-Na'im (2001) n 6, at 712.



again, ‘pending the adoption of an Islamic Declaration on Human Rights and Duties by the Organization of Islamic Conference’.<sup>60</sup>

Furthermore, based on resolution No. 4409, dated the 25th of April 1984, and resolution No. 4567, on March 27, 1986, the Council of the Arab League asked the Arab Permanent Commission on Human Rights to examine a draft Arab convention ‘to regulate the rights of the Arab refugees in the Arab countries’.<sup>61</sup> On 3-8 of October 1988, in Tunis, at its seventh session, the Arab Permanent Commission studied the draft Convention and submitted it to the Legal Commission for approval of ‘the Arab Convention on Regulating the Status of Refugees in the Arab Countries’.<sup>62</sup> The issues of how to protect refugees in Arab states are important, however, the adopted resolution ended up as a declaration, with no binding affect to the status of refugees in the region. In addition, the UN refugee convention was adopted in 1951<sup>63</sup> and its protocol in 1969<sup>64</sup> and has a much stronger definition of refugees, provides an extensive list of provisions for their legal protection by States, and obligates ratifying States to cooperate with supervisory mechanism provide by the UNHCR.<sup>65</sup> However, as will be discussed in the case study in chapter 7, only a few Arab States have ratified the refugee Convention, this illustrates to some extent the limited commitment of Arab League to promoting these fundamental human rights precepts.

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<sup>60</sup> *ibid*, See LAS Council Resolution No. 4458 on 28 March 1985. See also “Modernising” the Arab Charter on Human Rights. – Interestingly, on September 11, 1985 the final version of the Cooperation Agreement between the Arab League and the Organization of African Unity was ratified. See for example, ‘About the League of Arab States | Highlights in the LAS’ History’ Museum With No Frontiers (MWNF) & League of Arab States, 2011-2013 see 1981-1985, 11/09/1985 343<<http://www.museumwnf.org/league-of-arab-State/?page=LAS-highlights-in-history.php>> accessed 1 January 2015.

<sup>61</sup> See An-Na’im (2001) above n 6, 118.

<sup>62</sup> See Al-Midani above n 1, at 118.

<sup>63</sup> UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137. State parties of the Convention are: Algeria 21 Feb 1963 d; Djibouti 9 Aug 1977 d; Egypt 22 May 1981 a (with reservations in respect of article 12 (1), articles 20 and 22 (1), and articles 23 and 24; Morocco 7 Nov 1956 d; Mauritania 5 May 1987 a; Sudan 22 Feb 1974 a (reservation to article 26); Convention relating to the Status of Refugees (status at 23.09.2014) <[https://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg\\_no=V~2&chapter=5&Temp=mtdsg2&lang=en](https://treaties.un.org/pages/ViewDetailsII.aspx?&src=TREATY&mtdsg_no=V~2&chapter=5&Temp=mtdsg2&lang=en)> accessed 1 January 2015.

<sup>64</sup> *ibid*.

<sup>65</sup> United Nations High Commissioner for Refugees (UNHCR) ‘Introductory Note by the Office of the United Nations High Commissioner for Refugees (UNHCR)’ 4 <<http://www.unhcr.org/3b66c2aa10.html>> accessed 1 January 2015.

On March 10, 1989, the Council of the League issued resolution No. 4910, calling on the Arab League General Secretariat ‘to accelerate the process of setting standards and conditions that shall regulate the invitation of human rights non-governmental organizations [NGOs] to participate in the works of the Commission as observers’.<sup>66</sup> However, their involvement with the League did not have any effect.<sup>67</sup> In other regions of the world, NGOs had a tremendous influence with promoting and protecting human rights. This is especially true with the AU and the OAS. For example, with the OAS,<sup>68</sup> Article 44 stipulates that ‘any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organization, may lodge petitions with the Commission’ to complain or denunciate a State Party’s violation of the Convention.<sup>69</sup> However, NGOs in the Arab region have a very limited role and have difficulties being registered within Member States of the Arab League before attending Commission meetings as observers. In addition, Article 55 of the African Charter establishes the important role of NGOs – who at Commission meetings have observer status and may participate, ‘without a vote, in the discussions during the public sessions of the Commission’.<sup>70</sup> African and international NGOs have played a useful role where recent statistics shows more than 100 NGO representatives were present in the ACHPR sessions.<sup>71</sup> This has led the Commission to enhance its structure.<sup>72</sup> For example, it created a special rapporteur and working groups on particular human rights issues that help strengthen its human rights mandate.<sup>73</sup> Unfortunately, it is submitted that Arab

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<sup>66</sup> Al-Midani, (2012), n 1, at 118.

<sup>67</sup> *ibid.*, 117.

<sup>68</sup> Rules of Procedure of the Inter-American Commission on Human Rights’ Approved by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011 and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, for entry into force on August 1st, 2013’, OAS, ‘Basic Documents in the Inter-American System’ <<http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>> accessed 1 January 2015. See also Statute of the Inter-American Commission on Human Rights, O.A.S. Res. 447 (IX-0/79), O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80, Vol. 1 at 88, Annual Report of the Inter-American Commission on Human Rights, OEA/Ser.L/V/11.50 doc.13 rev. 1 at 10 (1980), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 93 (1992).

<sup>69</sup> See also Art. 45, para.3 and 4.

<sup>70</sup> Amnesty International ‘Document - A guide to the African Commission guide on human and peoples’ rights’ A guide to the African Commission guide on human and peoples’ rights, <<http://www.amnesty.org/en/library/asset/IOR63/005/2007/en/693a5f5e-d36a-11dd-a329-2f46302a8cc6/ior630052007enhtml>> accessed 1 January 2015.

<sup>71</sup> FIDH (2013) n 42, at 23.

<sup>72</sup> *ibid.*

<sup>73</sup> *ibid.*

NGOs have been largely ineffective- where only about 12 communications (from the Arab States) were passed to the ACHPR.<sup>74</sup>

Notwithstanding, on 5 December 1991 the UN issued resolution 46/24 commemorating cooperation between the UN and the Arab League.<sup>75</sup> The resolution did not mention the UN- Arab League collaboration in the area of human rights, however it did request the UN Secretary General to strengthen cooperation with the General Secretariat of the Arab League to further the realisation of the goals and purposes set out by the UN:

[T]o intensify further their cooperation towards the realization of the purposes and principles of the Charter of the United Nations, the strengthening of international peace and security, economic development, disarmament, decolonization, self-determination and the eradication of all forms of racism and racial discrimination.<sup>76</sup>

However, it was not until 1992, did the Arab League have the Arab Permanent Commission on Human Rights study (as well as its Legal Commission) to consider amending the draft Charter on Human Rights.<sup>77</sup> The first major initiative taken by the Commission was its contribution in the preparation of the 1994 Arab Charter on Human Rights, the first version of the Arab Charter on Human Rights.<sup>78</sup> The Arab Human Rights Department was also established by the Secretary General of the League of Arab States on the 16th of April 1992, primarily to help the Arab Commission carrying out its tasks.<sup>79</sup> As such, on the 14th of January 1993 the Arab Permanent Commission on

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<sup>74</sup> *ibid.*

<sup>75</sup> The resolution also decides that, in order to strengthen cooperation and progress and to prepare a 'comprehensive periodic reports', a general meeting between the United Nations system and the League of Arab States should take place once every two years, the next general meeting to be held in 1992, and 'inter-agency sectorial meetings should be organized annually on areas of priority and wide importance in the development of the Arab States'. (para 10, UNGA resolution 44/156 the UN issued resolution 46/24 in 5 December 1991).

<sup>76</sup> UNGA 'Cooperation between the United Nations and the League of Arab States' resolution 46/24, para. 6, 64th plenary meeting (5 December 1991).

<sup>77</sup> An-Na'im (2001) 714.

<sup>78</sup> Al-Midani, n 1 at 118.

<sup>79</sup> *ibid.*, 115. Also, the department of human rights carried out several activities in the area of promoting human rights in the Arab countries as it participated in a special Arab seminar on the updating of the first version of the Arab Charter for Human Rights 1994 in Sana'a on the 21st and 22nd of December 2002. The proceedings of this seminar were published under the title: 'Towards Updating the Arab Charter on Human Rights'. As will be explored later on, the Department of human rights also participated in the 'First Arab Conference on Human Rights' in Doha on the 14th and 15th of December 2008. The Department also called for a meeting in Cairo on 4th and 5th of July 2009, regarding the Arab Charter on Human Rights.

Human Rights decided to hold an Arab conference on human rights before the end of 1993, and the decision was endorsed on April 19<sup>th</sup> of that year, however, the decision was later post-poned.<sup>80</sup>

The reasons why they wanted to establish a regional human rights charter may be because at the time Arab States were invited to participate at the World Conference on Human Rights on June 14-25 1993 in Vienna.<sup>81</sup> This new international context pressured the League to draft a regional human rights Charter.<sup>82</sup>

#### 5.4 The Role of NGOs

Analogous to the work of the Arab League and the UN, the Arab Charter of Human Rights was originally proposed in 1960, by affiliates of the Union of Arab Lawyers at a conference in Damascus.<sup>83</sup> These NGOs were concerned at the human rights violations in Arab States and also critically examined the projects of the Arab League.<sup>84</sup> The seminar held in Kuwait in 1980 on human rights was jointly organized by the International Commission of Jurists, the University of Kuwait and The Union of Arab Lawyers, one of the primary concerns was the need for Arab and Muslim majority States to consider compatibility of Shariah with international human rights:

[I]t is unfair to judge Islamic law (Shariah) by the political systems which prevailed in various periods of Islamic history. It ought to be judged by the general [principles] which are derived from its sources.... Regrettably enough, contemporary Islamic practice cannot be said to conform in many aspects with the

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<sup>80</sup> See Al-Midani (2012) n 1, at 118. See also news article, 'In Doha, first Arab conference on human rights' *Asia News*, (13 December 2008) <<http://www.asianews.it/news-en/In-Doha,-first-Arab-conference-on-human-rights-14000.html>>

<sup>81</sup> Excerpted from: DPI /1394/Rev.1/HR-95-93241, April 1995, see also, OHCHR, 'Council holds panel to commemorate twentieth anniversary of Vienna Declaration and Programme of Action', MIDDAY, (25 February 2013) <<http://www2.ohchr.org/english/>> accessed 1 January 2015.

<sup>82</sup> See for example, Al-Midani n 1 at 118. Thus, on April 29th 1992, with resolution No. 5198, the Arab League Ministerial Council approved the Commission's recommendation and the need for cooperation with international human rights organizations.

<sup>83</sup> MA Al-Midani, 'the Enforcement Mechanisms of the Arab Charter on Human Rights and the Need for an Arab Court of Human Rights' (2010) 3 the Protection Project J. Of Hum. Rts. And Civ. Soc'y 64, at 63. See M Mattar, 'Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards' (2013) Vol. 26, Harv. Hum. Rts. J., 145.

<sup>84</sup> See for example in 1976 "Universal Declaration of People Rights" (UDPR) was promulgated in Algeria; The Union of Arab Lawyers in Iraq, the union also organised a conference in Kuwait in 1980 in partnership with the International Commission of Jurists; In 1985, the Tunisian League of Human Rights promulgated a "Tunisian Charter of Human Rights" Cited in K Tabet, 'Arab Islamic Developments on Human Rights' (2001) Vol.16, Arab L.Q., 262 at 255

true principles of Islam. Further, it is wrong to abuse Islam by seeking to justify certain political systems in the face of obvious contradictions between those systems and Islamic law.<sup>85</sup>

Another conference was organised under the auspices of Professor Cherif Bassiouni, at the International Institute of Higher Studies in Criminal Sciences in Syracuse, Italy on December 5-12 1986, it saw the adoption of their version of the Arab Charter for the protection of human rights in the region.<sup>86</sup> Bassiouni, invited representatives of jurists of different Arab States to a seminar in Syracuse, to create ‘the Draft Charter on Human and People’s Rights in the Arab World’.<sup>87</sup> The Draft Charter on Human and People’s Rights in the Arab World, was intended to highlight the challenges facing the Arab World, and on the requirement of ‘a common understanding of the human and collective rights of the Arab People’.<sup>88</sup> More importantly the Charter attempted to recognize ‘the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,’<sup>89</sup> It is divided into six different sections that share the same overall strength of the UDHR and the UN Bill of rights. It also provides enforcement mechanisms a commission and a human rights Court.<sup>90</sup>

Bassiouni notes how the draft was sent to all Arab heads of States, as well as ‘Ministers of Foreign Affairs, Ministers of Justice, the Secretary - General of the League of Arab States, and the Secretary General of the Organisation of the Islamic Conference’. It was also endorsed at the 16<sup>th</sup> Congress of the Arab Lawyers Union, ‘representing one hundred thousand lawyers throughout the Arab World’ in its meeting held from the eighth to 12<sup>th</sup> April 1987 in Kuwait.<sup>91</sup> Unfortunately, An-Na’im argues, that the 1986

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<sup>85</sup> International Commission of Jurists, ‘Human Rights in Islam: Report of a Seminar held in Kuwait in December 1980’ (1982) 7. See also M Baderin, *International Human Rights and Islamic Law* (Oxford University Press 2003) 12.

<sup>86</sup> C Bassiouni ‘The Draft Charter on Human and People’s Rights in the Arab World’ (Istituto Superiore Internazionale de Science Criminali, Siracusa, 1987) 1.

<sup>87</sup> Bassiouni, Preface, 1. State that were involved: occupied territories of Palestine and Israel, King Hassan of Jordan, Prime Minister Mahdi, President Assad, Egyptian Minister A. Fathi Sorououm and the Yemen Arab Republic’s Minister of Justice.

<sup>88</sup> See above Bassiouni (1987) n 86 at 26.

<sup>89</sup> Preamble of the Charter, see Bassiouni (1987) n 86.

<sup>90</sup> See above Bassiouni (1987) n 86 at 32. Furthermore, the Court shall publish report of its activities (Art. 58, 4)

<sup>91</sup> The text is also available online at the website of the Bibliotheque Jeanne Hersch at the following <[http://www.droitshumains.org/Biblio/Txt\\_Arabe/inst\\_proj86.htm](http://www.droitshumains.org/Biblio/Txt_Arabe/inst_proj86.htm)> accessed 1 January 2015. The text

draft Charter 'was never seriously considered by the Arab League or any national government'.<sup>92</sup>

Notwithstanding, these attempts made by the above NGOs illustrate how 28 years ago, human rights machinery similar to that of the Strasbourg system would have been established if there had been the political will on the part of the Arab League and its Member States to establish such a Charter and enforce the rights therein.

It is important at this point to note how the Arab League has not been supportive to the work of NGOs, nor do they provide them impetus to grow in the region. This is despite the fact UN Resolution 60/251 affirms the need for all States, to support NGOs because they play a vital role 'at the national, regional and international levels, in the promotion and protection of human rights'.<sup>93</sup>

Arab NGOs have a fragmented relationship with the Arab League. It is submitted that the first NGOs emerged in the Arab World in 1972: in Morocco, with the Moroccan Human Rights Organization, and in Egypt, with branches of the Society of Supporters of Human Rights in Cairo and Alexandria, and in Tunis, with the Tunisian League of Human Rights in 1977.<sup>94</sup> The next phase in this development came in the 1980s with the establishment of the Arab Organization for Human Rights (AOHR), the AOHR called for the need for Arab governments to undertake democratic and political reform.<sup>95</sup>

However, Arab NGOs tend to be less effective in promoting their human rights mandate due to many of the problems occurring in the region – such as the various political and security issues, as well as lack of support for their operation.<sup>96</sup> An-Na'im

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was also referred to by the Acting United National High Commissioner for Human Rights in his speech of 9 October 2003, before the Arab Standing Committee on Human Rights 343.

<sup>92</sup> *ibid.*

<sup>93</sup> UNGA, Resolution adopted by the General Assembly, sixth session, agenda items 46 and 120, /RES/60/251, (3 April 2006).

<sup>94</sup> See above An-Na'im, n 6, at 716. According to An-Na'im it was launched in Arab Countries that enjoyed a relative degree of political pluralism, or were at least receptive to civil society activism.

<sup>95</sup> *ibid.*

<sup>96</sup> *ibid.*, at 719.

suggests that the Arab governments seem to have severely restricted the growth and development of human rights NGOs.<sup>97</sup>

It is also contended that Arab NGOs suffer from structural weaknesses in their growth and development.<sup>98</sup> This hinders their ability to arrange alliances ‘locally and internally’.<sup>99</sup> Furthermore, it is argued that for NGOs to be effective a closer relationship between NGOs and the State need to be established.<sup>100</sup> Although theoretically Arab NGOs can be beneficial particularly with regards to advocating human rights, and strengthening people’s citizenship, in practice these NGOs are often secluded and have weak links within society.<sup>101</sup> According to Al Jurshi these NGOs have not gained popular support for their effective functioning.<sup>102</sup>

An-Na’im argues that Arab NGOs need be able to develop a discourse that takes into consideration the cultural and contextual specificity of the region ‘without undermining the universality of human rights’.<sup>103</sup> Shukr also observes the need for States to amend the existing laws on associations and civil society ‘in order to give them genuine autonomy’.<sup>104</sup>

As a result of international pressure, and the UN World Summit that was held on June 14-25 1993, the Arab League adopted Resolution No. 5198 on April 29<sup>th</sup> 1992.<sup>105</sup> The Resolution approved the need for cooperation with international human rights organisations and determined a number of criteria and requirements of NGO

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<sup>97</sup> *ibid.*

<sup>98</sup> See S Al Jurshi ‘The Arab Civil Society: Hindrances and Prospects’ in A Shalaby, S al-Jurshi, M El-Nabarawy, M Zaki, Q J Azzawi, A N Messarra, *Towards a Better Life: How to Improve the State of Democracy in the Middle East and North Africa* (GPoT, 2010) 57 at 53, 37.

<sup>99</sup> *ibid.*

<sup>100</sup> *ibid.*, at 53.

<sup>101</sup> See Al Jurshi above n 98, at 54.

<sup>102</sup> *ibid.*

<sup>103</sup> An-Na’im, n 6, at 721.

<sup>104</sup> A Shukr, ‘Islamic NGOs and the Development of Democracy in Egypt’, in S Ben Néfissa, and C Milani, *NGOs and Governance in the Arab World* (American Univ in Cairo Press, 2005) 151-167, at 165.

<sup>105</sup> See An-Na’im above n 6 at 721, Resolutions of the Council of Ministers of the League of Arab States, Resolution No. 6184, March 2002, Resolution No. 6243 September 2002, Resolution No. 6302/119 (Part II) March 2003 only available in Arabic, noted in M Rishmawi, ‘The Revised Arab Charter on Human Rights: A Step Forward?’ (2005) 5 *Hum. Rts. L. Rev.* 376, at 362-3.

involvement.<sup>106</sup> The most important of these is that: ‘they should be registered in an Arab Country and bear its nationality and that their activities be governed by the principles and rules stated in Arab and International Charters of human rights’.<sup>107</sup> This provision can be considered problematic, and reflects the inherent reluctance of the Arab League to allow NGO to operate without restrictions and hence adopted a critical approach towards States and in favour of the victims of human rights violations. This is notwithstanding the apparently welcoming stance in practice it is difficult for NGOs to register and operate with effect.

Finally, it is important at this juncture to highlight that in practice many Members of the Arab League have been supportive of regional and relativist approaches towards human rights. The approaches offer strength to positions held by the League as well as individual members. A survey of these instruments therefore becomes significant to ascertain the human rights values of the League to its members.

## 5.5 Other Regional Human Rights Instruments

### 5.5.1 The Universal Islamic Declaration of Human Rights

Analogues to the work of the Arab League and the Arab Permanent Commission on Human Rights, the Islamic Council and the Muslim World League contributed to the drafting of the Universal Islamic Declaration of Human Rights, which was adopted in September 1981.<sup>108</sup> A number of Member States of the Arab League were also involved.<sup>109</sup> The Declaration includes 23 human right provisions, and claims each provision is supported by the Quran and Sunna.<sup>110</sup> It also asserts in its preamble that

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<sup>106</sup> League of Arab States & Human Rights, General Secretariat – 2006. Information Letter, <<http://www.arableague.org.uk/uk/League%20of%20Arab%20states%20and%20Human%20Rights.pdf>> accessed 1 January 2015.

<sup>107</sup> *ibid.*

<sup>108</sup> See LAS Council Resolutions 6184 March 2002, 6243 September 2002, 6302/119 March 2003. See also Cavanaugh K ‘Narrating Law’ in A Emon, M Ellis, and B Glahn, *Islamic Law and International Human Rights Law* (Oxford University Press, 2012) 17-51, at 49. See Universal Islamic Declaration of Human Rights, adopted by the *Islamic Council of Europe* on 19 September 1981/21 *Dhul Qaidah 1401*.

<sup>109</sup> J Rehman, *International Human Rights Law* (London and New York: Longman 2010) 362.

<sup>110</sup> Universal Islamic Declaration on Human Rights, Preamble (Sept. 19, 1981),

<<http://www.alhewar.com/ISLAMDECL.html>> accessed 1 January 2015.



‘[e]ach one of the Human Rights enunciated in this declaration carries a corresponding duty’.<sup>111</sup>

Although the declaration does recognise important human rights provisions, it is criticized with its lack of emphasis on women and minority rights.<sup>112</sup> In addition, there exists limitation of rights and claw-back clauses.<sup>113</sup> Vollenhoven contends the UDIHR does not complement the UDHR or any of its Covenants, and seems to reinforce its position as a document that denies rights guaranteed by the UDHR.<sup>114</sup> It is also submitted that the UIDHR looks primarily like a religious document and has been criticized with its lack of emphasis on gender equality and minority rights.<sup>115</sup> For example, Article 19 and 20, explicitly invoke discrimination not solely based on sex, where women’s rights are undermined especially within marriage, but also between a married woman and a single one.<sup>116</sup> According to Dalacoura there are no provision provided in the Declaration to promote equal rights between sexes.<sup>117</sup>

Notwithstanding its controversial provisions, Professor Ali notes one positive aspect of the UIDHR is ‘the “owning” of human rights as a universal concept and no longer a purely alien, “Western” construct’.<sup>118</sup> This is important because it introduced the need for human rights mechanism in the Arab and Islamic world; the UDIHR therefore can be credited with being a forerunner to further more egalitarian human rights documents prepared by Arab and Muslim majority States.

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<sup>111</sup> J Morgan-Foster ‘Third Generation Rights: What Islamic Law Can Teach the International Human Rights Movement’ (2003-04) Vol.8, Yale Hum. Rts. & Dev. L.J., 116 at 67.

<sup>112</sup> See above Rehman n 109 at 362.

<sup>113</sup> K Dalacoura, *Islam, Liberalism and Human Rights* (3<sup>rd</sup> edn, I.B.Tauris, 2007) 50.

<sup>114</sup> W J Van Vollenhoven, ‘Chapter Three Human Rights: The logistics for the journey’, University of Pretoria (2006) 17 <<http://upetd.up.ac.za/thesis/available/etd-06142006-130531/unrestricted/03chapter3.pdf>> accessed 1 January 2015. See also K Dalacoura, *Islam, Liberalism and Human Rights* (3<sup>rd</sup> edn, I.B.Tauris, 2007) 50.

<sup>115</sup> See Rehman, n 109, at 362.

<sup>116</sup> See Dalacoura n 113.

<sup>117</sup> *ibid.*

<sup>118</sup> SS Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (The Hague: Kluwer Law International, 2000) 28.

### 5.5.2 Organisation of Islamic Cooperation (OIC) and Human Rights

Member States of the Arab League are also parties to the Organisation of Islamic Cooperation (OIC). That said and after having reviewed the resolutions and Summits adopted by the Arab League a lack of cooperation seems apparent between the OIC and Arab League. Such lack of cooperation is most evident in the failure to provide common mechanisms or collective policies to improve the human rights situation in the Arab region. As the discussion in the present section would highlight, notwithstanding all its limitations, the OIC and its Charter are better equipped and have greater sustainability towards human rights issues than the Arab League. Unlike the Arab League Charter, the OIC contains various provisions supporting Member States adherence to the UN charter, and International law, as well as Islamic Laws that promote ‘equality, justice and human dignity’.<sup>119</sup> The OIC Charter also includes various additional provisions supportive of the UN Human rights scheme. These include the provisions ‘to promote human rights and fundamental freedoms, good governance, rule of law, democracy and accountability in Member States in accordance with their constitutional and legal systems.’<sup>120</sup> The wordings provided in the OIC Charter are stronger than that of the Arab Charter on Human Rights (1994 and 2004) especially with regards to the provision of promoting State accountability and human rights.

The OIC is the second largest inter-governmental organisation after the UN. It includes 57 States, spanning over four continents (Middle East, East Asia, Central Asia and Africa) as noted above, all Member States of the Arab League are also parties to it the OIC.<sup>121</sup> The OIC aims to provide ‘[T]he collective voice of the Muslim world and ensuring to safeguard and protect the interests of the Muslim world in the spirit of promoting international peace and harmony among various people of the world’.<sup>122</sup> Similar to the Arab League, the OIC was also developed to support Muslim States political self-determination, economic independence and to support the independence of Palestine. However, unlike the Arab League, the OIC claims to be based on ‘Islamic

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<sup>119</sup> OIC, Charter of the Organisation of the Islamic Conference, Preamble, para. 3. <<http://www.oicun.org/2/2> <http://www.oicun.org/2/24/20140324031549266.html> <http://www.oicun.org/2/23/20140324031549266.html>> accessed 1 January 2015.

<sup>120</sup> OIC Charter preamble, para. 9.

<sup>121</sup> UN, ‘Organisation of Islamic Cooperation’ <<http://www.oicun.org/2/23/>> accessed 1 January 2015.

<sup>122</sup> *ibid.*

Solidarity' (or Islamic Ummah) and includes all Muslim or Islamic States, regardless of language, ethnicity or culture.<sup>123</sup> More importantly, as stated already, the Charter of the OIC includes a much more developed approach to human rights than that of the Arab League.<sup>124</sup> It affirms the importance of human rights and Islam's contribution to peace and justice.

The institutional framework of the OIC is similar to the Arab League as it establishes Islamic Summits. However, unlike the Arab League, the OIC usually holds summits every three years, to deliberate and take policy decisions concerning OIC objectives.<sup>125</sup> The OIC has established a General Secretariat, as the executive organ of the Organisation tasked with the implementation of the decisions of the Islamic Summits and the Council of Foreign Ministers.<sup>126</sup> Therefore, like the Arab League, the OIC does not have a binding mechanism to enforce its decisions.<sup>127</sup>

The most important human rights document adopted by the OIC is the Cairo Declaration of Human Rights in Islam (CDHRI). The Declaration was adopted on August 5, 1990 in the nineteenth Islamic Ministerial Conference.<sup>128</sup> From the outset, the Cairo Declaration of Human Rights was created to 'serve as a guide for Member States on human rights issues'.<sup>129</sup> It does contain some provisions similar to the Universal Declaration of Human Rights, because it stresses collective and individual duties.<sup>130</sup> However, concern over the fact emerged limiting the scope of the rights Article 24 of the CDHRI provides 'all the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'a [Shariah]'. According to Tadjdini, this emphasis is submitted to cause problems, such as a 'religionisation of the political landscape' has had broad impacts seeing the large number of Member States of the organisation.<sup>131</sup> Professor Ali also submits Articles 24 and 25 are also predominantly forceful in this

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<sup>123</sup> OIC Charter, see for example Articles 7, 9, and 10.

<sup>124</sup> See OIC Charter, and Cavanaugh, n 108, at 48.

<sup>125</sup> *ibid.*

<sup>126</sup> UN, 'Organisation of Islamic Cooperation' <<http://www.oicun.org/2/23/>> accessed 1 January 2015.

<sup>127</sup> M Baderin *International Human Rights and Islamic Law* (Oxford University Press, 2003) 228-229.

<sup>128</sup> Cairo Declaration on Human Rights in Islam, Nineteenth Islamic Conference of Foreign Ministers, UN Doc. ST/HR/1/Rev.5 (Vol. II) (Aug. 5, 1990).

<sup>129</sup> OIC Resolution 1/19-P.

<sup>130</sup> Cairo Declaration on Human Rights in Islam, Nineteenth Islamic Conference of Foreign Ministers, UN Doc. ST/HR/1/Rev.5 (Vol. II) (Aug. 5, 1990).

<sup>131</sup> A Tadjdini, 'The Organisation of Islamic Cooperation and Regional Challenges to International Law and Security' (2012) Vol. 4:2 ALF, 48 at 47.

regard, as they stipulate Shariah is to be the only source of reference for interpretation of any of the articles of the CDHRI.<sup>132</sup>

The OIC and its Member States have been active in promoting human rights where tangible efforts have been established with resolutions, seminars, and conferences; especially with regards to family values.<sup>133</sup> However, as Khan notes that despite the OIC's oral or written support towards human rights, it failed to put words into action.<sup>134</sup> Many Member States of the OIC are under scrutiny for their human rights records, as the cases of Sudan may illustrate.<sup>135</sup> Poor democratic state of affairs, also illustrates the arguably weak OIC framework and which in turn can cause barriers for the Member States to fully integrate international human rights law, and permit each state to implement Shariah with their own understating of it.<sup>136</sup> Furthermore, 47 out of 57 OIC Member States are parties to the ICCPR and ICESCR.<sup>137</sup> Notwithstanding it is submitted adoption of the CDHRI by OIC Member States conflicts with their obligations under the international bill of rights.<sup>138</sup> This is also the case with some Member States of the OIC that are also parties of the Council of Europe, such as Albania and Turkey, their adherence to the ECHR are in conflict with their membership to the CDHRI.<sup>139</sup> The Arab League also faces this problem with the fact that some Member States are also Members of the African Human Rights system.

The most novel development of the OIC to the human rights regime came in 2011 when the OIC finalized the statute of the Independent Permanent Commission on Human Rights (the Commission).<sup>140</sup> It aims to ensure the adherence to CDHRI by Member States.<sup>141</sup> The Commission was created as an enforcement mechanism to promote human rights to Member States.<sup>142</sup> However, Tadjdini submits that it is unlikely the new Commission will have any significant influence on improving the human rights

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<sup>132</sup> See above, Ali at n 118, at 29.

<sup>133</sup> For example, 'the OIC decided to hold its first symposium in rights of child in Jeddah in 1994' (Pakistan, 21 march 1994) See M Khan 'Islamic concept of human rights' in SM Haider (ed.) *Islamic concept of human rights* (Lahore Book House, 1978) 173.

<sup>134</sup> M Khan 'Islamic concept of human rights' in S.M. Haider (ed.), *Islamic concept of human rights*, (Lahore, The Book House, 1978) 164.

<sup>135</sup> *ibid.*

<sup>136</sup> See Tadjdini above, n 131, at 47.

<sup>137</sup> *ibid.*

<sup>138</sup> *ibid.*

<sup>139</sup> *ibid.*

situation in the OIC member states.<sup>143</sup> He states that the mandate of the Commission is already limited by the ambiguous provisions under the CDHRI, and the Commission's statute gives limited powers to address human rights violations. Furthermore, the Commission can only issue non-binding recommendations<sup>144</sup> This is similar to the Arab League, the Arab Human Rights Charter even in its amended version (2004) establishes an Arab Human Rights Committee.

It is unfortunate that the Arab League did not work with the OIC to provide a coherent regional human rights charter to promote and protect human rights that conform to international standards. Understandably, these are two different organisations. The OIC is an inter-governmental organisation with 57 Member States, consisting of Islamic or Muslim States, while the Arab League (is a regional organisation with 22 Member States, consisting of Arab States, with arguably a secular outlook). Furthermore, the common perception of human rights and the identical issues of violations conducted by a common enemy – Israel- ought to stimulate a more coherent agenda. The fact that all Member States of the Arab League are also members of the OIC should influence better relations between the two organisations. Evidently, the same institutional and practical problems facing the Arab League are also present to some extent within the OIC. Much like the OIC is much more developed than the League. Yet, similar to the League it emphasizes State sovereignty and non-interference of States affairs, and has failed to afford a judicial mechanism to hold States accountable to human rights violations, and/or provide a platform for redress for victims of human rights abuse.<sup>145</sup>

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<sup>140</sup> Resolution 2/37-LEG that followed the meeting of 18-20 May 2010 of the OIC's Council of Foreign Ministers. Through the resolution, the 'OIC emphasizes its concern over the difficulties of cooperating with non-Islamic countries and organizations through a shared understanding of human rights that will respect cultural, social and religious specificities' cited in Directorate-General for External Policies Policy Department 'The Role of Regional Human Rights Mechanisms' Directorate-General For External Policies Of The Union, Directorate B Policy Department Study. (2010) 43, EXPO/B/DROI/2009/25 /November/ 2010 PE 410.206 EN, <<http://www.europarl.europa.eu/activities/committees/studies.do?language=EN>> accessed 12 May 2014.

<sup>141</sup> See Tadjdini above, n 131, at 47.

<sup>142</sup> *ibid.*

<sup>143</sup> *ibid.*

<sup>144</sup> *ibid.*

<sup>145</sup> M Baderin *International Human Rights and Islamic Law* (Oxford University Press, 2003) 228-229,466.

## 5.6 The Arab Charter on Human Rights (1994)

At its ninth session, the Arab Permanent Commission on Human Rights, ‘[r]eturned to the study of the draft Arab Charter on Human Rights’.<sup>146</sup> In order to produce a draft Charter on Human Rights, the Secretariat of the Arab League, as well as a committee, were formed from the representatives of Iraq, Egypt, and Syria.<sup>147</sup> In 1992, the Legal and Human Rights Permanent Commissions of the Arab League ‘[e]xamined and amended the draft in light of the responses of Arab governments’.<sup>148</sup>

In February 1993, the two Commissions approved the draft and called on the Council of the Arab League to adopt the Declaration before the convening of the International Human Rights Conference in Vienna that year.<sup>149</sup> However, the Council postponed the adoption of the Charter to await further responses from Member States. The Charter was finally adopted by the Council of the Arab League by Resolution 5437 of 15 September 1994.<sup>150</sup> An-Na’im is of the view that this development was particularly surprising, not only because none of the seven States that had previously objected to the draft had changed their view,<sup>151</sup> but also because the Charter contains provisions such as the right to strike, prohibited in almost all Arab States.<sup>152</sup> Therefore, the provisions did not fit with the legal landscape of the region.<sup>153</sup> For example, the United Arab Emirates wanted the Charter to share similar objectives and the essence of the Cairo Declaration on Human Rights in Islam.<sup>154</sup> Oman simply did not agree with the general provisions of the Charter.<sup>155</sup>

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<sup>146</sup> Al-Midani (2012) n 1 at 119, 3.

<sup>147</sup> *ibid.*, See the first version of the Arab Charter on Human Rights 1994 in Human Rights Law Journal, 29 August 1997, Vol. 18 No. 1-4, pp. 151-153. This first version not approved by any Arab State.

<sup>148</sup> See above An-Na’im (2001) n 6, at 714.

<sup>149</sup> *ibid.*

<sup>150</sup> *ibid.*

<sup>151</sup> An-Na’im (2001) n 6, at 714.

<sup>152</sup> *ibid.*

<sup>153</sup> The States that objected to the draft in 1992 were Bahrain, Kuwait, Oman, Saudi Arabia, Sudan, United Arab Emirates, and Yemen, cited in An-Na’im, n 6, at 714. (For more details on why Arab State have not ratified, see Al-Jazy, above n 14, at 262) and W Allam, ‘The Arab Charter on Human Rights: main features’ (2014) ALQ 28, 63, at 40-42.

<sup>154</sup> Arab organisation for human rights (AOHR 1995) Report, pp. 11-15, cited in Al-Jazy n 14. See also An-Na’im, n 6, at 714.

<sup>155</sup> At the time Oman did not even have a constitution-it was not until 1996 that it did.

The Charter was nevertheless adopted despite different responses by Member States and their reservations to the Charter.<sup>156</sup> According to Professor An-Na'im the delay in the adoption of the Charter by the Arab League, was because the Arab Council wanted to wait for further responses from member States regarding their thoughts on the content of the document.<sup>157</sup> However, despite the many objections, the Council of the Arab League went ahead and adopted the Arab Charter on Human Rights.<sup>158</sup> As stated above, this represents the prevalent bureaucratic and fragmented nature of the Arab League.<sup>159</sup> It illustrates that Arab States were not supportive of the Arab Charter on Human Rights, as they perceived no justification or desire for having such a document.

### 5.6.1 Weakness of the Arab Charter on Human Rights (1994)

The 1994 version of the Arab Charter became the subject of the tension in the international arena.<sup>160</sup> The 1994 Arab Charter on Human Rights was limited and ambiguous with its provisions: in comparison to other international and regional instruments to other instruments. Professor Mattar is concerned that the Charter was restrictive in providing other adequate protection to fundamental rights, and allowed for 'far-reaching derogations'; provided 'expansive restrictions of a number of these fundamental rights', and most significantly the Charter lacked an efficient enforcement mechanisms.<sup>161</sup>

Professor Allam, also notes that the 1994 Arab Charter on Human Rights provides fewer obligations to human rights already provisioned in the ICCPR and the

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<sup>156</sup> An-Na'im, n 6, at 714.

<sup>157</sup> *ibid.*

<sup>158</sup> An-Na'im (2001), n 6, at 714.

<sup>159</sup> Al-Jazy n 14, at 215.

<sup>160</sup> See also V Muntarhorn 'Human Rights Monitoring in Asia-Pacific Region, in *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Möller* edited by G Alfredsson, J Grimheden, B G Ramcharan. (2nd rev. edn, Martinus Nijhoff 2009) 641- 648, at 644. See also the forthcoming arguments.

<sup>161</sup> M Mattar, 'Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards' (2013) Vol. 26, Harv. Hum. Rts. J., 93. M Rishmawi, 'The Revised Arab Charter on Human Rights: A Step Forward?' (2005) 5 Hum. Rts. L. Rev. 376, at 361; MA Al-Midani and M Cabanettes, 'Arab Charter on Human Rights 2004' (2011) Vol. 24, B.U. Int'l L.J, 148 <[http://www.eods.eu/library/LAS\\_Arab%20Charter%20on%20Human%20Rights\\_2004\\_EN.pdf](http://www.eods.eu/library/LAS_Arab%20Charter%20on%20Human%20Rights_2004_EN.pdf)> accessed 1 January 2015. Forsythe, D (2009) 'League of Arab States' cited in *Encyclopaedia of Human Rights*, Volume 1. Oxford University Press. P. 413.

ICESCR.<sup>162</sup> As such, the idea of the Charter was to some extent receptive to Arab States, since the States that have ratified international human rights treaties were not constrained by the few and equivocal obligations found in the Arab Charter.<sup>163</sup>

The Arab Charter on Human Rights lists 43 Articles divided into four chapters. The primary aim of the Charter, as listed in its Preamble, is to affirm the belief of human dignity in the Arab nations. It also emphasizes the importance of unity, freedom, ‘[t]he right of nations to self – determination’ and ‘[t]he safeguarding of their resources,’ as well as placing emphasis on, ‘the rule of law and the right to enjoy freedom justice and equal opportunities’.<sup>164</sup> In common with all regional human rights documents, the Charter also refers back to the United Nations Bill of Rights and in this case the CDHRI.<sup>165</sup>

Part I of the Charter consists of one Article based on self-determination and non-discrimination;<sup>166</sup> Part II contains 38 Articles (2-39) covering basic rights and liberties; Article 38 deals with the protection and care of family and Article 39 deals with the

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<sup>162</sup> See W Allam, ‘The Arab Charter on Human Rights: main features’ (2014) ALQ 28, 63, at 42.

<sup>163</sup> *ibid.*

<sup>164</sup> See above Al-Jazy ‘The Arab League and Human Rights Protection’ (BRILL, 1999) n 14, at 216.

<sup>165</sup> The Cairo declaration is seen by some human rights activists as a step backwards. See M Rishmawi, ‘The Arab charter on human rights: a comment’ (1996) 10 (1) *Interrights Bulletin*, 216. For example, the Preamble reaffirms the principles of the UN Bill of Rights as well as the Cairo Declaration on Human Rights in Islam. See Council of the League of Arab States, Arab Charter on Human Rights, September 15, 1994, *reprinted in* 18 *Hum. Rts. L.J.* 151. was only signed by Iraq, see HH Sahraoui, “‘Modernising’ the Arab Charter on Human Rights, cited in I Seiderman, *International Commission of Jurists Yearbook of the International Commission of Jurists: 2004* (Intersentia nv, 2004) 339- 398, at 339. See LAS Council resolution 5437 adopted during its 102<sup>nd</sup> regular session on 15 September 1994. See also, M Nowak. *Human Rights: A Handbook For Parliamentarians*, The Handbook was written by, Director of the Ludwig Boltzmann Institute of Human Rights at the University of Vienna and United Nations Special Rapporteur on Torture, with contributions from Mr. Jeroen Klok (OHCHR) and Ms. Ingeborg? Schwarz (IPU). Inter-Parliamentary Union Office of the United Nations High Commissioner for Human Rights. N 8 – 2005) 52 < [http://www.ipu.org/pdf/publications/hr\\_guide\\_en.pdf](http://www.ipu.org/pdf/publications/hr_guide_en.pdf)> accessed 1 January 2015.

<sup>166</sup> It is important to note this right to self-determination is mainly referring to Western or colonial rulers and not internal self-determination. The Charter does not explicitly state the right to resist against domestic authoritarian regimes. For more insight onto this please see J Rehman and E Polymenopoulou, ‘Justice after Democracy in the Arab World: Islamic Law Perspectives on Accountability’ (2013) Vol. 54, *GYIL*, 78; Also for more on the debate of the definition to self-determination in international law see P Thornberry, ‘Self-Determination, Minorities, Human Rights’, (1989) 38 *ICLQ* 880.



rights of youth.<sup>167</sup> Part III contains the Optional parts of the Charter whereby Member States are to report annually to the Arab Permanent Commission on Human Rights.<sup>168</sup>

Overall, it is argued that the protection of the rights provided are very ambiguous and failed to meet international standards.<sup>169</sup> It is also argued that the enforcement mechanism is weak. The Arab Permanent Commission on Human Rights is tasked with receiving reports from States and examining them.<sup>170</sup>

Many scholars reiterate that from a legal point of view, having an Arab Charter on human rights is of significance. According to the International Commission of Jurists (ICJ), the Arab Charter on Human Rights is '[a] simple text statement whose scope is more ethical and ideological, while Covenants are agreements with a binding and that the Arab Charter is destined to become a binding convention'.<sup>171</sup> Notwithstanding, because there was no political will to adopt such a Charter and with no ratification the Charter did not come into force.<sup>172</sup>

## 5.7 Conclusions

The Arab Permanent Commission on Human Rights is a specialized body tasked with promoting human rights and issuing recommendations to the Council of the Arab League. However, it seems to many of the authors cited above, the Commission is a

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<sup>167</sup> See above Al-Jazy (1999) 216-217, at n 14.

<sup>168</sup> The content of the State reports are not specified by the Charter. Al-Jazy (1999) n 14, at 218. See also Part IV, Art. 42-43.

<sup>169</sup> M Rishmawi, 'The Revised Arab Charter on Human Rights: A Step Forward?' (2004) 5 HRLR 2, 362.

<sup>170</sup> See An-Na'im above n 6, at 715. See arts. 4-42 of the Arab Charter (1994).

<sup>171</sup> International Commission of Jurists (ICJ) 'The complementarity meeting of the second session of the Permanent Arab Commission for Human Rights devoted to updating of the Arab Charter on Human Rights.' Commission internationale de jurists, Adoption of the text of the Arab Charter on Human Rights. Comments of the International Commission of Jurists. February 2004. Réunion complémentaire à la deuxième session extraordinaire de la Commission arabe permanente des droits de l'homme consacrée à l'actualisation de la Charte arabe des droits de l'homme' (4 au 15 janvier 2004) Adoption du texte de la Charte arabe des droits de l'homme Commentaires de la Commission Internationale de jurists Février 2004. 81A, avenue de Châtelaine, P.O. Box 216, 1219 Châtelaine, Geneva, Switzerland

<[http://www.humanrights.ch/upload/pdf/061015\\_Comment-Charte-arabe.pdf](http://www.humanrights.ch/upload/pdf/061015_Comment-Charte-arabe.pdf)> accessed 1 January 2015.

<sup>172</sup> Iraq was the only State that signed the Charter, See Allam, n 163 at 42.

highly politicized organ,<sup>173</sup> and its current institutional framework represents a drawback in the effective functioning and the credibility of its decisions.<sup>174</sup> Thus it supports the overall argument of the study, the Arab League is ineffective to promote and protect human rights.

Overall, however, it appears that the reason behind the Arab League's consideration of an Arab Permanent Commission on Human Rights and the Arab Charter on human rights was to satisfy the growing public opinion and to respond to the UN call for regional human rights establishments. Unlike other regional human rights establishments, the Arab Permanent Commission on Human Rights is restricted to the role of making recommendations to the Council of the League of Arab States: as the commission is not provided with the power to establish to execute or monitor the decisions it makes and it does not have any enforcement powers. According to Al-Midani, incongruent with the UN, where within the single organisation: the General Assembly, the Human Rights Council, and the High Commissioner for human rights all have one mandate to promote and respect human rights, the same is not true with the Arab League, since the Arab Permanent Commission on Human Rights seems to be the only political organ within the League responsible to promote and protect human rights.<sup>175</sup>

Finally, this chapter indicates the relativist approach taken by various Islamic organisations in the region that saw the adoption of declarations that reflect a cultural relative approach to human rights, unfortunately these documents not only were declarations with no binding effect, but some scholars also argue that the rights of minorities and women have been undermined in these documents.

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<sup>173</sup> See F Viljoen, 'International Human Rights Law: A Short History' (2009) UN Chronicle. Vol. XLVI No. 1 & 2 <<http://unchronicle.un.org/article/international-human-rights-law-short-history/>> accessed 12 May 2014. Robertson and Merrills, 'Human Rights in Europe' (Manchester Univ. Press, 1977)198-199.

<sup>174</sup> Al-Midani (2012) n 1, at 121.

<sup>175</sup> FIDH n 42, at 16. See for example, International Commission Of Jurists (ICJ) 'Position paper of the International Commission of Jurists' 20 December 2003, The process of "modernizing" the Arab Charter on Human Rights a disquieting regression List of recommendations, 1/-5/5 <<http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2004/03/MENA-modernising-Arab-Charter-position-paper-2004-eng.pdf>>

## Chapter 6 The Revised Version of the Arab Charter on Human Rights (2004)

### 6.1 Introduction

As mentioned above, the overall situation in the Arab world ignited concerns, especially among civil society and NGOs<sup>1</sup> Various meetings and conferences were organized in the Arab region and Europe ‘[t]o pressure Arab governments to amend the Charter’.<sup>2</sup> Consequently, the movement took place in an effort to ‘moderni[z]e’ the Arab Charter.<sup>3</sup> In 2001, the Council of the League of Arab States once again tasked the Arab Permanent Commission on Human Rights to update the Arab Charter on Human Rights.<sup>4</sup> According to Zaalani, during the drafting process, a Court was proposed that would allow individual petitions, however, he submits that ‘these attempts failed’.<sup>5</sup> It appears the drafters of the Charter continue with the reluctant approach towards providing legally binding human rights convention that holds States accountable for its actions, and allow victims of human rights abuse to appeal to a regional human rights body.

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<sup>1</sup> See ‘Human Rights: universal principles and regional guarantees’ The Arab Charter on Human Rights and The European Convention on Human Rights, The Mediator of the French Republic The Johns Hopkins University Paris II University, Selected Workshop Presentations and Proceedings. The Protection Project Journal of Human Rights and Civil Society, Issue 3 ((Paris, 1 February 2010) 9 <<http://www.protectionproject.org/wp-content/uploads/2010/11/The-Protection-Project-Journal-of-Human-Rights-Civil-Society-Volume-III.pdf>> accessed 30 October 2013. See also M Rishmawi ‘The Revised Arab Charter on Human Rights: A Step Forward?’ (2005) HRLR 5(2) 376 at 362. For example, The Moroccan Organisation for Human Rights also hosted a seminar organised by the Cairo Institute for Human Rights studies where the conference examined the human rights situations in the Arab World, ‘and the responsibilities, tasks and prospects of the Arab human rights movement.’ See for example, the Casablanca Declaration of the Arab Human Rights movement of April 1999, adopted by the First International Conference of the Arab Human Rights movement (Casablanca 25 April 1999). I Brownlie and GS Goodwin-Gill ‘Arab and Other Islamic States’ in *Brownlie's Documents on Human Rights* (Oxford University Press 2010) 1109.

<sup>2</sup> *ibid.*

<sup>3</sup> See LAS Council Resolution No. 5/437 102nd regular session, 15 September 1994. See also LAS Council Resolution No. 6302/119 of 24 March 2003. H Sahrui, ‘“Modernising” the Arab Charter on Human Rights’ in I Seiderman, *Yearbook of the International Commission of Jurists* (Intersentia nv, 2004) 339-340.

<sup>4</sup> *ibid.*

<sup>5</sup> A Zaalani, Professor at the University of Algiers, Vice-president of the Arab Committee for Human Rights ‘Human Rights: universal principles and regional guarantees’ The Arab Charter on Human Rights and The European Convention on Human Rights, The Mediator of the French Republic The Johns Hopkins University Paris II University, Selected Workshop Presentations and Proceedings. The Protection Project Journal of Human Rights and Civil Society, Issue 3 ((Paris, 1 February 2010) 188 <<http://www.protectionproject.org/wp-content/uploads/2010/11/The-Protection-Project-Journal-of-Human-Rights-Civil-Society-Volume-III.pdf>> accessed 30 October 2013.

This chapter evaluates the drafting process of the revised edition of the Arab Charter of Human Rights and attempts to highlight some of its criticized provisions. It is noted that despite all efforts particularly by the NGOs and the International community, the Arab League adopted the revised edition of the Arab Charter on Human Rights that includes many provisions that do not comply with international standards. The Charter contains many claw back clauses and invokes fundamental provisions to national discretion. Similar to the 1994 version, it failed to provide a suitable enforcement mechanism. The chapter will which also critically analyses the legislative framework of the Arab Human Rights Committee, and how in comparison with other regional and international human rights mechanisms remains weak.

More significantly, the chapter assess the overall contention of this study that in the absence of established principles of democratic governance and rule of law the Arab League and its instruments remain ineffectual in protecting human rights.

## 6.2 The Drafting Process

On April 17, 2002, the United Nations Higher Commission for Human Rights, and the Arab League signed a ‘memorandum of understanding’.<sup>6</sup> The memorandum covers areas of cooperation between the Arab League and the higher commission, including ‘developing and protecting human rights and fundamental freedoms, disseminating information on the strategies and means of implementation of human rights’.<sup>7</sup> Importantly, the memorandum also includes provisions on cooperation in training Arab League staff and representatives active in the field of human rights,<sup>8</sup> within the context of technical assistance and consultative services.<sup>9</sup>

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<sup>6</sup> Arab League (LAS) – General Secretariat, ‘The Arab Charter of Human Rights’ (2006) Informational letter, Information and Communication Sector 2.  
<<http://www.arableague.org.uk/uk/League%20of%20Arab%20states%20and%20Human%20Rights.pdf>> accessed 1 January 2015.

<sup>7</sup> *ibid*, Arab League (2006) 2.

<sup>8</sup> *ibid.*, 3.

<sup>9</sup> L Zerrougui ‘The Arab Charter on Human Rights’ (2008)  
<<http://projects.essex.ac.uk/ehrr/V7N2/Zerrougui.pdf>> accessed 1 January 2015.

On 5 September 2002 adopted Resolution 6243 to modernise the Arab Charter on Human Rights.<sup>10</sup> On January 10, 2003, a decision passed by the Arab Permanent Commission on Human Rights requested Arab States to submit their proposals to improve the Charter, ‘[w]ith a promise that the Commission would examine the Charter again in January 2004’.<sup>11</sup> The initiative to update the text of the Arab Charter on Human Rights was approved by resolution 6302/119 (Part II) of 24 March 2003.<sup>12</sup> Two special sessions of the Arab Permanent Commission on Human Rights were held in June and October 2003 devoted exclusively to the ‘[m]odernization’ and updating the Arab Charter human rights’, where the proposals of Member States were ‘deliberated in detail’.<sup>13</sup> Finally, on 24 March 2003 the Council of the Arab League adopted Resolution 6032, where it adopted the first draft of the Arab Charter on Human Rights that was influenced largely by the 1994 version.<sup>14</sup>

At the same time the OHCHR<sup>15</sup>, within the framework of the memorandum organized for five of the Arab League staff members, a weeklong training course on international

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<sup>10</sup> See W Allam, ‘The Arab Charter on Human Rights’ (2014) ALQ 28, 40-63, at 43.

<sup>11</sup> Al-Midani MA and M Cabanettes, ‘Arab Charter On Human Rights 2004’ (2011) Vol. 24, B.U. Int’l L.J, 148 <[http://www.acihl.org/res/Arab\\_Charter\\_on\\_Human\\_Rights\\_2004.pdf](http://www.acihl.org/res/Arab_Charter_on_Human_Rights_2004.pdf)> accessed 1 January 2015. See also LAS Council Resolution No 6184 March 2002, 6243 September 2002 and 6302/119 (Part II) March 2003. See also MA Al- Midani, ‘Human Rights Bodies in the League of Arab States’ (2012) Jinan Hum. Rts.J., no 3,109-135, at 110.

<sup>12</sup> See LAS Council Resolution No 6184 March 2002, 6243 September 2002 and 6302/119 (Part II) March 2003 (only available in Arabic). Noted in Rishmawi (2005) n 1 at 62–3. See also, International Commission of Jurists (ICJ) (2004), ‘The complementarity meeting of the second session of the Permanent Arab Commission for Human Rights devoted to updating of the Arab Charter on Human Rights. Commission internationale de jurists, Adoption of the text of the Arab Charter on Human Rights. Comments of the International Commission of Jurists. February 2004. Réunion complémentaire à la deuxième session extraordinaire de la Commission arabe permanente des droits de l’homme consacrée à l’actualisation de la Charte arabe des droits de l’homme’. (4 au 15 janvier 2004) Adoption du texte de la Charte arabe des droits de l’homme Commentaires de la Commission internationale de jurists Février 2004. 81A, avenue de Châtelaine, P.O. Box 216, 1219 Châtelaine, Geneva, Switzerland <[http://www.humanrights.ch/upload/pdf/061015\\_Comment-Charte-arabe.pdf](http://www.humanrights.ch/upload/pdf/061015_Comment-Charte-arabe.pdf)>

<sup>13</sup> International Commission of Jurists (ICJ), Adoption of the text of the Arab Charter on Human Rights. Comments of the International Commission of Jurists. [translated from French] (February 2004) Geneva, Switzerland <[http://www.humanrights.ch/upload/pdf/061015\\_Comment-Charte-arabe.pdf](http://www.humanrights.ch/upload/pdf/061015_Comment-Charte-arabe.pdf)> accessed 1 January 2015.

<sup>14</sup> *ibid*, see also W Allam, ‘The Arab Charter on Human Rights’ (2014) ALQ 28, 40-63, at 43.

<sup>15</sup> See also UN Commission on Human Rights, 62<sup>nd</sup> meeting, Resolution 2003/76, entitled ‘National institutions for the promotion and protection of human rights’, para. 10 of the Preamble, in which the Commission takes note of the Council of the League of Arab States, ‘as referred to in its resolutions 6089 of 12 March 2001, 6243 of 5 September 2002 and 6032 of 24 March 2003, to review and update the Arab Charter for Human Rights of 1994 and encourage the efforts of Arab non-governmental organizations to support this initiative.’

human rights instruments and mechanisms in Geneva in September 2002.<sup>16</sup> The OHCHR established a Committee of five experts, from Qatar, Tunisia, Saudi Arabia, Egypt and Algeria, '[t]o comment on the draft Arab Charter finalized by the Arab Human Rights Committee in October' and to bring it into line with international human rights standards.<sup>17</sup> From 21 to 26 December 2003, the Arab panel made a number of recommendations to the Arab Charter of Human Rights.<sup>18</sup> This took into account the observations and contributions it received from the Arab NGOs and International Organizations,<sup>19</sup> after extensive deliberations and receiving written and oral notes from regional and international human rights organisations, the Committee of Experts adopted a proposed draft, which was subsequently welcomed by NGOs from the region.<sup>20</sup> According to Professor Allam, the Arab Charter on Human Rights drafted by the expert Committee was influenced by the ICCPR and ICESCR, and as such, was consistent with international human rights standards.<sup>21</sup>

The Arab Permanent Commission on Human Rights held another meeting on 4-14 January 2004 to consider both drafts of the Arab Charter on Human Rights.<sup>22</sup> However, Allam highlights the important fact that members of the Commission were not experts on human rights, and some were even diplomats; as such, instead of drafting provisions to enhance human rights protection in the region, the meeting was held to negotiate how best to ensure the States had the least amount of responsibility and obligations to provide for their citizens.<sup>23</sup> Finally, the Arab Permanent Commission on Human Rights

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<sup>16</sup> OHCHR. Annual report 2003 human rights. 'Office of the United Nations High Commissioner for Human Rights Implementation of Activities and Use of Funds' 105 <<http://www.ohchr.org/Documents/AboutUs/annualreport2003.pdf>> accessed 1 January 2015.

<sup>17</sup> *ibid.*, 105.

<sup>18</sup> *ibid.*, see ICJ (2004) n 13, at 4.

<sup>19</sup> Al-Midani (2012) n 11, at 119.

<sup>20</sup> See also the First Arab Conference on Human Rights, held in Doha (2012). Al-Midani n 11, at 112. H Sahraoui, 'Modernising' the Arab Charter on Human Rights' in, ID Seiderman, *Yearbook of the International Commission of Jurists* (Intersentia nv., 2004) 339- 398, at 343. See Al-Midani and Cabanettes, above n 11, at 147 <[http://www.acihr.org/res/Arab\\_Charter\\_on\\_Human\\_Rights\\_2004.pdf](http://www.acihr.org/res/Arab_Charter_on_Human_Rights_2004.pdf)> accessed 1 January 2015. See LAS Council Resolutions: No 6184 March 2002, 6243 September 2002 and 6302/119 (Part II) March 2003. M Nowak, 'Protecting Dignity: an Agenda for Human Rights - Progress report on the eminent Persons Panel by Manfred Nowak, Panel member and rapporteur' (Genf 2008) 52 <<http://www.udhr60.ch/agenda/Nowak-Agenda.pdf>>

<sup>21</sup> Allam n 10, at 43.

<sup>22</sup> *ibid.*

<sup>23</sup> For example, the provisions included many references to domestic law where 'persons' were omitted and left with 'national' see Allam n 10, at 43.

concluded the final draft on 14 January 2004 and was sent for review to the Permanent Commission on Legal Affairs.<sup>24</sup>

The Arab Permanent Commission on Human Rights examined the draft again in a meeting held between November 4 and 11 2004.<sup>25</sup> The Commission created a Sub-Committee to enable implementation of the Arab Charter. Between 5- 6 December 2004, at its third meeting, the sub-committee issued a number of recommendations to request Member States of the Arab League to support ratification the Arab Charter of human rights.<sup>26</sup> The draft was sent to the Council of Ministers of the League of Arab States in March 2004.

On the 22<sup>nd</sup> of May 2004, a message on behalf of UN Secretary General Ban ki-moon praised the Arab League's initiatives and stated Ban ki-moon's hope the final version of the Arab Charter complements international human rights standards:

I would like to take this opportunity to congratulate the members of the Arab League on your important progress in revising the Arab Charter of Human Rights. I am encouraged by your plans to adopt the revised Charter, and hope that the final version will be fully in accordance with international human rights standards, as recommended by the Expert Group. The United Nations will continue to follow the efforts of the League in developing a regional human rights mechanism with great interest, and we remain committed to supporting and assisting you in that crucial endeavour.<sup>27</sup>

Finally, on 23-24 May 2004 at the 16<sup>th</sup> session of the Arab League Summit held at Tunis, the final version of the Arab Charter was presented and finally adopted with no reservations.<sup>28</sup> It entered into force on 15 March 2008,<sup>29</sup> two months after the deposit of

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<sup>24</sup> *ibid.*

<sup>25</sup> Al-Midani (2012) n 11 at 119.

<sup>26</sup> League of Arab States & Human Rights, General Secretariat – 2006. Information Letter, [www.las.int](http://www.las.int).

<sup>27</sup> See also Latest Statements, UN, 'United Nations Secretary-General Ban Ki-Moon's Statements' Tunis, Tunisia, 22 May 2004 <<http://www.un.org/sg/statements/index.asp?nid=938>> accessed 1 January 2015.

<sup>28</sup> *ibid.*, see also 'the Arab Charter on Human Rights'. The 16th Summit Resolution No.270 had a relatively short paragraph described 'Modernization of the Arab Charter on Human Rights', where it stated the leaders (of the members of the Arab League) support of the Arab Charter of Human Rights and appreciate the high aims of promotion and protection of human rights in Arab countries and thus the Charter is to be placed as a principal concern by Arab governments. At the same time, a number of inter-decisions in the areas of political, economic, and social development were issued, see 16th Summit, May 22 2004. (Translated from Arabic). See Para.27. p. 96. 16th Summit decision.

the seventh ratification<sup>30</sup> – as per Article 49 of the Charter.<sup>31</sup> As of 1 January 2015, it has fourteen of the twenty-two members of the Arab League parties to the Charter: these are Jordan (28 Oct 2004), Algeria (11 June 2006), Bahrain (18 June 2006), Libya (7 August 2006), Syrian Arab Republic (6 February 2007), Palestine (28 November 2007), United Arab Emirates (15 January 2008), Yemen (12 November 2008), Qatar (11 January 2009), Saudi Arabia (15 April 2009), Lebanon (8 May 2011), Sudan (21 May 2013), Kuwait (5 September 2013) and Iraq (4 April 2013).<sup>32</sup>

It is submitted that the 2004 Arab Charter on Human Rights is significant instrument because it is created by the Arab League for the Arab region.<sup>33</sup> In the opinion of Ms. Alshejni, Director of the Arab Human Rights Department, the Arab Charter ‘is extremely important’ and is considered to ‘the most important regional instruments for human rights in the Arab world’.<sup>34</sup> According to Smith, creating a culturally specific Arab-based human rights system – such as the Arab Charter, has ‘clear potential’, because many Arab States enter reservations to human rights treaties based on Islamic

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<sup>29</sup> See also M Rishmawi, ‘The Arab Charter on Human Rights and League of Arab States: an update’ (2010) 10 Hum. Rts. L. Rev. 169-78. See also F Viljoen, *International Human Rights Law in Africa*, (Oxford University Press 2012) 664, 14.

<sup>30</sup> The first dates that became legally bound by the Arab Charter are: Jordan, Algeria, Bahrain, Syria, Libya, Palestine and United Arab Emirates. Although the first state to sign the Arab Charter was Saudi Arabia on August 2 2004. Jordan was the first state to sign and ratify the Charter on October 28 2004, See LAS website, ‘The list of countries that have ratified the Arab Charter on Human Rights’ <[http://www.lasportal.org/wps/portal/las\\_ar\\_humanrights/inpage!/ut/p/c5/](http://www.lasportal.org/wps/portal/las_ar_humanrights/inpage!/ut/p/c5/)>

<sup>31</sup> Report and recommendations of the Permanent Arab Committee Human Rights at its (24) session from 28-31/01/2008 No. 6898. The Council at the 127th ministerial level approved the report and recommendations of the Permanent Arab Committee for Human Rights. The third item discussed in recommendation No. 6898 is the recommendation of the entry of force, the Arab Charter on Human Rights, 133,134.

<<http://www.lasportal.org/wps/wcm/connect/332918804510fd4dbd95fd6a5847d031/129.pdf?MOD=AJPERES>>

<sup>32</sup> See LAS, ‘State Parties to the Arab Charter On Human Rights’ above n 30.

<sup>33</sup> M Al Roken ‘The Arab Charter on human rights affirms the universality and indivisibility of human rights’ Bridging the Gulf (28 December 2010).

<[http://www.bridgingthegulf.org/en/about\\_us/editorials/The\\_Arab\\_Charter\\_on\\_human\\_rights\\_affirms\\_the\\_universality\\_and\\_indivisibility\\_of\\_human\\_rights.html?id=69](http://www.bridgingthegulf.org/en/about_us/editorials/The_Arab_Charter_on_human_rights_affirms_the_universality_and_indivisibility_of_human_rights.html?id=69)> ; see also R K.M. Smith, ‘Human Rights Organisation and Key Institutions’ in *Texts and Materials on International Human Rights*, (2<sup>nd</sup> edn, London & New York: Routledge-Cavendish 2010) 176.

<sup>34</sup> Speech by Ms. Elham Alshejni, Director of Human Rights Department, League of Arab States (2010) ‘Human “Human Rights: universal principles and regional guarantees” - The Arab Charter on Human Rights and the European Convention on Human Rights The Mediator of the French Republic The Johns Hopkins University Paris II University Paris - February, 1st 2010,

<[http://www.eoi.at/d/Sonderberichte%20-%20Brosch%C3%BCren/Frankreich/1303389570\\_Actes\\_Conference\\_1er\\_fevrier\\_-\\_ENGLISH\[1\].pdf](http://www.eoi.at/d/Sonderberichte%20-%20Brosch%C3%BCren/Frankreich/1303389570_Actes_Conference_1er_fevrier_-_ENGLISH[1].pdf)> accessed 1 January 2015.



values.<sup>35</sup> The Arab Charter is also said to be quite dissimilar from other regional human rights treaties since Member States of the Charter are geographically located in Asia and Africa.<sup>36</sup> Of its current twenty-two members, eight States are party to the African Court of Human Rights.<sup>37</sup> This is an evident problem, however unlike the African System; the League does not provide a platform for individual redress. The problem other regional arrangements may face with regards to simultaneous applications from individual applications from regional and international organisations is too early to assess with the Arab League.<sup>38</sup>

Notwithstanding several positive features and some advancements in human rights protection, the Arab Charter on Human Rights (2004) has been the subject of substantial criticisms. One of the most important criticism being the absence of a judicial mechanism to receive individual or State complaints and to interpret the international human rights provisions.<sup>39</sup> This absence of individual complaint procedures renders the Charter weak and ineffective.

### 6.3 General Criticisms

The final version of the Arab Charter on Human Rights was welcomed by the United Nations (UN) Commissioner for Human Rights, Louise Arbour in January 28, 2008, when she stated '[r]egional systems of promotion and protection can further help

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<sup>35</sup> R Smith, *Textbook on International Human Rights*, (6th edn, Oxford University Press, 2013) 137.

<sup>36</sup> European Parliament, 'The Role of Regional Human Rights Mechanisms' directorate-General For External Policies Of The Union, Directorate B Policy Department Study. EXPO/B/DROI/2009/25 /November/ 2010 PE 410.206 EN, (23 November 2010), 5.  
<<http://www.europarl.europa.eu/committees/en/droi/studiesdownload.html?languageDocument=EN&file=33385>>

<sup>37</sup> Algeria, 10/04/1986 signed (s),01/03/1987ratified (r),20/03/1987 deposited(d); Comoros 07/12/2004s, 01/06/1986r,18/07/1986 d; Djibouti 20/12/1991s, 11/11/1991r, 20/12/1991d, Egypt16/11/1981s, 20/03/1984r, 03/04/1984 d; Libya 30/05/1985s, 19/07/1986r, 26/03/1987d; Mauritania 25/02/1982s 14/06/1986r 26/06/1986s, Sudan 03/09/1982s 18/02/1986r,11/03/1986r; Tunisia 16/03/1983r, 22/04/1983d. Cited in African Commission on Human and Peoples' Rights (2013), Ratification Table: African Charter on Human and Peoples' Rights. <<http://www.achpr.org/instruments/achpr/ratification/>>; See Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, OAU Doc. OAU/LEG/AFCHPR/PROT (III), *entered into force* Jan. 25, 2004.

<sup>38</sup> On examples of problems that may arise in existent and already established regional human rights mechanisms, see AH Robertson, and JG Merrills, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights* (Manchester University Press, 1996) 269.

<sup>39</sup> V Muntarhorn, 'Human Rights Monitoring in the Asia Pacific Region' in G Alfredsson, J Grimheden, B G. Ramcharan, *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Möller*, (Martinus Nijhoff Publishers, 2009) 641- 648, at 644.

strengthen the enjoyment of human rights...Moreover, the Arab Charter on Human Rights is an important step forward in this direction'.<sup>40</sup> However, once the Charter entered into force, western media criticized the Charter for equating Zionism with racism. Consequently, the UN High Commissioner withdrew its support stating '[t]he Arab Charter is not in conformity with General Assembly Resolution 46/86, which rejects that Zionism is a form of racism and racial discrimination'.<sup>41</sup> Louise Arbour pointed out that the Charter does not conform to '[i]nternational standards' and her office 'does not endorse these inconsistencies'. She also stated that throughout the drafting process her office was concerned with these provisions.<sup>42</sup> Finally, she confirmed the OHCHR will 'continue to work with all stakeholders in the region to ensure the implementation of universal human rights norms'.<sup>43</sup> However, to date the redrafting of the final version of the Charter has never taken place.

The drafters of the Arab Charter failed to take into account recommendations by the OHCHR. Rishmawi contends that the draft of the 2004 version of the Arab Charter (that was prepared by the expert Committee that involved participation of NGOs) was initially consistent with international human rights law, but went through some 'radical changes' when considered by the Arab Permanent Commission on Human Rights.<sup>44</sup> The Arab Charter provisions came into conflict with international law on some issues 'while also lacking some important guarantees'.<sup>45</sup> Sahraoui agrees that although the NGOs have participated in many of the discussions on the Arab Charter, their role with

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<sup>40</sup>See Arbour Backs Plan That Seeks End to Zionism' *The Ottawa Citizen* (2014) <<http://www.canada.com/ottawacitizen/news/story.html?id=621d0497-8ed7-4b74-a300-370b106faeb2>> accessed 4 October 2014; See for example, 'UN Rights Chief Must Clarify Endorsement of Arab Charter with Anti-Semitic Provisions' <[www.unwatch.org](http://www.unwatch.org)>.

<sup>41</sup> UN News Service Section, 'UN News - Arab Rights Charter Deviates from International Standards, Says UN Official' (30 January 2008) <<http://www.un.org/apps/news/story.asp?NewsID=25447#.VDzdtfldVqU>> accessed 14 October 2014. Interesting to note here the UN General Assembly Resolution (R) 3379(XXX) for the elimination of all forms of racism and racial discrimination, mentioning that Zionism is a form of racism. Which was later revoked in 1991 by the UNGA.

<sup>42</sup> *ibid.*

<sup>43</sup> *ibid* see UN News Centre, 'Arab rights charter deviates from international standards' (30 January 2008) <[http://www.un.org/apps/news/story.asp/html/realfile/story.asp?NewsID=25447&Cr=human&Cr1=rights#.UmqFosY\\_uGk](http://www.un.org/apps/news/story.asp/html/realfile/story.asp?NewsID=25447&Cr=human&Cr1=rights#.UmqFosY_uGk)>

<sup>44</sup> M Rishmawi, 'The League of Arab States: Recent developments on human rights and social justice' in I Lintel, A Buyse, B McGonigle Leyh (Eds.) *Defending Human Rights: Tools for Social Justice: Volume in Honour of Fried van Hoof on the Occasion of his Valedictory Lecture and the 30th Anniversary of the Netherlands Institute of Human Rights* (Cambridge, Antwerp, & Portland: Intersentia, 2012) 41-48, at 44.

<sup>45</sup> *ibid.*

the Arab Permanent Commission on Human Rights was very limited and often unable to really influence of the content of the final version of the Charter.<sup>46</sup>

Finally, it seems the final version of the Arab Charter on Human Rights reflects to some extent the proposals of the Arab Permanent Commission on Human Rights and its specialised departments, and not the aspirations of regional and international NGOs or the OHCHR, as the following discussion also highlights. Some of the most important problems are the fact that the Charter still does not allow for individual petitions. The Charter does not provide for a human rights court, which in itself is inherently problematic. For example, the OHCHR for years has stressed the fact that individual complaint procedures are vital for any treaty and allow human rights to be given ‘concrete meaning’.<sup>47</sup> This illustrates the bureaucratic nature of the Arab League.<sup>48</sup> There are also various provisions, such as supporting discrimination (to non-nationals and women) and reference to domestic law.<sup>49</sup> It seems even after many collaborations and involvement with the OHCHR and various international and regional organisations, the League still adopted a regional human rights Charter with no binding mechanism of enforcement and is still not in conformity with international human rights standards.

#### 6.4 The Scope and Structure of the Arab Charter on Human Rights

According to the translated version of the 2004 Arab Charter on Human Rights, the Charter was created ‘[t]o place human rights at the centre of the key national concerns of Arab States’.<sup>50</sup> It lists 53 provisions and claims to recognize all ratifying States must

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<sup>46</sup> See above HH Sahraoui, “‘Modernising’ the Arab Charter on Human Rights’ in I Seiderman I, *Yearbook of the International Commission of Jurists: 2004*. International Commission of Jurists (Intersentia nv 2004) 339- 398, at 349. On the other side of the argument, Alshejni, Director of the Arab Human Rights Department, was also involved with the ‘modernisation’ of the Arab Charter, between October 2003 and January 2004. She argued that the Arab experts working from the UN Commission, were consulted and the final version of the Arab Charter adopted no less than 90% of what they had suggested. Alshejni, Director of Human Rights Department, League of Arab States, n 6, at 188, 190.

<sup>47</sup> OHCHR, ‘Human Rights Treaty Bodies - Individual Communications’  
<<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenereale>>

<sup>48</sup> I Al-Jazy ‘Chapter 11: Arab League and Human Rights Protection’ in E Cotran and AO Sherif (eds.), *Democracy, the Rule of Law and Islam* (Kluwer Law International: The Hague, 1999) 211- 220 at 215.

<sup>49</sup> See Allam n 10 at 57-59.

<sup>50</sup> Art.1 (1) League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008.

undertake for ‘all citizens to equally enjoy the rights and freedoms provided for in the Charter’.<sup>51</sup> Al-Midani *et al.* categorise the charter into four main categories:

- 1) Individual rights: ‘the right to life’ (Articles 5, 6 and 7); ‘the right not to be subjected to torture, inhuman or degrading treatment’ (Arts 8, 9, 18 and 20); the right to be free from slavery (Article 10); the right to security of the person (Articles 14 and 18).
- 2) Rule of law and justice: ‘the right of all persons to be equal before the law’ (Article 12); ‘the rights to due process and fair trial’ (Articles 13, 15, 16, 17 and 19).
- 3) Civil and political rights: ‘the right to freedom of movement’ (Articles 24, 26 and 27); ‘the right of respect for private and family life’ (Article 21 & Article 24 – Political rights); ‘rights of minorities’ (Article 25); ‘the right of political asylum’ (Article 28); ‘the right to acquire a nationality’ (Article 29); ‘liberty of thought, belief and religion’ (Article 30); ‘the right of private property’ (Article 31); ‘the right of information and liberty of opinion, expression and research’ (Article 32); ‘the right to marriage’ (Article 33).
- 4) Economic, social and cultural rights: ‘the right to work’ (Article 34); ‘the right to form trade unions’ (Article 35); ‘the right to social protection’ (Article 36); ‘the right of development’ (Article 37); ‘the right of education’ (Article 41); ‘the right to participate in cultural life’ (Article 42).<sup>52</sup>

There are various positive provisions similar to the African Charter on Human and People’s Rights<sup>53</sup> and includes three generations of human rights: civil and political rights, economic, social and cultural rights, and collective rights, such as Article 37 ‘the right to development’, Article 38 ‘the right to an adequate standard of living’ and ‘the right to a healthy environment’.<sup>54</sup>

#### 6.4.1 Preamble

The preamble takes into account the region’s cultural particularity<sup>55</sup> that reflects on the religious principles engrained in Arab nations.<sup>56</sup> It also declares the region’s respect for human dignity and the concept of ‘Brotherhood’ when it comes to humanitarian

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<sup>51</sup> League of Arab States, n 6, at 2.

<sup>52</sup> See above Al-Midani and Cabanettes n 11, at 148-49.

<sup>53</sup> See Allam above n 10, at 46-47.

<sup>54</sup> League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int’l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008.

<sup>55</sup> See M Mattar ‘Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards’ (2013) Vol. 26, Harv. Hum. Rts. J., 147, at 97.

<sup>56</sup> See above Al-Midani and Cabanettes n 11, at 147. See also International Covenant on Civil and Political Rights, opened for signature Dec. 19, 1966, S. Treaty Doc. No. 95-20, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976); International Covenant on Economic, Social and Cultural Rights Art. 25, Dec. 16, 1966, 993 U.N.T.S. 3 (entered into force Jan 3, 1976).

values.<sup>57</sup> The revised Preamble of the Arab Charter makes no reference to the previous 1994 version. It is nonetheless similar to the previous versions; however, it added more rights in the drafter's attempt to conform to universal human rights principles.<sup>58</sup>

It expands on the importance of human rights and its interrelationship with world peace,<sup>59</sup> and reaffirms the principles of UDHR, and the provisions of the ICCPR, and the ICESCR and 'having regard' to the Cairo Declaration of Human Rights in Islam.<sup>60</sup> Thus the preamble attempts to reconcile with Shariah and the universal notions of human rights. It seems to accept to some extent, the principle of Universalism (as opposed to Relativism) and shows some reform of its ambiguous provisions that were evident in the 1994 version.<sup>61</sup> However, according to Allam, references to the Cairo Declaration, a non-binding document with weak and ambiguous provisions, renders 'a weak point in the Arab Charter'.<sup>62</sup>

In comparison with the preamble of the European Convention on Human Rights (ECHR) which confirms '[a]t securing the universal and effective recognition and observance of the Rights therein declared' and aims to achieve greater unity – between its members.<sup>63</sup> It also mentions that '[o]ne of the methods by which that aim is to be pursued is the maintenance and further realisation of human rights and fundamental freedoms'; stipulating unity is dependent on those Member States who promote 'human

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<sup>57</sup> M Nowak, 'Protecting Dignity: an Agenda for Human Rights - Progress report on the eminent Persons Panel by Manfred Nowak, Panel member and rapporteur' (Genf 2008) para.10, 54  
<<http://www.udhr60.ch/agenda/Nowak-Agenda.pdf>>

<sup>58</sup> See Al-Midani and Cabanettes n 11, at 147. Preamble Arab Charter Translated version from OHCHR. Similar to the previous version – however the wording is different – taking out 'favoured' as to level out Arab supremacy. See 1994 version of the Preamble: 'Stemming from the Arab Nation's faith in the dignity of man; from when God favoured it by making the Arab nation the cradle of monotheistic religions and the birthplace of civilisation; which has reaffirmed [man's] right to a life of dignity based on freedom, justice and peace' League of Arab States, Arab Charter on Human Rights, 15 September 1994.

<sup>59</sup> See above ICJ (2004) n 13, at 7,

<sup>60</sup> League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008 (herein LAS, Arab Charter on Human Rights (2004)).

<sup>61</sup> see D Vitkauskaitė-Meurice 'The Arab Charter on Human Rights: the Naissance of New Regional Human Rights System or a Challenge to the Universality of Human Rights?' *Jurisprudence*, (2010) Vol 119, No 1 180, at 172.

<sup>62</sup> See Allam above, n 10, at 47-48.

<sup>63</sup> Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, Preamble, para. 3.

rights and fundamental freedoms'.<sup>64</sup> The preamble also confirms its regional particularity based on 'a common heritage of political traditions, ideals, freedom and the rule of law'.<sup>65</sup>

The Preamble of the American Convention on Human Rights also takes on a different approach to the above. It recognizes that:

[T]he essential rights of man are not derived from one's being a national of a certain state, but are based upon attributes of the human personality, and that they therefore justify international protection in the form of a convention reinforcing or complementing the protection provided by the domestic law of the American States.<sup>66</sup>

This international protection of human rights is unique and adds value to the promotion of human rights to all human beings, regardless of nationality, racial background or religion. The '*pro homine* principle', where law is to be interpreted in a manner 'most advantageous to the human being' is a vital principle of IACHR.<sup>67</sup> Furthermore, in its Advisory Opinion on the case of *Habeas Corpus* even in emergency situations, human rights must be protected at all times since they are 'inherent to man'.<sup>68</sup> This is not present in the final revisions of the Arab Charter on Human Rights (2004).

The African Charter on the other hand has a much longer preamble than all three regional mechanisms; it takes on a strong regional focus and takes into consideration 'the virtues of their historical tradition and the values of African civilization' and 'that the enjoyment of rights and freedoms also implies the

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<sup>64</sup> *ibid.*

<sup>65</sup> *ibid.*, para. 5.

<sup>66</sup> American Convention On Human Rights, Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969).

<sup>67</sup> OAS (2011) 'What is IACHR?' <<http://www.oas.org/en/iachr/mandate/what.asp>> accessed 1 January 2015.

<sup>68</sup> See I-A Court HR, *Habeas Corpus in Emergency Situations* (arts. 27(2), 25(1) and 7(6), Advisory Opinion OC-8/87 of January 30, 1987, Series A, No. 8, para. 18 at p. 37. According to the OHCHR, 'It conveys in the Court's view, that "what may only be suspended or limited" under the Convention is the "full and effective exercise" of the rights contained therein; cited UN Office of the High Commissioner for Human Rights/ International Bar Association, *Human Rights in the Administration Of Justice: A Manual On Human Rights For Judges, Prosecutors and Lawyers*, Professional Training Series No.9 ( New York- Geneva, UN Publications, 2003) 4-5.

performance of duties on the part of everyone'.<sup>69</sup> This is very important for the Arab League and its specialized bodies to consider because it emphasizes the duty of the citizen, not just the governments.

#### 6.4.2 Complementarity to International Standards

At the 16<sup>th</sup> session of the Arab Summit held in Tunis from 23-24 May 2004, the revised version of the Arab Charter was presented and finally adopted by the Arab League with no reservations.<sup>70</sup> It entered into force in 2008 as per Article 49 of the Charter<sup>71</sup> and currently has fourteen out of the twenty-two Member States of the Arab League parties to the Charter.

Article 1 of the Arab Charter on Human rights sets the overall aim of the Charter – taking into account '[t]he national identity of the Arab State', and '[t]heir sense of belonging to a common civilization'.<sup>72</sup> It also highlights the importance of human rights – placing it at the 'centre of the key national concerns of Arab States' and in order to help each individual within the Arab States improve his or her situation in life with the '[n]oble human value'.<sup>73</sup> Vitkauskaitė-Meurice, rightly observes this is particularly novel, because traditionally some Arab State have systematically wanted to challenge '[t]he universality of human rights'.<sup>74</sup>

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<sup>69</sup> African (Banjul) Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986.

<sup>70</sup> See 'Arab Charter on Human Rights'. The 2004 16th Summit Resolution No.270 had a relatively short paragraph described 'Modernization of the Arab Charter on Human Rights', where it stated the Leaders (of the members of the Arab League) support of the Arab Charter of Human Rights 'and appreciate the high aims of promotion and protection of human rights in Arab countries' and thus the Charter is to be placed as a principal concern by Arab governments Translated from Arabic to English. Para.27. p. 96. 16th Summit Decision. See Allam for more details regarding the adoption, n 10, at

<sup>71</sup> See above n 28, at 133.

<sup>72</sup> Art. 1(1) Emphasis added.

<sup>73</sup> *ibid.* see also Mattar, above, n 55 at 97. See also P Naskou-Perraki, 'The Arab Charter on Human Rights: A New Start for the Protection of Human Rights in the Arab World' (2009) 62, *Revue Hellenique De Droit Int'l* (Greece).

<sup>74</sup> See above Vitkauskaitė-Meurice, n 61, at 173. According to Rishmawi, the phrase 'universal, indivisible, interdependent and interrelated' is not cited previously together in the UDHR and its bill of rights, showing that the Arab League appear to have expanded its understanding of human rights. See Rishmawi (2005) n 1, at 361.

However, it is argued that Article 1 of the Arab Charter on Human Rights (2004) provides a weaker normative force in comparison with other regional human rights instruments.<sup>75</sup> For example, Article 1 of the ECHR seems to impose more directly the idea that the contracting State are obligated to implement its provisions to secure the rights and freedom stipulated in the Convention. The drafters of the Convention, chose the expression ‘shall secure’, instead of ‘undertake to secure’, in order to emphasize the binding nature of Article 1;<sup>76</sup> requiring State Parties to respect the obligations set out in the Convention with regard ‘to everyone within their jurisdiction’. Although the Article establishes the link between domestic laws and the Convention, it does not prescribe any particular method of how to bring domestic laws in line with the convention.<sup>77</sup> According to Merrills and Robertson the means of implementation could vary according to the constitutional traditions of the State.<sup>78</sup> Nevertheless, any victim whose Convention rights are violated can take his or her case to Strasbourg, albeit after exhausting their domestic legal remedies.<sup>79</sup> The same is regrettably not true with the revised version of the Arab Charter on Human Rights.

Article 3(3) of the Arab Charter is distinguished from the previous version of the 1994 version and from other international human rights instruments.<sup>80</sup> It recognises equal rights for men and women ‘in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments’.<sup>81</sup> Positive Discrimination is a vital concept provisioned in the Arab Charter. Allam submits that this is a positive provision because it establishes rights for men and women

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<sup>75</sup> See for example JG Merrills and AH Robertson, *Human Rights in Europe/A Study of the European Convention on Human Rights* (4th edn, Manchester University Press, Glasgow 2001), at 24.

<sup>76</sup> *ibid.*

<sup>77</sup> *ibid.*

<sup>78</sup> *ibid.*

<sup>79</sup> As provisioned in Art. 34 of ECHR. See J Wadham, H Mountfield, A Edmundson, C Gallagher, *Blackstone’s Guide to the Human Rights Act 1998* (London, 1999) 25.

<sup>80</sup> The United Nations Human Rights Committee, 21 in its General Comment No. 28. COHRE, ‘In Search Of Equality: A Survey of Law and Practice Related to Women’s Inheritance Rights In The Middle East And North Africa (Mena) Region’, Introduction Centre On Housing Rights And Evictions (COHRE) Geneva, Switzerland. (October 2006 )5.

<[http://www.gewamed.net/share/img\\_documents/41\\_in\\_search\\_of\\_equity-a\\_survey\\_of\\_law\\_and\\_practice\\_related\\_to\\_women\\_inheritance\\_rights.pdf](http://www.gewamed.net/share/img_documents/41_in_search_of_equity-a_survey_of_law_and_practice_related_to_women_inheritance_rights.pdf)>

<sup>81</sup> Art. 3(3), LAS, Arab Charter on Human Rights (2004).



within the framework of the ‘positive discrimination’.<sup>82</sup> Mattar also notes that it may be interpreted by some States to limit women’s rights and reference to Shariah may play a restrictive role for its interpretation.<sup>83</sup> Rishmawi argues that subjecting these rights to Shariah or national legislation could challenge attempts at equality.<sup>84</sup> This is also supported by Professor Rehman, where he states that it makes the Article ambiguous and open to criticism.<sup>85</sup> This is a significant concern with implementation on the global level. Sixteen of its twenty-two Member States of the Arab League declared reservations to CEDAW, e.g. to Article 2.<sup>86</sup> Therefore, it is submitted these women’s rights are violated because States attempt to override their obligation to provide laws or amend their constitutions and in the process failing to conform to the progressive provision provided by CEDAW.

Furthermore, Article 4(2) requires Member States of the Arab Charter to provide judicial guarantees required for the protection of the abovementioned rights that ‘may not be suspended’.<sup>87</sup> As noted briefly in chapter 4 the right to due process and fair trial is inalienable and remains of paramount importance. However, with the current uprisings of the region this provision is routinely being breached in various parts of the Arab world, especially in the Syrian Arab Republic, Bahrain and Yemen.<sup>88</sup> As reported by the UNDP, rights provided by international human rights conventions are abolished in many parts of the Arab region, whenever a general state of emergency arises.<sup>89</sup> There are also many legal restrictions on human rights and lack of safeguards for protecting those rights. It appears that many Arab states have accessed or ratified international

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<sup>82</sup> See Allam above n 10, at 52.

<sup>83</sup> See Mattar above n 55 at 106-108.

<sup>84</sup> Rishmawi (2005) n 1, at 375.

<sup>85</sup> *ibid.*, see also J Rehman, *International Human Rights Law* (London and New York: Longman 2010) at 380.

<sup>86</sup> CEDAW list of ratifications. See SS Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man?* (The Hague: Kluwer Law International, 2000) 214-216.

<sup>87</sup> League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008.

<sup>88</sup> See for example, Europarl ‘Situation in Syria, Yemen and Bahrain in the context of the situation in the Arab world and North Africa’ European Parliament resolution of 7 July 2011 on the situation in Syria, Yemen and Bahrain in the context of the situation in the Arab world and North Africa, P7\_TA-PROV(2011)0333

<<http://www.europarl.europa.eu/document/activities/cont/201107/20110720ATT24518/20110720ATT24518EN.pdf>> See also J J Paust, ‘International Law, Dignity, Democracy, and the Arab Spring’ (2013) CORNELL INT’L L.J. 1 10 .

<sup>89</sup> UNDP ‘Arab Human Development Report: Challenges to Human Security in Arab Countries’ (2009) 59 <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2009e.pdf>>

human rights conventions ‘with the aim of improving their international image but without bringing national laws into line’.<sup>90</sup> The government of the Syrian Arab Republic is an important example in this regard, as will be evaluated in chapter 7.

Furthermore, although Article 7(1) of the Arab Charter on Human Rights prohibits death sentencing to children, it invokes it to national discretion, i.e. ‘[u]nless otherwise stipulated in the laws in force at the time of the commission of the crime’.<sup>91</sup> This submitted to be problematic, because it contradicts international norms and violates inter alia Article 37 of CRC,<sup>92</sup> and Article 6 (5) of the ICCPR that prohibits the death penalty imposed on children less than eighteen years of age. Moreover, Article 3 of the UDHR guarantees to everyone ‘the right to life, liberty and security of person’; the rights are affirmed in article 6 (1) of the ICCPR<sup>93</sup>, it is incumbent both in several international law and under treaty law, for State authorities not to deprive individuals of these rights.<sup>94</sup> The Human Rights Committee (HRC) declared the right to life as ‘the supreme right’ and that even in times of emergency the provisions should establish that no derogations are permitted from this right.<sup>95</sup>

Additionally, Viljoen contends the provisions of the Arab Charter includes a number of ‘claw-back’ clauses, where the inter-national (and supra-national) nature of the Charter’s protection is ‘compromised by making it conditional upon and thus similar to domestic law’.<sup>96</sup> This is also supported by Professor Allam who argues that it weakens the binding effect of the Charter and allows States to justify non-implementation of the Charter’s provisions.<sup>97</sup> For example, Article 34 (5) ‘[e]ach State Party shall ensure to workers who migrate to its territory the requisite protection in accordance with the laws in force’.<sup>98</sup>

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<sup>90</sup> *ibid.*

<sup>91</sup> Art. 7 (1), (emphasis added). LAS. Arab Charter on Human Rights (2004).

<sup>92</sup> ‘Lawyers for Lawyers’ 3 <http://www.observatoire-avocats.org/en/tools/teaching-tools/>

<sup>93</sup> Article 6 (1) of the ICCPR stipulates the prohibition of the death penalty as it states ‘[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life’.

<sup>94</sup> *ibid.*, see also J Rehman, *International Human Rights Law* (London and New York: Longman 2010) 92. See for example, art. 3 of UDHR, art. 2 ECHR, art. 4 AFCHPR.

<sup>95</sup> See also art. 4(2) ICCPR; General comment No. 6 the right to life (art.6) (30 April 1982).

<sup>96</sup> Viljoen, n 29, at 14. See also Arab Charter arts 11-16, 36, 39.

<sup>97</sup> See above Allam, n 10 at 62.

<sup>98</sup> Art. 34 (5) Arab Charter on Human Rights (2004).

Article 43 of the Arab Charter outlines that the provisions listed in the Charter should not be interpreted in a way that undermines the protected ‘rights and freedoms’ stipulated in the Charter, particularly laws relating to the rights of women, children and the rights of persons belonging to minorities.<sup>99</sup> This is a positive provision if implemented by ratifying States. However, Rishmawi rightly submits that it remains to be seen how this provision will operate, especially since the Charter is itself weak in providing effective protection of the rights of women, children, and minorities.<sup>100</sup> Furthermore, the article, like most of the ambiguous provisions in the Charter, Article 43 includes a reference to national legislations, this is particularly concerning, because Rishmawi notes this provision does not resolve the current incompatibility of national legislations of most Arab States with international law.<sup>101</sup>

Article 53 (1) of the Arab Charter provides that:

[A]ny State Party, when signing this Charter, depositing the instruments of ratification or acceding hereto, may make a reservation to any article of the Charter, provided that such reservation does not conflict with the aims and fundamental purposes of the Charter.<sup>102</sup>

This provision according to Allam is problematic, because as discussed in chapter 2 the ICJ and the Vienna Convention on the Law of Treaties, as well as other human rights conventions restrict reservations that are incompatible with ‘the object and purpose of the treaty’; in fact, it is argued that States are encouraged to abstain from reservations to human rights treaties.<sup>103</sup> While Article 53 (1) requires that the reservation does not conflict with ‘the aim and fundamental purpose of the Charter’.<sup>104</sup> The provision is not needed because it can be subject to abuse since the drafters left it open, allowing

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<sup>99</sup> See Mattar above, n 55, at 102.

<sup>100</sup> M Rishmawi, ‘The Revised Arab Charter on Human Rights: A Step Forward?’ (2005) HRLR 5, 361-376, at 370.

<sup>101</sup> *ibid* at 370. See also S Zaher ‘The Human Rights to Education in Arab Countries: an international law perspective’ cited in A E. Mazawi and R G. Sultana, *World Yearbook of Education 2010: Education and the Arab 'World': Political Projects, Struggles, and Geometries of Power* (Routledge, 2010) 183- 195, at 186.

<sup>102</sup> Art. 53 (21) LAS, Arab Charter on Human Rights (2004).

<sup>103</sup> See above Allam n 10, at 60.

<sup>104</sup> *ibid*.

reservations to be upheld to ‘any article of the Charter’ this includes many provisions that are fundamental and should not be subject to reservations.<sup>105</sup>

Allam takes the view that the Charter is weak, ambiguous and provides a ‘lack of harmony between the provisions’.<sup>106</sup> He argues that several provisions are consistent with international human rights standards, while other articles opposes them. As such, the Articles within the Charter are deemed ‘self-contradictory’.<sup>107</sup> In line with Rishmawi, Allam argues that the Charter needs to go through amendments in order to overcome its weakness and ambiguity.<sup>108</sup> As such, Amnesty International urged the Arab League to further develop the provisions of the Arab Charter to bring it into conformity with international human rights standards.<sup>109</sup>

The aforementioned presents an illustrative sample of the problematic provisions contained in the Arab Charter. Further, it is beneficial to note that the Arab League also failed to realise the importance of legally protecting the right of refugees and stateless persons, especially since the history of the region provides the fundamental need for these provisions to be implemented.<sup>110</sup> Only nine from the twenty-two Member States of the Arab League have ratified the 1951 Convention relating to the Status of Refugees and eight States ratified its protocol.<sup>111</sup> Both the convention and the 1967 Protocol were created to monitor and protect the human rights of refugees. In pointing to the overall

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<sup>105</sup> *ibid.* Such as Article 5 ‘Right to Life’ or Article 8 ‘No one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment’, in fact all of the provisions are fundamental and should not be subject to reservations. LAS. Arab Charter on Human Rights (2004).

<sup>106</sup> See above Allam n 10, at 63.

<sup>107</sup> *ibid.*

<sup>108</sup> *ibid.* see Rishmawi, n 100, 370-371.

<sup>109</sup> Amnesty International ‘Middle East and North Africa Region Re-drafting the Arab Charter on Human Rights: Building for a better future’ (2009) 2

<<http://www.amnesty.org/en/library/asset/MDE01/002/2004/ar/63b5cabe-d60d-11dd-bb24-1fb85fe8fa05/mde010022004enpdf>> accessed 2 January 2015. This was not the first time that Amnesty International had made observations and recommendations related to the Charter. Amnesty International first submitted observations on the Charter in December 1993, when the Charter was still in its draft form, to the Secretariat of the Arab League’ 2. See also M. Rishmawi, The revised Arab Charter on Human Rights: a step forward? Human Rights Law Review 2005, 361

<sup>110</sup> Although it adopted the Arab Convention on Regulating Status of Refugees in the Arab Countries, without independent body to oversee its implementation. See Arab Convention on Regulating Status of Refugees in the Arab Countries 1994; as well as Regional Refugee Instruments & Related, Declaration on the Protection of Refugees and Displaced Persons in the Arab World, 19 November 1992.

<sup>111</sup> Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967. Algeria (8 Nov 1967 a), Djibouti (9 Aug 1977 d), Egypt (22 May 1981 a), Mauritania (5 May 1987 a), Morocco (20 Apr 1971 a), Sudan (23 May 1974 a), Tunisia (16 Oct 1968 a), Yemen (18 Jan 1980 a).

malaise Kagan notes that the problem is not so much that the Arab States are unable to administer refugee policies, but it is the lack of willingness to protect human rights such inability and malaise while sustaining the overall argument of the study nevertheless reflects ground realities.<sup>112</sup> The disastrous refugee situation will become even more apparent during our consideration of the Syrian crises.

## 6.5 The Arab Human Rights Committee

### 6.5.1 Introduction

The 2004 Arab Charter on Human Rights devotes Articles 45 - 48 to dealing with the establishment of the Arab Human Rights Committee.<sup>113</sup> Once the Arab Charter entered into force on March 16 2008, the Committee was subsequently created as per Article 49 para. 2.<sup>114</sup> The main objectives of the Arab Human Rights Committee are: to monitor whether or not such human rights legislation as exists is actually being enforced in State parties, and to follow-up on the legislative or non-legislative measures the state in question has taken to implement those rights.<sup>115</sup>

The Arab Human Rights Committee is presently the only enforcement mechanism that acts as a ‘compliance monitoring mechanism’ to the Arab Charter on Human Rights.<sup>116</sup> As evaluated in the previous chapter, the idea of an Arab human rights court was discussed nearly a decade ago by various stakeholders in the region. However, the Arab

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<sup>112</sup> M Kagan “‘We Live in a Country of the UNHCR’: The UN Surrogate State and refugee policy in the Middle East’ (2011), Research Paper No.201, UNHCR New Issues in Refugee Research, Geneva: Policy Development and Evaluation Service UNHCR. However, with the exceptions of the weak central governments in Lebanon, Yemen and post-Baathist Iraq.

<sup>113</sup> Arab Human Rights Committee, ‘Arab Charter on Human Rights’  
<[http://www.lasportal.org/wps/portal/las\\_ar\\_humanrights/inpage/lut/p/c5/vY3NDolwEAafxSfYhfATjxgBC7YqFoReDBqDglCiBCJPL3pHL8b9jjuZAQHDqrS9ZGlzkVV6hRiEsUcl4KHvKuhq8xkSc-OrRkQoeirsIjkPUDIOce2LwgORXeXhFbMHn\\_iEv2Tv\\_8hZCGwhyxMkIMxRCzOBQ4zafps\\_atIXfZBjh03Yqay3OmoX2OTBiuZiRYuzx0OpMk76uxkQyh1fuU-VyNnYFsvWtXOcfG452h9bxk9bddku9Xa7Pt\\_0my6tyRNm8MoY/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=a59c70004a393b33b0debc526698d42c](http://www.lasportal.org/wps/portal/las_ar_humanrights/inpage/lut/p/c5/vY3NDolwEAafxSfYhfATjxgBC7YqFoReDBqDglCiBCJPL3pHL8b9jjuZAQHDqrS9ZGlzkVV6hRiEsUcl4KHvKuhq8xkSc-OrRkQoeirsIjkPUDIOce2LwgORXeXhFbMHn_iEv2Tv_8hZCGwhyxMkIMxRCzOBQ4zafps_atIXfZBjh03Yqay3OmoX2OTBiuZiRYuzx0OpMk76uxkQyh1fuU-VyNnYFsvWtXOcfG452h9bxk9bddku9Xa7Pt_0my6tyRNm8MoY/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=a59c70004a393b33b0debc526698d42c)> League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008.

<sup>114</sup> See also Statement by Dr. A Zaalani (2010) n 5, at 10.

<sup>115</sup> LAS, ‘About the Commission on Human Rights’ (2013).

<sup>116</sup> F Kidamenemariam, “Enforcement of Human Rights under Regional Human Rights Mechanism A Comparative Analysis” (2006) LLM Theses and Essays. USA: University of Georgia, 1.

League decided to oppose judicial sanctions.<sup>117</sup> To this absence of a Court, the issue of effectiveness of the Arab Human Rights committee becomes all the more crucial.

### 6.5.2 The Legislative Framework of the Arab Human Rights Committee

Article 45 establishes the legislative framework of the Arab Human Rights Committee. Article 45(1) stipulates that the committee is to be composed of seven members. Article 45(2) clearly outlines the specifications of the candidates for the position: it recommends that they should be ‘highly experienced persons’.<sup>118</sup> These experts are to execute their duties in their ‘personal capacity’, and that they should do their work ‘with full impartiality and integrity’.<sup>119</sup> However, according to Al-Midani, the Charter does not require a formal commitment to do so before taking joining the Committee.<sup>120</sup>

Furthermore, Article 45 (5) establishes the process of electing members to the Committee, which illustrates an element of transparency and can improve its ‘quality’.<sup>121</sup> However, the Arab Human Rights Committee has failed to provide a detailed structure to match those defined by international human rights treaty bodies. For example, the OHCHR suggests that an effective human rights committee should include criteria for ‘candidature, qualifications and expertise and term limits’ and more importantly ‘gender balance’.<sup>122</sup> Emphasis on gender balance is very important; particularly in the Arab region and especially with the fact all the members of the Arab Human Rights Committee are male.<sup>123</sup> In this regard, experience of similar bodies, including those operating at the regional level, can offer a good example to improve the

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<sup>117</sup> See Zaalani above, n 5 at 10.

<sup>118</sup> League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008. Al-Midani and Cabanettes, 147, 148 (2004) (in the introduction to an English translation of the 2004 Arab Charter  
<[http://www.acihl.org/res/Arab\\_Charter\\_on\\_Human\\_Rights\\_2004.pdf](http://www.acihl.org/res/Arab_Charter_on_Human_Rights_2004.pdf)>

<sup>119</sup> League of Arab States, Arab Charter on Human Rights, for another translated version of the Charter see Al-Midani (2012) n 11, at 125.

<sup>120</sup> Al-Midani (2012) n 11 at 128.

<sup>121</sup> *ibid.*

<sup>122</sup> Concept Paper on the High Commissioner's Proposal for a Unified Standing Treaty Body, U.N. Doc. HRI/MC/2006/CRP.1 (Geneva, 22-23 June 2006).

<sup>123</sup> See for example Arab Human Rights Committee, ‘Members of the Arab Human Rights Committee’, in  
<[http://www.lasportal.org/wps/portal/las\\_ar\\_humanrights/inpage!/ut/](http://www.lasportal.org/wps/portal/las_ar_humanrights/inpage!/ut/)> accessed 2 January 2015.

effectiveness of the Arab Human Rights Committee.<sup>124</sup> For example, the OAS stipulates the importance of '[t]he inclusion of a gender perspective' in all the activities of the Commission.<sup>125</sup>

Article 45 (7) of the Arab Charter establishes that the first meeting of the Committee is to be convened by the Secretary General of the Arab League. During the session, 'the Committee shall elect its Chairman from among its members,' for a two-year term.<sup>126</sup> Furthermore, it stipulates that upon the invitation of the Secretary General of the League the Arab Human Rights Committee are to hold their meetings at the League of Arab States headquarters in Cairo. These meetings may also be held in the premise in any Member State upon the invitation of the Secretary General of the League. The Charter also mandates the Committee to establish 'rules of procedure' and they determine themselves how often they shall meet.<sup>127</sup> Thus, the Committee is the only mechanism charged with monitoring the implementation of the Arab Charter. This can also serve as defect and weakens the authoritative position of the Arab Human Rights Committee.

To ensure members' impartiality and integrity, Article 47 establishes that members of the Committee shall enjoy necessary immunities for their 'protection against any form of harassment or moral or material pressure or prosecution' while working 'as members of the Committee'.<sup>128</sup>

Article 47 does not provide diplomatic privileges, thus limiting the accessibility and function of the Committee. This Clause is in contrast to other provisions in related human rights instruments, Article 43 of the of the African Charter on Human and Peoples' Rights provides 'diplomatic privileges and immunities [are] accorded under the Convention of the Organization of African Unity for diplomatic privileges and immunities'.<sup>129</sup> Similarly, the Statute of the American Commission on Human Rights

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<sup>124</sup> See HRI/MC/2006/CRP.1.

<sup>125</sup> OAS 'What is IACHR?' (2011) <<http://www.oas.org/en/iachr/mandate/what.asp>>

<sup>126</sup> See Art. 45 (7) in League of Arab States, Arab Charter on Human Rights, May 22, 2004, reprinted in 12 Int'l Hum. Rts. Rep. 893 (2005), entered into force March 15, 2008.

<sup>127</sup> *ibid.*

<sup>128</sup> See Art. 47, See also Al-Midani above n 11, at 128.

<sup>129</sup> See Art. (43) of the African Charter on Human and Peoples' Rights: 'In discharging their duties, members of the Commission shall enjoy diplomatic privileges and immunities provided in the General

(1960) refers to the diplomatic privileges and immunities to the Members of the OAS Commission. Article 12 of the Statute distinguishes between OAS States that are members and non-members of the American Convention on Human Rights.

It is submitted that representatives of OAS member States who are also parties to the American Commission enjoy diplomatic immunities (as provided for by the rules of international law for diplomats) from the moment they are first elected and throughout their term of office.<sup>130</sup> Significantly, members of the OAS that are not parties to the American Convention still 'enjoy the immunities and privileges relating to their posts'.<sup>131</sup> This position on immunities is reaffirmed by Article 70 of the American Convention on Human Rights.<sup>132</sup>

Article 48 of the Arab Charter on Human Rights covers the main mechanism of implementation by the Arab Human Rights Committee. Article 48 (1) requires member States of the Arab Charter to submit a report to the Secretary-General of the Arab League explaining measures they have undertaken 'to give effect to the rights and freedoms recognized in this Charter and on the progress made towards the enjoyment thereof'.<sup>133</sup> After receiving the reports, the Secretary General will then transfer these reports to the Committee 'for its consideration'.<sup>134</sup> Thus, initially the mechanism of implementation of the Arab human Rights Committee relies on the Member States' commitment to submit the reports to the Secretary General for the Committee's

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Convention on the Privileges and immunities of the Organization of African Unity', African [Banjul] Charter on Human and Peoples' Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5,

<sup>130</sup> See Al-Midani, above, n 11, at 128.

<sup>131</sup> See Art. (12) of the Statute of the American Commission on Human Rights: 'In those member states of the Organization that are Parties to the American Convention on Human Rights, the members of the Commission shall enjoy, from the time of their election and throughout their term of office, such immunities as are granted to diplomatic agents under international law. While in office, they shall also enjoy the diplomatic privileges required for the performance of their duties'. Organization of American States (OAS), *Statute of the Inter-American Commission on Human Rights*, 1 October 1979, O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80, Vol. 1 at 88.

<sup>132</sup> 'Art. 70: 1: 'The judges of the Court and the members of the Commission shall enjoy, from the moment of their election and throughout their term of office, the immunities extended to diplomatic agents in accordance with international law. During the exercise of their official function they shall, in addition, enjoy the diplomatic privileges necessary for the performance of their duties'. Organization of American States (OAS), American Convention on Human Rights, "Pact of San Jose" Costa Rica, 22 November 1969.

<sup>133</sup> Art. 48 (1).

<sup>134</sup> *ibid.*



consideration.<sup>135</sup> There exists weakness in relying on submission of State reports because to date, since its instigation of the procedure in 2008, only five States have submitted their obligatory reports. One may also question to the extent to which the recommendations of the reports by the Committee will be binding, since there is no mention of judicial system or other enforcement mechanisms.<sup>136</sup> The Arab Human Rights Committee cannot receive individual or inter-State complaints and there are no provisions to determine the subsequent procedure in case of a State's non-compliance with provisions.<sup>137</sup> Furthermore, there are no provisions establishing relationship between the Arab Human Rights Committee and the Council of the Arab League. This is unfortunate and a major lacuna as the Council of the League could not assist with monitoring the implementation of the reports and recommendations the Committee has passed.<sup>138</sup>

It is equally unfortunate to recognise that the mandate of the Committee is very limited in comparison to other regional human rights commissions (or committees). For example, the inter-American commission on Human Rights has jurisdiction to review petitions '[t]hat claim violation of the rights of individuals' guaranteed in the American Convention on Human Rights and has competence to consider 'alleged violations' of the rights recognized in the American Declaration on the Rights and Duties of Man.<sup>139</sup> The Inter-American Commission lists its primary mandate as to '[p]romote respect for human rights in any of the territories of OAS member State and act as a consultative body to the OAS'.<sup>140</sup>

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<sup>135</sup> See Al-Midani, (2012) above, n 11, at 130.

<sup>136</sup> Al-Midani n 11, at 132.

<sup>137</sup> Allam n 10, at 63.

<sup>138</sup> Al-Midani n 11, at 132. FIDH 'The Arab League and Human Rights: Challenges Ahead' (Regional Seminar held in Cairo 16-17 February 2013) 14

<[http://www.fidh.org/IMG/pdf/arab\\_league\\_human\\_rights\\_challenges.pdf](http://www.fidh.org/IMG/pdf/arab_league_human_rights_challenges.pdf)> accessed 1 January 2015.

<sup>139</sup> D R Pinzón "the "Victim" Requirement, the Fourth Instance Formula and the Notion of "Person" in the Individual Complaint Procedure of the Inter American Human Rights System' (2001) Vol. 7, No.1, ILSA Journal of Int'l & Comparative Law, 2.

<sup>140</sup> See Art. , and OAS, 'IACHR Presents Second Report on the Situation of Human Rights Defenders in the Americas' (6 March 2012) <[http://www.oas.org/en/iachr/media\\_center/PReleases/2012/025.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/025.asp)>, The Commission is composed of seven independent members who do not represent their State or their residence and are elected individually by the OAS General Assembly. G L Neuman, 'Import, Export, and Regional Consent in the Inter-American Court of Human Rights' (2008) EJIL, Vol. 19 No. 1, 101–123. <<http://www.ejil.org/pdfs/19/1/175.pdf>>; See also OAS, 'Brief History of the Inter-American Human Rights System' (2011) <<http://www.oas.org/en/iachr/mandate/what.asp>> accessed 1 January 2015.

Compared to the Arab Human Rights Committee, the role and competence of Inter-American Commission on Human Rights provides more room to exercise its mandate.<sup>141</sup> For example, from 1965 until 1997 the Inter-American Commission on Human Rights (IACHR) ‘was expressly authorized’ to examine petitions or of cases concerning particular human rights violations.<sup>142</sup> Thus, for 32 years the IACHR has processed or is still processing 12,000 cases.<sup>143</sup> The reports of individual cases may then be found in the Annual Reports of the Commission or autonomously by country.<sup>144</sup> These on-site visits and inspection facility as contained to the IACHR is unfortunately not available in the Arab Human Rights Committee.<sup>145</sup> Pinzón observes the competence *Ratione Materiae* of the Inter-American Commission is very wide in scope.<sup>146</sup> For example, Thomas Buergenthal, former President of the Inter-American Court of Human Rights, comments on the Commission’s dual role:

As [an O.A.S.] Charter organ, the Commission has jurisdiction over all O.A.S. Member States, whether or not they have ratified the Convention; as a Convention organ, its jurisdiction extends only to the States Parties to the Convention. Here its jurisdiction is more specific and its powers more extensive. The powers of the Commission as Charter organ lack precision, which is just as well, for the ambiguities about the scope of its powers gave it greater flexibility to deal imaginatively with gross violations of human rights prior to the entry into force of the Convention. It retains that flexibility in dealing with states that have not ratified it and in responding to emergency situations involving large-scale human rights abuses in the region.<sup>147</sup>

Unfortunately, despite the presence of regional arrangements in all corners of the globe, the Arab League failed to replicate many of the positive procedures provided by these

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<sup>141</sup> This competence by the commission is mandatory (Art. 44); from one State party against another State party, if such competence has been recognized (Art. 45). American Convention on Human Rights, Adopted at the Inter-American Specialized Conference on Human Rights, San José, Costa Rica, 22 November 1969. OAS, ‘Reports on Cases’ Current Statute and Regulations of the Commission can be found in Basic Documents pertaining to Human Rights in the Inter-American System, Inter-Am. C.H.R., OAS/ser.L/V/I.4,rev7 (2000).

<sup>142</sup> See above OAS (2011), n 125.

<sup>143</sup> *ibid.*

<sup>144</sup> See above OAS (2011), n 125.

<sup>145</sup> R K.M. Smith, ‘Human Rights Organisation and Key Institutions’ in *Texts and Materials on International Human Rights*, (2<sup>nd</sup> edn, Routledge 2010) 127.

<sup>146</sup> Current Statute and Regulations of the Commission can be found in Basic Documents pertaining to Human Rights in the Inter-American System, Inter-Am. C.H.R., OAS/ser.L/V/I.4, rev.7(2000).

<sup>147</sup> American Convention on Human Rights, Nov. 22, 1969, OAS T.S. No. 36, at 1, OAS Off. Rec. OEA/Ser. L/V/II.23 doc. 21 rev. 6 (1979), *reprinted in* 9 I.L.M. 673 (1970) (entered into force, July 18, 1978). See W B H Lukes, R A, Hnatt KM ‘Regional Human Rights Regimes: A Comparison and Appraisal’ (1987) Vol 20, No. 4, Vand. J. Transnat’l L., 637, at 603.

systems. In addition to the lacuna, the Arab League not only failed to adopt an enforcement mechanism that provides individual complaints procedures. The American Convention on Human Rights (1961) and African (Banjul) Charter on Human (1981) and Peoples' Rights the European Convention on Human Rights (1950) provide individual complaint procedures.

The ECHR, for example, sets out in Article 34 that any individual complainant whose rights listed in the Convention are violated can take his/her case to Strasbourg after exhausting their national domestic remedies (and passing other admissibility criterions).<sup>148</sup> More importantly contracting Parties are 'not to hinder in any way the effective exercise of this right'.<sup>149</sup>

At the Inter-American level, Article 44 of the American Convention on Human Rights also permits any individual to complain without the conditions imposed by the European Convention. For example, the petitioner need not be the victim: 'any person or group of persons, or any nongovernmental entity legally recognized in one or more member states of the Organisation, may lodge petitions with the Commission' to

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<sup>148</sup> As listed in Art. 34 of Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS. See also J. Wadham J, Mountfield H, Edmundson A, Gallagher C, *Blackstone's Guide to the Human Rights Act 1998* (London, 1999)25. Such as Article 34, the provision only applies if they are themselves victims, or Art. 35(1) a petition must be lodged within six months after the date on which the last domestic jurisdictional decision was taken. Boyle K 'The European Convention on Human Rights' (2009) 1 Vol. 40, Victoria U Wellington L Rev, 9. Soering v United Kingdom Application No 14038/88 ECHR (1989) 11 EHRR 439 Series A No 161 [where the concept of victim was developed]. As well as the European Social Charter, which 'supplements' the European Convention on Human Rights (ECHR) and deals with economic and social rights. It sets out various fundamental rights and freedoms and establishes 'a supervisory mechanism based on a system of collective complaints and national reports'. However, it does not have a judicial enforcement mechanism such as the ECHR. Régis Brillat, Head of the Department of the European Social Charter Executive Secretary of the European Committee of Social Rights, 30 June 2008, European Social Charter Collected texts (6th edition) (updated to 30 June 2008) 7 <[http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter\\_enasp](http://www.coe.int/t/dghl/monitoring/socialcharter/Presentation/AboutCharter_enasp)>; Furthermore, we can see the Committee being effective with regards to the implementation of the provisions to 'look beyond the letter of the law to see how effectively it operates in practice'. See J Harris, 'Chapter One Collective Complaints under the European Social Charter: Encouraging Progress?' cited in KH Kaikobad, M Bohlander, *International Law and Power: Perspectives on Legal Order and Justice: Essays in Honour of Colin Warbrick* (Martinus Nijhoff Publishers, 2009) 5; D Harris and J Darcy, *The European Social Charter* (2<sup>nd</sup> edn, Ardsley, New York, 2001) 5. This is illustrated in the case of *International Commission of Jurists v Portugal*, where it declared that: 'the aim and purpose of the Charter, being a human rights protection instrument, is to protect rights not merely theoretically, but also in fact'. Cited from *Jurists v Portugal*, Complaint No. 1/1998, Merits, ECSR, 9 September 1999, at 32 (2006), paragraph 207. Thus, a contracting State may be found to be in breach of its obligations if the laws prove unsatisfactory.

<sup>149</sup> Such as Art.1, 13, of ECHR.

complain or denunciate a State Party's violation of the Convention.<sup>150</sup> This is one of the most important provisions, which ensures that NGOs have the ability to lodge complaints; however, these NGOs need to be legally recognised in one or more member states of the organisation. This NGO ability to lodge a petition is not included in the Arab Charter on Human Rights. However, like the European system, local remedies need to still be exhausted, and petitions need to be lodged within six months of its exhaustion.

The African Commission on Human and Peoples' Rights is created 'to promote human and peoples' rights and ensure their protection in Africa'.<sup>151</sup> Its organisational structure is more detailed than the Arab League. The African Charter has fifteen provisions related to the African Commission (Articles 30-44). Article 31 is much more developed than the Arab Charter's Article 45 (2), establishing that there should be eleven members rather than the seven members of its Arab Committee on human rights and insisting on their experience and competence in human rights matters and acting in their 'personal capacity'. The African Charter on Human and Peoples' rights establishes 14 provisions (Articles 45-59) for its procedure on how the Commission works and receiving petitions and communications.<sup>152</sup> Article 56 of The African Charter on Human and Peoples' rights also allows individual complaints. These communications may also be submitted by NGOs and various other entities and like the American Convention the petitioner does not necessarily have to be the victim.<sup>153</sup>

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<sup>150</sup> See also 'Rules of Procedure of the Inter-American Commission on Human Rights' approved by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011 and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, for entry into force on August 1st, 2013, OAS, 'Basic Documents in the Inter-American System' <<http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>>

<sup>151</sup> Art. 30. African (Banjul) Charter on Human And Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

<sup>152</sup> See. Art. 46-59 (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

<sup>153</sup> Although the African Human Rights system does offer complaint procedures there were only three cases filed to the Commission and none were ruled admissible by the Commission. See for example, *Centre of the Independence of Judges and Lawyers V Algeria* 17th Ordinary Session, 13 - 22 March 1995. See ACHPR (2013) *104/94-109/94 126/94 Centre of the Independence of Judges and Lawyers / Algeria / Decisions on Communications / ACHPR*. [online] <[http://www.achpr.org/communications/decision/104.94-109.94\\_126.94/](http://www.achpr.org/communications/decision/104.94-109.94_126.94/)> accessed 13 Dec 2013. See also *Centre for Independence of Judges and Lawyers v Algeria* (2000) AHRLR 15 (ACHPR 1994). See generally 'United Nations Human Rights Treaty Bodies' <http://www1.umn.edu/humanrts/research/ZIM%20ahrlr-text.pdf>>

Furthermore, despite all the resolutions and recommendations adopted by the Council of the Arab League to promote human rights, it does not supervise implementation of the *Concluding Observations and Recommendations* of the Arab Human Rights Committee.

## 6.6 Conclusions

All of the above analyses the Arab Charter on Human Rights and its drafting process. It shows that the Charter (even with its highly criticised provisions) was made possible primarily due to the collaborative efforts of the OHCHR (and its expert committee), the Arab Permanent Human Rights Commission and the Arab Human Rights Department. However, in line with Al-Midani's observation one may question the role the Arab League Council has played in assisting the Arab Human Rights Committee with monitoring States' implementation of the Committee recommendations,<sup>154</sup> since no mention of this collaborative effort is made in the Arab Human Rights Charter.

Overall, as this study has established although the revised version of the Arab Charter on Human Rights represents improvements in comparison to the 1994 version, there are nevertheless substantial shortcomings and limitations in the text of the Charter. It is unfortunate to see that Arab League still did not accept many of the recommendations by the OHCHR expert committee, or the international and regional NGOs. The League included provisions that undermine the universality of human rights and failed to provide sufficient provisions to protect the rights of women, children, and minorities. It seems the Charter did not depart from the criticism of the 1994 version of the Charter. Despite all the meetings it had with the OHCHR, and other international forums it attended, the leading figures behind the Arab Charter on Human Rights failed to provide an effective enforcement mechanism, especially one that provides an individual complaints procedure. One may therefore legitimately question the actual aim of the Arab League and its approach towards the protection of human rights.

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<sup>154</sup> See Al-Midani above (2012) n 11, at 132.

**PART IV:**

**IMPLEMENTATION: BRINGING THEORY INTO PRACTICE**

**Chapter 7 State Practice**

**Case study on the Syrian Arab Republic**

## 7.1 Introduction

As highlighted in the preceding chapters, the Arab League has failed to secure an effective enforcement mechanism to the Arab Charter on Human Rights 2004. The Arab human rights committee does not have the jurisdiction to provide advisory opinions, enforce binding decisions, or interpret the provisions of the Arab Charter on Human Rights. Unlike other regional human rights establishments, the Charter does not have a mechanism to develop jurisprudence that could be used in courts at the national level of Member States.<sup>1</sup> The Charter has also not attained its deserved status among Arab States, where many are unaware of its existence.<sup>2</sup>

The Arab Human Rights Committee which commenced its work in 2011, issued a statement recognising the severe violations of human rights by the government.<sup>3</sup> In December 2011, the committee joined the international community by sending some of its members to participate in the League of Arab States observer mission to the Syrian Arab Republic.<sup>4</sup> However, these efforts have been limited and largely based on political motivation rather than a genuine desire to resolve the disparity and ensure human rights protection.

Accordingly, in order to highlight the deficiencies of the League, this chapter assess the role of the Arab League and its human rights institutions in relation to the Syrian uprising. It will start by providing a historical overview and background to the constitutional and political situation in the Syrian Arab Republic. It will then endeavour to examine the human rights situation in Syria and the government's human rights treaty adherence. Subsequently, it will discuss the Syrian uprising and the role if any

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<sup>1</sup> The International Federation for Human Rights (FIDH) 'The Arab League and Human Rights: Challenges Ahead' (Regional Seminar held in Cairo on 16-17 February 2013) 16  
<[http://www.fidh.org/IMG/pdf/arab\\_league\\_human\\_rights\\_challenges.pdf](http://www.fidh.org/IMG/pdf/arab_league_human_rights_challenges.pdf)

<sup>2</sup> Speech by E Alshejri, Director of Human Rights Department, League of Arab States (2010) 'Human Rights: universal principles and regional guarantees' Guarantees' The Mediator of the French Republic, The Johns Hopkins University, Paris II University Paris, France, (1 February 2010), Selected Workshop Presentations and Proceedings. The Protection Project Journal of Human Rights and Civil Society, Issue 3 (Fall 2010) 191.

<sup>3</sup> See LAS press statement 'Statement of the Arab Human Rights Committee (Committee Charter) on the current situation in a number of Arab countries' (April 21 2011). (in Arabic)

<sup>4</sup> See Statement of the Arab Human Rights Committee (Committee Charter) about their participation in the Observer Mission of the Arab League to Syria. (Press Statement February 1 2012) (originally in Arabic).

<<http://www.lasportal.org/wps/wcm/connect/8c6afd804a7fc699b52dbd526698d42c/Human+Rights+Comission+Statement+On+Syria.pdf?MOD=AJPERES>> accessed 2 January 2015.



played by the Arab League in response to the government led civil war in Syria and the plight of the Syrian refugees in this regard.

## 7.2 Background

The Syrian Arab Republic (herein after Syria) is a long standing member of the Arab League and the relationship between Syria and the League stretches back to several decades.<sup>5</sup> According to Boutros-Ghali the League's first resolution supported Syria's independence from French occupation.<sup>6</sup> For example, although Syria gained independence from the French Mandate in September 1941, the French troops did not leave its territories. The Arab League passed resolution No. 1 in June 5 1945 which stipulates that: '[a]ny international meeting held to solve the dispute between Syria and the Lebanon, and France, should include the League of Arab States';<sup>7</sup> it also added that 'it should be understood that every negotiation on the question should be based upon the recognition of the independence and sovereignty of both these countries'.<sup>8</sup> The second resolution (Resolution No.2) adopted by the League in June 6<sup>th</sup> 1945 requested the French forces 'Troupes Spéciales' to entrust their military equipment to the Syrian and Lebanese governments; they accord this request with Article 6 of the Arab League's Pact, which stipulates the League will support these Arab republics to attain sovereignty and independence.<sup>9</sup> Consequently, the League took their concern to the United Nations Conference on International Organization in San Francisco.<sup>10</sup> This was the first time that the Arab League presented itself as a regional organisation at an international level.<sup>11</sup> Months after these meetings, the Syrian and Lebanese conflicts were settled by the French Mandate's agreement of 22 March 1946, which provided for the elimination of the French troops from Syria by 15 April 1946 and from Lebanon by 31 August 1946.<sup>12</sup>

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<sup>5</sup> See for example, A Dawisha, *Arab Nationalism In The Twentieth Century, From Triumph To Despair* (Princeton University Press, 2003) 119.

<sup>6</sup> Boutros-Ghali, BY, 'The Arab League, 1945-1955: Ten Years of Struggle' (1955) 498 Int'l Conciliation, 396.

<sup>7</sup> *ibid.*

<sup>8</sup> *ibid.*

<sup>9</sup> *ibid.*

<sup>10</sup> See above, Boutros-Ghali n 6, at 396.

<sup>11</sup> *ibid.*

<sup>12</sup> *ibid.*

Notwithstanding, the aforementioned developments, Syria was left largely fragmented as a result of the French occupation and its 'divide and rule'<sup>13</sup> policy, which increased tribal, sectarian and political rivalries between different villages such as the Aleppo, Damascus, and in the Alawite province, the Jazira, and Jebel Druze.<sup>14</sup> At the time of its independence 85 per cent of the population in Syria were Arabs, a majority (60 per cent) were Sunnis; there were also the Shi'a offshoots of Alawites, Druzes, Ismailis, as well as many Christians and ethnic minorities such as Kurds, Armenians, Turkomans, and Circassians.<sup>15</sup> They all have their own tribal affiliations, especially the Alawites. According to Bassam Tibi, Alawites distinguish themselves from other Arabs, even though they are ethnically Arabs, 'by embracing a myth of common descent and a common belief'.<sup>16</sup> In addition, the Alawites are internally divided into units of four tribes and religiously subdivided into three sub-sects.<sup>17</sup>

Paul argues that historically, external indirect and direct interventions also influenced the state of affairs in Syria. In less than three years of democratic rule, Syria had to undergo three military coups; the first one was in 1949 and two others were subsequently followed within nine months of each other.<sup>18</sup>

Hafez Al Assad became president of Syria in 1971 until his death in 2000.<sup>19</sup> The Assads belong to the Alawites who as noted earlier are a branch of the Shi'a sect and a religious minority encompassing 11 percent of the Syrian population. Thus while recent statistics provides Sunni Muslims represent 75 percent of the population.<sup>20</sup> Since, Syria experienced the highest number of coup d'état in the region, he took a series of steps<sup>21</sup> to keep himself in power. One of the most important step he took was strengthening the role of the security forces, the military intelligence and the main counter intelligence

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<sup>13</sup> Dawisha, n 5, at 93.

<sup>14</sup> *ibid.*

<sup>15</sup> Dawisha, n 5, at 92.

<sup>16</sup> B Tibi, 'The Simultaneity of the Unsimultaneous: Old Tribes and Imposed Nation-States in the Modern Middle East' in P S Khoury and J Kostine *Tribes and State Formation in the Middle East* (University of California Press, 1990) 127-152, at 138.

<sup>17</sup> *ibid.* for more details on these sub-sects refer to Tibi (1990).

<sup>18</sup> According to Paul, the first Coup was supported by the CIA. See JA Paul, *Human Rights in Syria*, (Human Rights Watch, 1990) 9.

<sup>19</sup> For more information on Syrian and the Baath party see, J Galvani, 'Syria and the Baath Party' MERIP Reports, No. 25 (Feb., 1974), pp. 3-16.

Syria and the Baath Party 'MERIP Reports, No. 25 (Feb., 1974), pp. 3-16.

<sup>20</sup> J Gelvin, *The Arab Uprisings: What Everyone Needs to Know* (Oxford University Press, 2012) 102.

<sup>21</sup> *ibid.*, at 109.

agency.<sup>22</sup> The armed forces parallel to the regular military have various security agencies with overlapping jurisdictions.<sup>23</sup> Within the military, he distributed high-ranking positions to people from his Alwaite tribe, as well as from the Druze and Ismaili tribes, who are all minorities in Syria and have their tribal or ethnic affiliations.<sup>24</sup> These minorities were also State employees and rich merchants. This sectarian divide is unfortunate for the rest of the 70 per cent Sunni population, especially since they were initially, during the Ottoman era, affluent and were property owners and administrators.<sup>25</sup> Thus, Syria under Assad had escalated tensions because of these sectarian and ethnic rivalries.<sup>26</sup>

Notwithstanding the political conflicts, Assad was very powerful and was regarded as a brutal dictator. To keep himself in power, he hired military and security forces to intimidate any opposition to the government, with violence and forced disappearances.<sup>27</sup> For example, because of the apparent threat from Islamic extremists (the Muslim brotherhood)<sup>28</sup> that called for the removal of the secular regime under Hafez Al-Assad, the year 1982 saw one of the most brutal attacks by the government that resulted in the killing of between 10,000 and 25,000 Syrians, mostly civilians.<sup>29</sup>

### 7.2.1 Constitution

The Syrian constitution under the current Assad regime was adopted by Hafez Al-Assad in March 1973.<sup>30</sup> According to one report, the 1973 Constitution represents a synthesis between the desire to protect fundamental rights and freedoms, and the

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<sup>22</sup> See Paul above n 18, at 158.

<sup>23</sup> See Gelvin above n 20, at 109.

<sup>24</sup> See Paul above n 26, at 158. For more information on the Ba'athist regime, see P Seale, *Asad* (Berkeley: University of California 1989), see also N Dam, *the Struggle for Power in Syria: Sectarianism, Regionalism, and Tribalism in politics, 1961-1978* (New York: St Martin's 1979).

<sup>25</sup> See Paul above, n 18, at 8.

<sup>26</sup> *ibid.*

<sup>27</sup> BBC News, 'Profile: Syria's ruling Baath Party' July 9, 2012 < <http://www.bbc.co.uk/news/world-middle-east-18582755>> accessed 2 January 2015.

<sup>28</sup> See Gelvin, n 20, at 102

<sup>29</sup> T Friedman, 'Foreign Affairs; Hama Rules' (21 September 2001)

<<http://www.nytimes.com/2001/09/21/opinion/foreign-affairs-hama-rules.html>> accessed 2 January 2015.

<sup>30</sup> Although Syria had a constitutional regime under the Ottoman Empire from 1876 to 1877 and 1908 to 1918. Then again it had a new constitution under the French mandate in 1928. D Commins and D W Lesch, *Historical Dictionary of Syria* (Scarecrow Press, 2<sup>nd</sup> edn, 2004) 95.

affirmation of the need to protect the socialist Baathist regime.<sup>31</sup> Clause 1 of the Constitution states that ‘the Syrian Arab Republic is a democratic, popular, socialist, and independent state’.<sup>32</sup> However, the provisions appear as an illusion and inconsistent to the practical measures taken by the regime; the Baath party under Assad became an important tool to implant a perception of loyalty, in order to attain support and control of Syria.<sup>33</sup> The party rules authoritatively controls most of Syria’s print and broadcast media.<sup>34</sup> When Hafiz Al-Assad died in June 2000, and in order to pass a legal succession to his son Bashar Al-Assad, the Constitution had to be amended to reduce the minimum age to 34, from the previous requirement of 40.<sup>35</sup> This illustrates the anarchic behaviour of the regime, instead of installing a transparent electoral process; the Syrian constitution was amended to allow succession of the son of Hafez Al-Assad.

The constitution provides Bashar Al-Assad, strong presidential powers, as the supreme authority and commander of chief of armed forces.<sup>36</sup> He has expanded authority to rule by decree and has disbanded the legislature.<sup>37</sup> The legislative branch consists of a unicameral People’s Assembly elections every four years. The Assembly can vote on legislation drafted by the executive branch but are not able to legislate.<sup>38</sup> The president holds the ultimate power and administrative authority with virtually no checks and balances on his government or efficient constitutional, legislative, or judicial restraints.<sup>39</sup> Hence, one report suggests that the parliament in Syria under the president is only ‘a rubber stamp’ whereas the president takes control over the political organisations.<sup>40</sup>

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<sup>31</sup> Alkarama, ‘Syria, The Permanent Agency – A Breeding Ground for Torture’, Report submitted to the Committee against Torture in the context of the review of the initial periodic report of the Syrian Arab Republic, 4 (9 April 2010)

<<http://www.arabhumanrights.org/publications/countries/syria/shadowreports/Alkarama-Syria44-2010e.pdf>> accessed 2 January 2015.

<sup>32</sup> *ibid.*

<sup>33</sup> See BBC News, ‘Profile: Syria’s ruling Baath Party’ July 9, 2012 < <http://www.bbc.co.uk/news/world-middle-east-18582755>> accessed 2 January 2015.

<sup>34</sup> For more information on Syrian and the Baath party see, J Galvani, ‘Syria and the Baath Party’, MERIP Reports, No. 25 (Feb., 1974), pp. 3-16.

<sup>35</sup> See Commins and Lesch above, n 30, at 96.

<sup>36</sup> *ibid.*, see also, J A. Paul, ‘Government, Political Parties, and the Legal System, in *Human Rights in Syria* (Human Rights Watch, 1990) 24.

<sup>37</sup> *ibid.*

<sup>38</sup> Commins and Lesch, n 30, at 96

<sup>39</sup> See Alkarama n 31, at 4.

<sup>40</sup> *ibid.*

In response to the uprisings in Syria, the government held a constitutional referendum on 26 February 2012. It introduced multiple political parties to take part in elections instead of the long-standing single-party system, and established presidential election system with eleven-year limits (and the possibility of one re-election).<sup>41</sup> The referendum implies that Bashar Al Assad, currently in power since 2000, could serve another two terms after his presidency expires in 2014.<sup>42</sup>

Although Assad proposed to repeal the age-old emergency law, he still kept the anarchic presidential decrees.<sup>43</sup> These include placing members of security forces above the law while also replacing the emergency law with one aimed to suppress protesters in the name of protecting the nation from terrorism.<sup>44</sup> Assad's regime claims that 90 per cent of voters have backed the declared reforms in a referendum. However, in fact, this is highly unlikely, especially since shortly after the referendum, the regimes' military forces conducted violent clampdowns causing at least 124 people dead.<sup>45</sup> Furthermore, various opposition groups dismissed this reform<sup>46</sup> and described it as meaningless,<sup>47</sup> while the UN rejected the validity of the referendum especially in the context of the continued 'pervasive violence' and 'mass human rights violations'.<sup>48</sup>

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<sup>41</sup> Commins and Lesch, n 30, at 96.

<sup>42</sup> KY Oweis, 'Syria approves new constitution amid bloodshed' *Reuters* (27 February, 2012) <<http://www.reuters.com/article/2012/02/27/us-syria-idUSL5E8DB0BH20120227>> accessed 2 January 2015

<sup>43</sup> See Commins and Lesch, n 30, at 96.

<sup>44</sup> See above Gelvin, n 20, at 104.

<sup>45</sup> M Chulov, 'Syria claims 90% of voters backed reforms in referendum' *The Guardian* (27 February 2012) <<http://www.theguardian.com/world/2012/feb/27/syria-bashar-al-assad>> accessed 12, August 2014.

<sup>46</sup> See Oweis above, n 42.

<sup>47</sup> The government of Syria claims 90% of voters backed the reforms in referendum, however, 124 people are reportedly murdered soon after the referendum; M Chulov, 'Syria claims 90% of voters backed reforms in referendum' <<http://www.theguardian.com/world/2012/feb/27/syria-bashar-al-assad>> accessed 27 February 2014.

<sup>48</sup> ED Buey, 'Highlights of the Noon Briefing Deputy Spokesperson for Secretary-General Ban Ki-Moon', UN Office of the Spokesperson for the Secretary-General (27 February 2012). <[http://www.un.org/sg/spokesperson/highlights/?HighD=2/27/2012&d\\_month=2&d\\_year=2012](http://www.un.org/sg/spokesperson/highlights/?HighD=2/27/2012&d_month=2&d_year=2012)> accessed 11 August 2014.

### 7.3 International Human Rights Treaty Obligations

#### 7.3.1 State of Emergency

As this study suggests, human rights were violated for decades within Arab States, and the Arab League never took a firm or serious steps in these situations to ensure respect for and protection of human rights.<sup>49</sup> Syria, particularly under the governance of the Assads, has hosted one of the longest declared emergencies in the region.<sup>50</sup> As this study suggests the status of emergency laws in Syria do not meet the requirements established under international law to justify its imposition.<sup>51</sup>

The Syrian government defended its emergency law (Legislative Decree No. 51 of 22 December 1962 and amended by Decree-Law No. 1 of 9 March 1963), for more than fifty years.<sup>52</sup> It justified the Law on grounds that it is facing continuous threats of attacks or even potential war with Israel<sup>53</sup>, and the challenge of violent extremist groups within the country.<sup>54</sup> However, it is submitted that the decree is an excuse for the government to stamp down any legitimate domestic opposition.<sup>55</sup>

According to the United Nations Committee against Torture (CAT), the Emergency law in Syria allows fundamental human rights and freedoms to be suspended and is inconsistent with Syria's obligation undertaken under Article 2, 4, 11, 12, 13, 15, 16 of the Convention Against Torture.<sup>56</sup> Similarly, the Syrian Human Rights Committee

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<sup>49</sup> M Rishmawi, 'The League of Arab States in the Wake of the "Arab Spring"' (2012) CIHRS, 56 <<http://www.cihrs.org/wp-content/uploads/2013/09/Arab-Leage.pdf>> accessed 12 May 2014. Although it did expel Libya from a seat at Summits, Statement of the Council no. 136 in its extraordinary session on 22 February 2011. Full membership status was restored on 27 August 2011 when the Libyan Transitional Council was considered the representative of the Libyan people in the League. See LAS Council Resolution No 7470, Extraordinary Session 27 August 2011. Council Resolution 7298, Regular Session 135, 2 March 2011. Council Resolution 7360, Extraordinary Session, 12 March 2011.

<sup>50</sup> D Haddad, 'Human Rights in Syria: The Never-Ending Emergency' (2009) *Int. J. Middle East Stud.* 41,546.

<sup>51</sup> See Haddad above, n 50, at 546.

<sup>52</sup> See Paul above n 18, at 25.

<sup>53</sup> *ibid.*

<sup>54</sup> Haddad, n 50, at 546.

<sup>55</sup> See Paul above, n 18, at 26.

<sup>56</sup> *ibid.*, see also, Human Rights Committee, General Comment 29, States of Emergency (article 4), U.N. Doc. CCPR/C/21/Rev.1/Add.11 (2001).

declared Syria's imposition of Emergency law 'the most repressive law [regarding] the rights and freedoms of all Syrian citizens without exceptions'.<sup>57</sup>

The Emergency Law gives overwhelming powers to the Marital Law Governor, such as the giving discretion to the Prime Minister and the Minister of Interior (Assad's deputy) to limit the right of freedom of assembly and freedom of movement, and allows the government to seize property, censor mail, and other electronic broadcasts and communications.<sup>58</sup> Although constitutionally impermissible,<sup>59</sup> security forces under Assad have been using torture to intimidate people under the emergency law.<sup>60</sup> It also includes an expanded list of offences 'against state security' and those that 'constitute a general danger' (Article 6).<sup>61</sup> These vague and ambiguous definitions of Syria's emergency laws have caused significant violations of human rights.<sup>62</sup>

### 7.3.2 International Treaties

For the purpose of this study it is also important to note that Syria was one of the first States to ratify the revised version of the Arab Charter on Human Rights (2004) (on 6 February 2007). Syria was also among the first States to send their representative to contribute as Committee members in the first cycle of the Arab Human Rights Committee in 2009. However, considering how the Syrian government continues to violate almost every provision of the Arab Charter on Human Rights, the validity and efficiency of the Arab League's regional human rights system are highly questionable.<sup>63</sup> However, not only is the Syrian government not adhering to the

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<sup>57</sup> Syrian Human Rights Committee, 'Special Report – Repressive Laws in Syria' (19 February 2001), <<http://www.shrc.org.uk/data/aspx/d4/254.aspx>> accessed 1 January 2015.

<sup>58</sup> See Paul n 18, at 26.

<sup>59</sup> See Paul above, n 18, at 26.

<sup>60</sup> See Macaulay, Macaulay M, 'Syria: The Need to Reform Monitoring of States of Emergency', (December 2, 2005) 1, 13  
<[http://www.lrwc.org/ws/wpcontent/uploads/2012/03/Syria.StateofEmergency.Macaulay.Feb\\_.06.pdf](http://www.lrwc.org/ws/wpcontent/uploads/2012/03/Syria.StateofEmergency.Macaulay.Feb_.06.pdf)> accessed 1 January 2015.

<sup>61</sup> See Paul above, n 18, at 26.

<sup>62</sup> See above, Syrian Human Rights Committee, n 57. Macaulay argues although indirectly, the emergency laws are to blame for the majority of human rights abuses in Syria, it is not the only cause. See Macaulay (2005) n 60, at 1.

<sup>63</sup> See for example, Amnesty International 'Middle East and North Africa Region Re-drafting the Arab Charter on Human Rights: Building for a better Future' 1-7  
<<http://www.amnesty.org/en/library/asset/MDE01/002/2004/ar/63b5cabe-d60d-11dd-bb24-1fb85fe8fa05/mde010022004enpdf>> accessed 2 January 2015

provisions provided by the Arab Charter on Human Rights (2004), but also to other international human rights treaties.

The Syrian government ratified almost all fundamental human rights treaties including: ICCPR (21 Apr 1969 a); ICESCR (21 Apr 1969a); CERD (21 Apr 1969 a); CEDAW (28 Mar 2003 a); CAT (19 Aug 2004 a); CRC (15 Jul 1993); ICMR<sup>64</sup> (2 Jun 2005 a); CRC (OP) (17 Oct 2003 a). However, it can be argued that the Syrian government has been ratifying these instruments without the intention of implementing the provisions of their instruments within their domestic legislations. Nor is Syrian regime concerned about cooperating with enforcement mechanisms as maintained in treaty bodies.

Syrian State practice also reflects an unwillingness to respect and enforce international human rights obligations. For example, although the Syrian government ratified CAT in 2004, it declared its reservations against recognizing the competence of the Committee against Torture (herein the CAT Committee).<sup>65</sup> In addition, Syria ratified CERD in 1969; it has only submitted one report in 1998, raising its overdue reports to sixteenth to twentieth reports: 2000, 2002, 2004, 2006, and 2008, respectively.<sup>66</sup> Syria also has other reports overdue, including CAT, which was due in 2011, CESCR, which is overdue since 2006; and HR Committee, overdue since 2009.<sup>67</sup>

The CAT Committee is concerned that Syria did not adopt a definition of torture that conforms with Article 1 of the CAT. The CAT Committee expressed concern that the Syrian legislation does not ensure that acts of torture are ‘offenses under criminal law’ and provide appropriate penalties.<sup>68</sup> This is a particular problem because of the increasing allegations against Syria regarding torture inflicted by law enforcement and

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<sup>64</sup> International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, Adopted by General Assembly resolution 45/158 of 18 December 1990.

<sup>65</sup> See Syria’s declaration on art. 20. It also declared upon its ratification of CAT that Syria does in ‘no way’ will recognise the State of Israel. UNTC ‘Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment’, New York, 10 December 1984.

<[https://treaties.un.org/Pages/ViewDetails.aspx?mtmsg\\_no=IV-9&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?mtmsg_no=IV-9&chapter=4&lang=en#EndDec)> accessed 2 January 2015.

<sup>66</sup> UN Human Rights Council, Compilation: [Universal Periodic Review]: Syrian Arab Republic / prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, 5 September 2011, A/HRC/WG.6/12/SYR/2, 5.

<sup>67</sup> *ibid.*

<sup>68</sup> Committee against Torture, Forty-fourth session, Consideration of reports submitted by States parties under article 19 of the convention, Advance Unedited Version Concluding observations of the Committee against Torture (26 April – 14 May 2010) para.7



investigative officials in detention facilities.<sup>69</sup> Thus, the Committee urged the government of Syria to take all necessary measures to ensure ‘all allegations of torture or cruel, inhuman or degrading treatment are promptly and impartially investigated’.<sup>70</sup> The government is requested to enforce appropriate penalties to those found guilty and to provide adequate compensation and full rehabilitation victims.<sup>71</sup>

Accordingly, the CAT Committee recommended Syria to permit visits of the following Rapporteurs: The Special Rapporteur on the question of torture, the Special Rapporteur on the Promotion and Protection of Human Rights While Countering Terrorism, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, the Working Group on Arbitrary Detention and the Special Rapporteur on the Situation of Human Rights Defenders.<sup>72</sup>

Additionally, the suffrage of woman was also a major concern by the CAT Committee. The Personal Status Act in Syria is discriminatory towards women in issues related to marriage, divorce laws, women’s custody rights, and ‘obligation for a wife to obey her husband in return for maintenance’.<sup>73</sup> The Penal code is equally problematic and prescribes small penalties for those claiming ‘honour’ as a mitigating factor when murdering or committing violence towards women.<sup>74</sup> According to Karama, approximately 50 to 300 women are victims of honour killing each year.<sup>75</sup> The Penal Code does not criminalize marital rape and allows mitigating factors to honour-related crimes against women.<sup>76</sup> This is despite the fact the government recognised the problem

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<sup>69</sup> *ibid.*

<sup>70</sup> *ibid.*

<sup>71</sup> *ibid.*

<sup>72</sup> CAT/C/SYR/CO/1, para. 38.

<sup>73</sup> See Karama, para. 2.4, pp.4–5.

<sup>74</sup> See for example, the 2010 report on Syria, in ‘Syria - Amnesty International Report 2010’, <<http://www.amnesty.org/en/region/syria/report-2010>> accessed 2 January 2015

<sup>75</sup> A/HRC/WG.6/12/SYR/3, 5. See Karama, ‘Syria: NGO Stakeholder Report to the UN Universal Periodic Review’ (Mar. 2011) para. 2.3, p. 3,

<<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/SY/KARAMA-eng.pdf>> accessed 2 January 2015;

<sup>76</sup> *ibid.*, Karama, para. 1.3, p. 2.

of honour killings and amended article 548 of the Syrian Penal Code from one-year maximum sentence to honour related crimes to a minimum jail term of two years.<sup>77</sup>

The CAT Committee expressed concern of the following: Paragraph 35, its concern that ‘honour’ crimes usually go unpunished, and the verdicts are ‘far less than for equally violent crimes without this “honour” dimension’ (Articles 1, 2, 4 and 16). Rape victims are also denied protection, where Article 508 of the Penal Code allows perpetrators to escape convictions if they marry their victims. Article 508 remains in the Syrian Penal Code, despite the fact that numerous international judicial and quasi-judicial bodies have that recognised rape is a crime and a form of torture.<sup>78</sup>

Finally, it is equally important to stress the rights of ethnic minorities in Syria have been extremely undermined. According to many NGOs, Kurds are victims of State repression,<sup>79</sup> treated as a security threat<sup>80</sup> and presently live under discriminatory laws and policies restricting their ability to live as equals,<sup>81</sup> violating almost every human rights treaty the government has ratified.

Unfortunately, as recent events unravel, these fundamental human rights guarantees are disregarded within the Syrian legislation.<sup>82</sup> The UN Human Rights Council is concerned with the human rights situation in Syria, and it called for all relevant special-procedures mandate holders ‘to pay particular attention to the human rights situation in

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<sup>77</sup> BBC News, ‘Syria amends honour killing law’ (2 July 2009)

<<http://news.bbc.co.uk/1/hi/8130639.stm>> accessed 2 January 2015, See also 2009 Human Rights Report: Syria, US Department of State, 2010, 4.

<sup>78</sup> Committee against Torture, Forty-fourth session, Consideration of reports submitted by States parties under article 19 of the convention, Advance Unedited Version, Concluding observations of the Committee against Torture, (26 April – 14 May 2010) para. 26.

<sup>79</sup> UNGA, Human Rights Council Working Group on the Universal Periodic Review, Twelfth session, Geneva, 3–14 October 2011, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (c) of the annex to Human Rights Council resolution 5/1. (25 July 2011)STP, p. 2.

<sup>80</sup> *ibid.*, 2.

<sup>81</sup> *ibid.*, 5.

<sup>82</sup> See for example, the 2010 Amnesty report on Syria. Syria - Amnesty International Report 2010, <<http://www.amnesty.org/en/region/syria/report-2010>> accessed 2 January 2015

Syria'.<sup>83</sup> CAT also urged the Syrian government to amend its legislation to bring it in line with the provisions of the ICCPR and CAT.<sup>84</sup>

Notwithstanding the various substantial defects in Syrian laws and failings of implementation of laws to protect human rights, the Arab Human Rights Committee has failed to criticise Syria. It is contended that the plight of the Syrian people has not gained the attention of the Arab League until 2011 (with the cluster of uprisings and the increasing international humanitarian concerns). This stance confirms the Arab League is weak and ineffectual system. This is especially the case since it has failed to provide an efficient monitoring mechanism to oversee Member States treaty adherence as per Article 45 of the Arab Charter on Human Rights, or even with its Arab Permanent Commission on Human Rights, established by the League long before the Arab Charter on Human Rights, as discussed in chapter 5.

#### **7.4 The Syrian Uprising**

From the start of the uprisings in March 2011, protests erupted in many parts of Syria demanding the downfall of the regime. However, the regime attempted to clamp down the protests, and Bashar Al-Assad claimed that by virtue of his 'Arab nationalist credentials,' his administration would win popular support and remain in power.<sup>85</sup> However, many, especially the Sunni majority despised his repressive form of governance and ultimately confrontations between the regime and protesters heightened, escalating to a State of civil war resulting in one of the largest humanitarian disasters in the region. Despite the many calls by the international community to resign, Assad and his regime are clinging to power regardless of how many innocent lives it would cost.<sup>86</sup>

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<sup>83</sup> Human Rights Council resolution S-16/1, para. 6. Cited from UN Human Rights Council, (5 September 2011) A/HRC/WG.6/12/SYR/2, 7.

<sup>84</sup> Committee against Torture, Forty-fourth session, Consideration of reports submitted by States parties under article 19 of the convention, advance unedited version, Concluding observations of the Committee against Torture, (26 April – 14 May 2010) .

<sup>85</sup> Heydemann and Leenders, n 24, at 3.

<sup>86</sup> See above, n 24, 2-4.

Since the uprisings in 2011, Syria has become a human rights concern internationally; there have been over 100,000 deaths, and more than 680,000 wounded.<sup>87</sup> According to the UNHCR, about 2.2 million Syrians have left their families to look for protection from neighbouring States; half of them are children (1.1 million).<sup>88</sup> Within Syria, there are about 6.8 million people in need of humanitarian assistance, and around tens of thousands of protesters are held in Syrian prisons.<sup>89</sup>

Reports issued by the United Nations Human Rights Council<sup>90</sup>, United Nations High Commissioner for Human Rights (OHCHR),<sup>91</sup> the UN CAT,<sup>92</sup> international and regional committees and NGOs<sup>93</sup>, affirm allegations that the Syrian governments under Assad and his government forces have committed ‘gross’ and ‘systematic’ violations of human rights, alleviating to ‘crimes against humanity’.<sup>94</sup> Since the start of the uprising in 2011, the UN independent fact-finding mission reports:

The substantial body of evidence gathered by the commission indicates that these gross violations of human rights have been committed by Syrian military and security forces since the beginning of the protests in March 2011. The commission is gravely concerned that crimes against humanity have been committed in different locations in the Syrian Arab Republic during the period under review. It calls upon the Government of the Syrian Arab Republic to put an immediate end to the ongoing gross human rights violations, to initiate independent and impartial investigations of these violations

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<sup>87</sup> UN News, ‘Syria: UN-Arab League envoy Brahimi resigns’ 13 May 2014,

<<http://www.un.org/apps/news/story.asp?NewsID=47780#.U7O4bflDX-k>> accessed 2 January 2015.

<sup>88</sup> United Nations’ S/PV.6627, Security Council, Sixty-sixth year, 6627th meeting, Tuesday, 4 October 2011, 6 p.m. New York, 2.

<sup>89</sup> *ibid.*

<sup>90</sup> VP Nanda, ‘The Future Under International Law Of the Responsibility To Protect After Libya and Syria’ (2013) Vol. 21, No.1, *Mich St J Int'l L. Rev.*, 2; see Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/S-17/2/Add.1 (Nov. 23, 2011).

<sup>91</sup> U.N. Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Syrian Arab Republic, A/HRC/18/53 (Sept. 15, 2011).

<sup>92</sup> See above Nanda, n 90, at 4.

<sup>93</sup> *ibid.*, see for example, HRW, ‘Syria: Strong Evidence Government Used Chemicals as a Weapon Civilian Casualties in Barrel Bomb Attacks on 3 Towns’ (13 May 2014)

<<http://www.hrw.org/news/2014/05/13/syria-strong-evidence-government-used-chemicals-weapon>> accessed 1 January 2015; See also Amnesty International ‘Syria: voices in crisis: A monthly insight into the human rights crisis in Syria’ (22 July 2014) MDE 24/029/2014; NGO Monitor ‘NGOs on Syria And Chemical Weapons: A Display Of Irrelevance’ (September 03, 2013)

<[http://www.ngomonitor.org/article/ngos\\_on\\_syria\\_and\\_chemical\\_weapons\\_a\\_display\\_of\\_irrelevance](http://www.ngomonitor.org/article/ngos_on_syria_and_chemical_weapons_a_display_of_irrelevance)> accessed 2 January 2015

<sup>94</sup> See above Nanda, n 90, at 2.

and to bring perpetrators to justice.<sup>95</sup>

Therefore, according to UN Secretary General Ban Ki-moon, the situation in Syria represents ‘the biggest humanitarian and peace and security crisis facing the world, with violence reaching unthinkable levels’.<sup>96</sup> There are approximately, 10.8 million Syrians in need of humanitarian assistance.<sup>97</sup>

#### 7.4.1 The Syrian crisis and the Arab League

The Syrian crisis is still ongoing, despite international and regional efforts. The international community failed to intervene in Syria in order to prevent the civil war from escalating. This is despite the fact that on 24 October 2005, the UN held a World Summit in New York and adopted resolution 60/1.<sup>98</sup> This is particularly important, because in addition to the provisions of the UN Charter, world leaders, including Member States of the Arab League unanimously agreed on this resolution, which promotes *inter alia* the responsibility of the international community to prevent and protect human rights of people in times of crisis, such as para 138 and 139 of resolution 60/1.<sup>99</sup> The Resolution also confirms; ‘[A]ll human rights are universal, indivisible, interrelated, interdependent and mutually reinforcing and that all human rights must be treated in a fair and equal manner, on the same footing and with the same emphasis’.<sup>100</sup>

On October 2011, the League proposed a plan to the Syrian government to ‘stop violence against civilians, to free political detainees, to remove tanks and weapons from cities, and to allow outsiders — including the international news media — to travel

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<sup>95</sup> UN Human Rights Council, *Report of the independent international commission of inquiry on the Syrian Arab Republic*, 16 August 2012, A/HRC/21/50.

<sup>96</sup> UN Secretary-General, Department of Public Information ‘With Violence In Syria Reaching ‘Unthinkable Levels’, Secretary-General Appeals For End To Tragedy Of World’s Biggest Humanitarian, Peace, Security Crisis’, (12 March 2014) SG/SM/15703, <<http://www.un.org/News/Press/docs/2014/sgsm15703.doc.htm>> accessed 2 January 2015

<sup>97</sup> UNDP, ‘Responding to the crisis in Syria’ (2014) <[http://www.undp.org/content/undp/en/home/ourwork/crisispreventionandrecovery/projects\\_initiatives/Responding\\_to\\_crisis\\_Syria/](http://www.undp.org/content/undp/en/home/ourwork/crisispreventionandrecovery/projects_initiatives/Responding_to_crisis_Syria/)> accessed 2 January 2015

<sup>98</sup> See the 2005 World Summit Outcome, G.A. Res. 60/1, 1139, U.N. Doc. A/RES/60/1 para. 135. (Sept. 16, 2005) (the atrocity crimes to which R2P applies include genocide, war crimes, and ethnic cleansing, along with crimes against humanity and their incitement).

<sup>99</sup> A/RES/60/1 para. 138.

<sup>100</sup> A/RES/60/1, para. 135.

freely in Syria'.<sup>101</sup> However, the Syrian government did not agree with the plan, consequently on November 2011 a resolution was passed by the Council of the Arab League to impose economic and political sanction against Syria, as well as suspending Syria's seat in all bodies of the League.<sup>102</sup>

In an extraordinary meeting held on July 22 2012, the Council of the Arab League adopted resolution No. 7510,<sup>103</sup> requesting the Syrian president (Bashar Al-Assad) to step down and leave the country immediately in order to attain 'a safe exit'.<sup>104</sup> However, lack of agreement immediately became apparent and serious difficulties amongst League members persist. Algeria and Iraq registered their reservations against Resolution No. 7510, since they were seemingly supportive of the Assad regime. Lebanon as with previous resolutions distanced itself from the resolution.<sup>105</sup>

Noting the lack of cooperation of Assad, and the escalating war occurring in Syria, on September 5, 2012, the Council of the Arab League at its 138<sup>th</sup> session adopted Resolution 7523,<sup>106</sup> which condemned the attacks by the government forces and the armed insurgents (the Shabiha) against civilians.<sup>107</sup> The Council also sought support from the UN Security Council in accordance with Chapter VII of the UN charter.<sup>108</sup>

The League also agreed to meet with the members of the Syrian political opposition, on different occasions.<sup>109</sup> Support to these Syrian opposition groups are important, because they most often represent the Syrian people and aim to achieve a 'democratic and pluralistic civil State'.<sup>110</sup> The Syrian opposition represented by Moaz al-Khatib Syrian

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<sup>101</sup> A Lyon 'Arab League turns to U.N. as Gulf observers quit Syria' (Jan 24, 2012) <<http://www.reuters.com/article/2012/01/24/us-syria-idUSTRE8041A820120124>> accessed 2 January 2015. See also LAS Council Resolution No 7438, Extraordinary Session, 12 November 2011.

<sup>102</sup> Rishmawi n 49, at 58. See Summit Decision 555, Regular Session 23, 29 March 2012. See also, LAS Council Resolution No 7460, Regular Session 137, 10 March 2012.

<sup>103</sup> Council Resolution 7510, Extraordinary Session 22 July 2012.

<sup>104</sup> CNN Wire Staff 'Arab League to offer 'safe exit' if Assad resigns' (23 July 2012) <<http://edition.cnn.com/2012/07/22/world/meast/syria-unrest/>> accessed 1 January 2015.

<sup>105</sup> The Council further called on the UN Security Council to ensure the cessation of attacks against civilians by the Syrian regime in accordance with Chapter VII of the UN Charter. Rishmawi, n 49, at 58.

<sup>106</sup> Rishmawi n 49, at 51.

<sup>107</sup> Council Resolution 7523, Regular Session 138, 5 September 2012.

<sup>108</sup> Rishmawi, n 49, at 58.

<sup>109</sup> *ibid.*

<sup>110</sup> For more information on the Syrian Opposition, see 'Syria crisis: Guide to armed and political opposition' *BBC News* (17 October 2013) <<http://www.bbc.co.uk/news/world-middle-east-15798218>> accessed 2 January 2015.

of the National Council (SNC) was given a seat at the Arab League Doha Summit on March 26<sup>th</sup> 2013. This was considered a ‘shameful’ move by the Assad regime.<sup>111</sup> However, despite all optimism, a year later, the Arab League failed to provide a seat to the same opposition group.<sup>112</sup> This was because of the divisions within the League. Political interests prevailing within Egypt seemed to align itself with Algeria, Lebanon and Iraq. It, therefore, is apparent that the League remains bitterly divided and unstable to take any united actions.<sup>113</sup> A spokesperson from the Syrian opposition believes the League’s decision weakens the opposition and sends a clear message to Assad to continue inflicting violence.<sup>114</sup>

In this regard, it is important to highlight the situation in Syria is highly complex, for example, according to the BBC there as many as 1,000 armed opposition groups in Syria, in command, with an estimated 100,000 fighters.<sup>115</sup> However, the government of Syria is still the dominant player in the region. There are allegations that the Assad regime supported al-Qaeda and other terrorist groups present in Syria.<sup>116</sup> The Telegraph newspaper cites recent allegations made by western intelligence agencies that the Syrian government opened prison doors, letting out jihadists (members of AlQaeda) who later became engaged with the Islamic State of Iraq and Syria (ISIS), in order to terrorize the Syrian population.<sup>117</sup> The aim was also ‘to persuade the West that the

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<sup>111</sup> I Black, ‘Syrian opposition takes Arab League seat’ *The Guardian* (March 26<sup>th</sup> 2013) <<http://www.theguardian.com/world/2013/mar/26/syrian-opposition-appeals-nato-support>> accessed 2 January 2015; See also ‘Opposition takes Syria seat at Arab League summit’ *BBC News* (26 March 2013) <<http://www.bbc.co.uk/news/world-middle-east-21936731>> accessed 2 January 2015

<sup>112</sup> ‘Opposition fail to get Syria Arab League seat’ *Aljazeera* (March 27 2014) <<http://www.aljazeera.com/news/middleeast/2014/03/opposition-fail-get-syria-arab-league-seat-2014326144447997621.html>> accessed 2 January 2015

<sup>113</sup> *ibid.*

<sup>114</sup> ‘Saudi Arabia calls for SNC seat at Arab summit’ *Al-Arabiya* (25 March 2014) <<http://english.alarabiya.net/News/middle-east/2014/03/25/Syria-takes-center-stage-at-Arab-League-summit-.html>> accessed 2 January 2015

<sup>115</sup> *ibid* n 110 (BBC News 17 Oct. 2013).

<sup>116</sup> R Sherlock and R Spencer, ‘Syria's Assad accused of boosting al-Qaeda with secret oil deals’ *The Telegraph* (20 January 2014) <<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10585391/Syrias-Assad-accused-of-boosting-al-Qaeda-with-secret-oil-deals.html>> accessed 24 June 2014.

<sup>117</sup> See ‘Assad's fatal strategic mistakes ‘Bashar al-Assad's support for armed groups might lead to his regime's demise’ *Al Jazeera* (29 Mar 2014) <<http://www.aljazeera.com/indepth/opinion/2014/03/al-assad-fatal-strategic-mistak-201432910353132476.html>> accessed 2 January 2015

uprising was sponsored by Islamist militants including al-Qaeda as a way of stopping Western support for it'.<sup>118</sup>

These allegations are also supported by the fact that ISIS (Islamic State of Iraq and Syria) have entered Syria in 2013 and the Assad regime seemed to have ignored their operations for a year.<sup>119</sup> ISIS is an extreme jihadi group and operates with great impunity.<sup>120</sup> It initially grew of al-Qaeda in Iraq (AQI) (however, it is submitted that Al-Qaeda revoked their association with ISIS) and has become one of the largest jihadist groups fighting government forces in Syria and Iraq.<sup>121</sup> As such, the main armed opposition the Free Syrian Army<sup>122</sup>, is pleading for support from the international community, and other States in supporting their cause against the Syrian regime and the ISIS terror organisation.<sup>123</sup>

Notwithstanding, all the aforementioned conflicts, Human Rights Watch has argued that the Arab League, even with its announced sanctions against Syria, lacked consensus among its member States to implement their adopted resolutions.<sup>124</sup> The League also failed to stop Iraq (a long-standing member of the Arab League, and a ratifying member of the Arab Charter 2004) from acting as a transition point for transmitting weapons from Iran to the Assad regime.<sup>125</sup> They have also failed to compel Member states to ratify key human rights treaties to protect the rights of refugees an issue which be examined in detail shortly.

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<sup>118</sup> See above, R Sherlock and Richard Spencer, 'Syria's Assad accused of boosting al-Qaeda with secret oil deals' *The Telegraph*.

<sup>119</sup> 'Syrian warplanes hammer ISIS targets in Raqqa' *Al Arabiya News* (Sunday, 17 August 2014) <<http://english.alarabiya.net/en/News/2014/08/17/ISIS-closes-in-on-rebel-stronghold-in-north-Syria.html>> accessed 2 January 2015

<sup>120</sup> 'Who are Isis? The rise of the Islamic State in Iraq and the Levant' *The Independent* (16 June 2014) <<http://www.independent.co.uk/news/world/middle-east/who-are-isis-the-rise-of-the-islamic-state-in-iraq-and-the-levant-9541421.html>> accessed 2 January 2015

<sup>121</sup> 'Syria Iraq: The Islamic State militant group' BBC News (2 August 2014) <<http://www.bbc.co.uk/news/world-middle-east-24179084>> accessed 2 January 2015.

<sup>122</sup> The Free Syrian Army was established in August 2011, See above 'Syria crisis: Guide to armed and political opposition' BBC News, n 110.

<sup>123</sup> 'Syrian warplanes hammer ISIS targets in Raqqa' *Al Arabiya News* (Sunday, 17 August 2014) <<http://english.alarabiya.net/en/News/2014/08/17/ISIS-closes-in-on-rebel-stronghold-in-north-Syria.html>> accessed 2 January 2015

<sup>124</sup> "'World Report' Events of 2012' (2013) Human Rights Watch, 12 <[http://www.hrw.org/sites/default/files/wr2013\\_web.pdf](http://www.hrw.org/sites/default/files/wr2013_web.pdf)> accessed 2 January 2015.

<sup>125</sup> *ibid.*, see also HRW, 'Death from the Skies Deliberate and Indiscriminate Air Strikes on Civilians' (2013) 8 <[http://www.hrw.org/sites/default/files/reports/syria0413webwcover\\_1\\_0.pdf](http://www.hrw.org/sites/default/files/reports/syria0413webwcover_1_0.pdf)> accessed 2 January 2015



### 7.4.2 Failure of the League of Arab States Observer Mission

On the 12<sup>th</sup> of November 2011, pursuant to Council Resolution 7438 the Arab League decided to send an observer mission to Syria.<sup>126</sup> On 16 November 2011, resolution 7439 was adopted approving the draft protocol prepared by the Arab League's legal division and providing the mandate of 'the League of Arab States Observer Mission' (LAS Observer Mission) to Syria.<sup>127</sup> On November 24, 2011, Resolution 7441 was adopted requesting the Secretary-General of the League to organise the Observer Mission to the Syrian Arab Republic 'in order to fulfil its mandate under the protocol'.<sup>128</sup> On 19 December 2011, the Syrian government and the General Secretariat of Arab League signed the protocol. The Syrian government claimed to adhere to the demands of the Arab League and provide an end to the escalating violence.<sup>129</sup> Consequently, based on the adopted resolutions, 13 member States and six relevant Arab organisations transmitted the names of their candidates for the Observer Mission (totalling 166 members).<sup>130</sup> The legal framework of the Commission provided by the Arab League and its members has been widely criticized.<sup>131</sup>

For example, the head of the Mission was a Sudanese General Mohammed al-Dabi, who is accused of genocide by the International Criminal Court (ICC) concerning his actions in Darfur.<sup>132</sup> There are also allegations that some members of the Mission lied with what they saw, while others were themselves attacked by the Assad regime.<sup>133</sup> One official from the Mission, Anwar Malek claims, in an attempt to halt any action from

<sup>126</sup> See Rishmawi above n 49, at 58.

<sup>127</sup> Report of the Secretary-General of the League of Arab States Concerning the Mandate of the League of Arab States Observer Mission to Syria, 22 January 2012, League of Arab States Observer Mission to Syria Report of the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012. (2012) 11 <[http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/syria/Syria\\_63\\_Report\\_SG\\_of\\_AL\\_enclosure\\_4.pdf](http://www.lcil.cam.ac.uk/sites/default/files/LCIL/documents/arabspring/syria/Syria_63_Report_SG_of_AL_enclosure_4.pdf)> accessed 1 January 2015.

<sup>128</sup> *ibid.*

<sup>129</sup> 'Has the Arab League failed in Syria?' *Aljazeera* (January 8, 2012), <<http://www.aljazeera.com/programmes/insidesyria/2012/01/201218895746271.html>> accessed 2 January 2015 BBC News, 'Syria unrest: Arab League delays sending more observers' (12 January 2012) <<http://www.bbc.co.uk/news/world-middle-east-16522961>> accessed 2 January 2015

<sup>130</sup> Report of the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012. 27/01/12 1 McAULEY, 259.12D 12-21687.

<sup>131</sup> See Rishmawi above, at n 49, at 59.

<sup>132</sup> 'Syria unrest: Arab League observer mission head quits' *BBC News* (12 February 2012) <<http://www.bbc.co.uk/news/world-middle-east-17001032>> accessed 2 January 2015

<sup>133</sup> 'Arab observer calls Syria mission a 'farce'' *Aljazeera*, (January, 11 2012) <<http://www.aljazeera.com/news/middleeast/2012/01/201211163519970727.html>> accessed 2 January 2015

the Arab League, the Assad regime ‘fabricated’ what monitors see and experience in Syria.<sup>134</sup> In front of the Mission, security forces withdrew their tanks from the streets, as instructed by the Arab League resolution, however soon after the Observers left, the government returned the tanks back on the street.<sup>135</sup>

Additionally, the report by the LAS Observer Mission to Syria highlights the infrastructural weakness of the Mission.<sup>136</sup> For example, it indicates how some members of the Mission had no expertise in the area; the experts received no training, or equipment to help the members gather effective information, or proper security.<sup>137</sup> These gave reason for many members of the commission to resign, and the commission to end in failure,<sup>138</sup> with no benefit to the League or the Syrian people.<sup>139</sup> The report claims the Mission needed more information concerning their tasks and political support from members of the Arab league, in order to attain an accommodating atmosphere to fulfil its mandate.<sup>140</sup>

Furthermore, it is also submitted that two weeks since the presence of the Observer Mission 400 people were killed.<sup>141</sup> Rice claims that the Syrian government is not adhering to their commitments, but rather ‘stepping up the violence’.<sup>142</sup> Ultimately, because of the escalating scale of bloodshed at the time, six member States of the Arab League (Gulf States) withdrew their observers.<sup>143</sup> Three days later, on 28 January,

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<sup>134</sup> ‘Ex-Arab League monitor labels Syria mission “a farce” *BBC News* (11 January 2012) <<http://www.bbc.co.uk/news/world-middle-east-16507805>> accessed 2 January 2015/

<sup>135</sup> *ibid.*, see also, ‘Syria and the Arab League: no end in sight’ *The Economist* (7 January 2012) <<http://www.economist.com/node/21542428>> accessed 2 January 2015

<sup>136</sup> Report of the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012. 27/01/12 1 McAULEY, 259.12D 12-21687.

<sup>137</sup> *ibid.*

<sup>138</sup> Report of the LAS Observers Mission to Syria December 24, 2011, (January 18, 2012) 11 <[http://www.foreignpolicy.com/files/fp\\_uploaded\\_documents/120131\\_1306\\_001.pdf](http://www.foreignpolicy.com/files/fp_uploaded_documents/120131_1306_001.pdf)> accessed 2 January 2015.

<sup>139</sup> *ibid.*

<sup>140</sup> *ibid.*

<sup>141</sup> ‘Has the Arab League failed in Syria?’ *Aljazeera*, (January 8, 2012), <<http://www.aljazeera.com/programmes/insidesyria/2012/01/201218895746271.html>>, BBC News, ‘Syria unrest: Arab League delays sending more observers’ (2012) see above n 127.

<sup>142</sup> ‘Arab observer calls Syria mission a ‘farce’ *Aljazeera* (January 11 2012) <<http://www.aljazeera.com/news/middleeast/2012/01/201211163519970727.html>> accessed 2 January 2015.

<sup>143</sup> CNN Wire Staff, ‘Arab League’s Syria mission extended by a month’ (January 25, 2012 ) <<http://edition.cnn.com/2012/01/24/world/meast/syria-unrest/>> accessed 2 January 2015.

2012, the Telegraph reports Secretary-General Nabil el-Araby decided to remove the Mission:

Given the critical deterioration of the situation in Syria and the continued use of violence ... it has been decided to immediately stop the work of the Arab League's mission to Syria pending presentation of the issue to the league's council.<sup>144</sup>

Lack of institutional and political support and an unclear mandate hampered the effectiveness and work of the LAS Observer Mission.<sup>145</sup> It is unfortunate that despite the many human rights violations committed by the government, it was only in 2011 that the Arab League suspended Syria's seat in all bodies of the League.<sup>146</sup>

### 7.4.3 Resignation of UN-Arab League envoys

In need of international assistance, the Secretary General of the League called the UN Secretary General Ban-Ki-moon for support.<sup>147</sup> The UN agreed to send a joint UN-Arab League special envoy, in an attempt to mediate between both sides of the opposition to promote peace to the escalating violence in Syria.<sup>148</sup>

The former UN Secretary General, Kofi Annan was appointed as the Joint United Nations-League of Arab States Special Representative in February 2012. He worked with both sides and drafted a six-point peace plan to help end the Syrian crisis.<sup>149</sup> The plan calls for the Syrian government to end the violence, start a political dialogue, release detainees, and allow access for the media and humanitarian agencies.<sup>150</sup> The

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<sup>144</sup> Telegraph reporter and agencies in Cairo, 'Arab League suspends monitoring mission in Syria', *The Telegraph* (28 Jan 2012) <<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9046461/Arab-League-suspends-monitoring-mission-in-Syria.html>> accessed 2 January 2015

<sup>145</sup> 'Arab League suspends Syria monitoring mission' *Reuters* (January 29, 2012) <<http://www.france24.com/en/20120128-arab-league-suspends-syria-monitoring-mission-amid-mounting-violence/>> accessed 2 January 2015.

<sup>146</sup> See Rishmawi above, n 49, at 58. See Summit Decision 555, Regular Session 23, 29 March 2012. See also, LAS Council Resolution No 7460, Regular Session 137, (10 March 2012).

<sup>147</sup> 'Arab League seeks UN help for Syria mission' *Aljazeera* (February 9, 2012) <<http://www.aljazeera.com/news/middleeast/2012/02/201228224311826930.html>> accessed 2 January 2015

<sup>148</sup> *ibid.*

<sup>149</sup> 'Kofi Annan resigns as UN-Arab League Joint Special Envoy for Syrian crisis' *UN News*, (2 August 2012) <<http://www.un.org/apps/news/story.asp?NewsID=42609#.U7O5VfldX-k>> accessed 2 January 2015, See also, 'Syria crisis: Kofi Annan quits as UN-Arab League envoy' *BBC World News*, (2 August 2012) <<http://www.bbc.co.uk/news/world-middle-east-19099676>>

<sup>150</sup> *ibid.*

Assad regime did not accept this, and consequently Annan resigned.<sup>151</sup> After his resignation, Lakhdar Brahimi was nominated on 17 August 2012 to replace Annan. However, despite Brahimi's effort to achieve a peaceful solution to the conflict, and mediate between the Syrian opposition and government officials, he also achieved no resolution between them, and accordingly resigned from his position as special envoy as well.<sup>152</sup> Overall, even though a new mediator is underway, he/she is to serve only the UN, and not the 'deeply divided Arab League'.<sup>153</sup> The above discussions affirmed that despite all efforts, the Arab League remains divided over the Syrian crises, this causes the League's relationship and collaboration with the UN deeply fractured.<sup>154</sup>

### 7.5 The Arab League and the Syrian Refugees

Three years since the uprisings in Syria, there are now over 100,000 people killed and almost 9 million refugees.<sup>155</sup> An estimated fifty per cent or 12.6 million Syrians now living in poverty, while 4.4 million in extreme poverty.<sup>156</sup> Around sixty per cent of Syrians are either internally displaced or looking for refuge in neighbouring States.<sup>157</sup> The UNDP estimates 2.9 million refugees are present in Egypt, Iraq, Jordan, Lebanon, Turkey and North Africa.<sup>158</sup> Before long refugees will produce about one-third of the

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<sup>151</sup> *ibid.*

<sup>152</sup> 'Syria crisis: Lakhdar Brahimi resigns as UN Arab League envoy' *BBC News* (13 May 2014) <<http://www.bbc.co.uk/news/world-middle-east-27395386>> accessed 2 January 2015., UN News Source, 'Syria: UN-Arab League envoy Brahimi resigns' (13 May 2014) <<http://www.un.org/apps/news/story.asp?NewsID=47780>> accessed 2 January 2015. According to the Guardian, this resignation of Brahimi has been anticipated long before. See Black above n 111

<sup>153</sup> *ibid.*

<sup>154</sup> GG Putra and YN Santoso, 'The Refugees Of Syria: Between Politics and Violation of Human Rights' (2012) *Juris Gentium Law Review*, 5.

<sup>155</sup> 'Countries urged to offer admission for additional 100,000 Syrians' *UN refugee agency* <[http://www.un.org/apps/news/story.asp?NewsID=47200#.U\\_IMrPldWQw](http://www.un.org/apps/news/story.asp?NewsID=47200#.U_IMrPldWQw)> accessed 25 September 2014

<sup>156</sup> *ibid.*, UNDP (2014), n 97; also War's human cost and the tremendous repercussions on UNHCR, 'Global Trends' (2013) <[http://www.unhcr.org/5399a14f9.html#\\_ga=1.39703971.187048615.1411743986](http://www.unhcr.org/5399a14f9.html#_ga=1.39703971.187048615.1411743986)> accessed 2 January 2015.

<sup>157</sup> UNDP (2014), n 97. As of 5 December 2014 Amnesty International estimates that there are 3.8 million refugees from Syria and most of them (95%) are in Turkey, Egypt, Lebanon, Iraq and Jordan. (Amnesty International 'Facts & Figures: Syria refugee crisis & international resettlement' (5 December 2014) <<http://www.amnesty.org/en/news/facts-figures-syria-refugee-crisis-international-resettlement-2014-12-05>> accessed 2 January 2015

<sup>158</sup> UNDP (2014) n 97.

population in Lebanon and camp Za'atari in Jordan, already hosting 81,000 Syrian refugees, the camp is considered the second largest of its kind in the world.<sup>159</sup>

The region presently hosts a substantial amount of refugees, especially after the Arab Spring.<sup>160</sup> Unfortunately, the Arab League and the Arab Charter on Human Rights includes claw back clauses that ultimately fail to protect fundamental human rights of refugees. For example, although the Charter does mention in Article 28 the right for individuals to seek political asylum, it leaves it to the domestic laws of States to proscribe legal protection, as per Article 29.<sup>161</sup> Other important human rights provisions such as the right to education, right to work and acquire nationality are left with the discretionary of the States.<sup>162</sup> It may be submitted that the main reasons behind these provisions is because most States do not want to be accountable for refugees to integrate into their society, so they leave it to the UN and its specialised agencies to respond to the needs of the refugees, and ensure responsibility to their overall departure of these refugees.<sup>163</sup> Unfortunately, it is argued that host governments fail to provide 'short-term emergency planning to long-term development'.<sup>164</sup>

Only nine states from the twenty-two Member States of the Arab League have ratified the 1951 Convention relating to the Status of Refugees and only eight have ratified its 1967 Protocol.<sup>165</sup> The Convention is a fundamental legal document for the refugees it provides a universally accepted definition of a refugee and imposes obligations on States to protect the rights of the refugees.<sup>166</sup> Both the 1951 Convention and the 1967

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<sup>159</sup> *ibid.*

<sup>160</sup> For example, UNHCR 'Global Facts and Figure' <[http://www.unhcr.org.uk/fileadmin/user\\_upload/pdf/Displacement\\_Facts\\_and\\_Figures\\_Final.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/Displacement_Facts_and_Figures_Final.pdf)> accessed 2 January 2015.

<sup>161</sup> *ibid.* See also UNHCR 'Facts and Figures about Refugees' <<http://www.unhcr.org.uk/about-us/key-facts-and-figures.html>> accessed 2 January 2015.

<sup>162</sup> *ibid.* See also Art. 24(5), 34, 41 of Arab Charter On Human Rights (2004)

<sup>163</sup> T Zaman 'Lessons learned: Palestinian refugees from Baghdad to Damascus' (2011), Vol. 5 Issue 2. IJCIS 270.

<sup>164</sup> C Phillips and N Quilliam, 'The Plight of Syria's Refugees is Another Security Crisis in the Making' Chatham House <<http://www.chathamhouse.org/expert/comment/15997>> accessed 2 January 2015.

<sup>165</sup> Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967. Algeria (8 Nov 1967 a), Djibouti (9 Aug 1977 d), Egypt (22 May 1981 a), Mauritania (5 May 1987 a), Morocco (20 Apr 1971 a), Sudan (23 May 1974 a), Tunisia (16 Oct 1968 a), Yemen (18 Jan 1980 a).

<sup>166</sup> Algeria ( 21 Feb 1963 d); Djibouti (9 Aug 1977 d), Egypt ( 22 May 1981 a), Egypt (With reservations in respect of article 12 (1), articles 20 and 22 (1), and articles 23 and 24; Mauritania ( 5 May 1987 a), Morocco (7 Nov 1956 d), Sudan (22 Feb 1974 a), Yemen (10 18 Jan 1980 a), and Tunisia ( 24 Oct 1957 d). UNTC. Chapter V, Refugees And Stateless Persons, 2 . Convention relating to the Status of Refugees, Geneva, 28 July 1951. United Nations, Treaty Series , vol. 189, p. 137. Status at: 20-09-2014 05:02:19.

Protocol were created to monitor and protect the human rights of refugees; many Arab states did not ratify these binding instruments.<sup>167</sup> However, this failing poses a major issue because the United Nations High Commissioner for Refugees (UNHCR) needs States to support their mandate to lead and coordinate international action ‘to protect, assist, and find solutions for refugees and other populations of concern’.<sup>168</sup> This is also an evident problem, because there are many stateless people and refugees in the region, especially in the aftermath of the Arab Spring.<sup>169</sup>

More specific to our case study, from the four major State destination for Syrian refugees, (i.e. Iraq, Lebanon, Jordan and Egypt) only Egypt has ratified the 1951 Convention relating to the Status of Refugees in 1981. However, over the years these aforementioned States including Egypt agreed on ‘an alternative legal instrument for regulating the status of refugees’.<sup>170</sup> These are Memorandum of Understanding (MOUs) between the UNHCR and Egypt, Jordan, and Lebanon.<sup>171</sup> Nevertheless, according to Kagan, these MOUs inhabit an unspecified position in international law.<sup>172</sup> While the Refugee Convention (of which these governments failed to ratify) defines refugee status and provides them unequivocal rights, the primary aim of MOUs is on ‘codifying the division of labour between host governments and [the] UNHCR’.<sup>173</sup> An example of this position can be illustrated in the following with the MOUs signed between Lebanon and the UNHCR; ‘[the] UNHCR provides ... the necessary assistance to refugee holding temporary circulation permits ... in order to avoid that those refugees

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<sup>167</sup> Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967. Algeria (8 Nov 1967 a), Djibouti (9 Aug 1977 d), Egypt (22 May 1981 a), Mauritania (5 May 1987 a), Morocco (20 Apr 1971 a), Sudan (23 May 1974 a), Tunisia (16 Oct 1968 a), Yemen (18 Jan 1980 a). G Sadek ‘Legal Status of Refugees: Egypt, Jordan, Lebanon, and Iraq’ (2013)

<<http://www.loc.gov/law/help/refugees/legal-status-refugees.php>> accessed 2 January 2015

<sup>168</sup> Turk and Eyster ‘Strengthening Accountability in UNHCR’ (2010), 22 Int’l J. Refugee L., 159.

<sup>169</sup> Although the League created a declaration in 1993, right to refugees have not been implemented.

<sup>170</sup> M Kagan, ‘We Live in a Country of the UNHCR: The UN Surrogate State and refugee policy in the Middle East’, (2011) Research Paper No.201, UNHCR New Issues in Refugee Research, Geneva: Policy Development and Evaluation Service, 17.

<[http://reliefweb.int/sites/reliefweb.int/files/resources/E562A0C03554F4FD8525783800739D61-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/E562A0C03554F4FD8525783800739D61-Full_Report.pdf)> accessed 2 January 2015.

<sup>171</sup> *ibid.*

<sup>172</sup> *ibid.*

<sup>173</sup> *ibid.*

be forced to violate the national laws or constitute a burden on the Lebanese Government'.<sup>174</sup>

Thus while Egypt, Iraq, Lebanon, and Jordan<sup>175</sup> host the majority of Syrian refugees they do not have domestic laws governing the status of refugees.<sup>176</sup> The reason for the absence of laws specifically governing the integration of refugees in Arab States is because these States most often agree to accept refugees in their States, as long as the refugees will stay for a short period of time and the human welfare (and ultimate departure) of the refugees are supported by an international body such as UNHCR or UNRWA or other third parties.<sup>177</sup>

It has been justifiably argued that Arab States and members of the Arab League tend to consider the UN as a 'surrogate state,'<sup>178</sup> performing a 'state substitution role,'<sup>179</sup> however; the UN does not have the legal capacity to act as 'an auxiliary for a host government'.<sup>180</sup> Therefore, all the burden is left with the UN who are tasked to carry out fundamental measures to ensure the wellbeing of the refugees; they not only establish and manage refugee camps, but also 'register newly arrived asylum-seekers, carry out refugee status determination, and administer education, health, livelihood and other social welfare programs'.<sup>181</sup>

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<sup>174</sup> Memorandum (Lebanon), Memorandum of Understanding between the Directorate of the General Security (Republic of Lebanon) and the Regional Office of the UN High Commissioner for Refugees, Concerning the processing of cases of asylum-seekers applying for refugee status with the UNHCR Office, 9 September 2003. See also article 14 Memorandum of Understanding between the Government of Jordan and UNHCR, (5 April 1998), <<http://www.unhcr.org/refworld/docid/3ae6b31920.html>> accessed 30 September 2014. Letter of understanding between the government of the Hashemite Kingdom of Jordan and the Office of the United Nations High Commission for Refugees, 2222 UNTS 213-216. See M Kagan above n 170, at 18. see also L Hilal and S Samy, 'Asylum And Migration In The Mashrek Asylum and Migration Country Fact Sheet, Lebanon, Euro-Mediterranean Human Rights Network 1-16/16' (2008) <<http://mawgeng.a.m.f.unblog.fr/files/2009/11/factsheetlebanonen.pdf>>

<sup>175</sup> See Sadek above, n 167.

<sup>176</sup> *ibid.*

<sup>177</sup> Kagan n 170, at 3. However, with the exceptions of the weak central governments in Lebanon, Yemen and post-Baathist Iraq.

<sup>178</sup> See A Slaughter and J Crisp, 'A surrogate state? The role of UNHCR in protracted refugee situations,' in G Loescher, J Milner, E Newman, and G Troeller (eds.), *Protracted Refugee Situations* (Tokyo: United Nations University Press, 2008), 123-140.

<sup>179</sup> V Turk, 'UNHCR's Role in Supervising International Protection Standards in the Context of its Mandate', (2010), Keynote Address, International Conference on Forced Displacement, Protection Standards, Supervision of the 1951 Convention and the 1967 Protocol and Other International Instruments, York University, Toronto, 3.

<sup>180</sup> See above Kagan (2011) n 170 at 3.

<sup>181</sup> V Turk and E Eyster, 'Strengthening Accountability in UNHCR', (2010), 22 *Int'l J. Refugee L.* 164.

Therefore, with the increasing global challenges, the UNHCR is facing many problems with regards to the human rights situation of refugees in the region. For example, it is submitted that the UNHCR is underfunded, and only received 51 per cent of the \$3.7 billion required to support the Syrian refugees (which according to Chatham House, presently accounts for 3.1 million refugees).<sup>182</sup>

Arab States need to revisit their policies of integrating and welcoming refugees in their respective States. This is particularly important because refugees are submitted to be hosted in only five Arab States, and these States are facing major difficulties.<sup>183</sup> Refugees themselves are suffering in these States and one of the reasons for this suffering is their inability to integrate in their host States, because there exists no automatic rule in many Arab States for giving refugees residency permits in order for them to access to health care or employment, or even public education.<sup>184</sup> Although, some State do provide permits, they are usually given to a limited number of refugees and valid for a restricted period extending to a year (maximum).<sup>185</sup> For example, in Iraq, the UNHCR estimates just 30 per cent of Iraqi refugees were granted residency permits.<sup>186</sup> With the great influx of Syrian refugees and the fact their permits usually expire, many live and work illegally in Iraq, Jordan and Egypt.<sup>187</sup> As a result, Syrian refugees suffer significant human rights violations, especially women and children.<sup>188</sup>

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<sup>182</sup> See Phillips and Quilliam n 164. It is important to note the generous donation of Saudi Arabia to the Syrian refugees. For example, in 2013 it donated US \$10 Million to the Syria Appeal of the United Nations Relief and Works Agency for Palestine Refugees (UNRWA) with \$ 10 million, through its Saudi Fund for Development. See UNRWA, 'Saudi Arabia Contributes US\$ 10M for Palestine Refugees from Syria' (10 September 2013) <<http://www.unrwa.org/newsroom/press-releases/saudi-arabia-contributes-us-10m-palestine-refugees-syria>> accessed 1 January 2015.

<sup>183</sup> V Turk and E Eyster, 'Strengthening Accountability in UNHCR', (2010), 22 Int'l J. Refugee L. 164.

<sup>184</sup> Law No. 24 of 1973, art. 12, A Al-Rasmiyya, 16 June 1973, at 1112, [http://www.lob.gov.jo/ui/laws/search\\_no.jsp?year=1973&no=24](http://www.lob.gov.jo/ui/laws/search_no.jsp?year=1973&no=24) (official website of the Jordanian Council of Ministers), unofficial English translation <<http://www.refworld.org/cgi-bin/texis/vtx/rwmain?docid=3ae6b4ed4c>> accessed 1 January 2015.

<sup>185</sup> *ibid.*

<sup>186</sup> J Emanuel, 'Discriminatory National Laws in Jordan and Their Effect on Mixed Refugee Families' 12 (Program on Law & Hum. Dev. Univ. of Notre Dame Law Sch., Student Research Papers No. 2012-4, Apr. 2012), <<http://www3.nd.edu/~ndlaw/prog-human-rights/student-research-papers/NationalityLawsInJordan.pdf>> accessed 1 January 2015.

<sup>187</sup> 'Legal Status of Individuals Fleeing Syria, Syria Needs Analysis Project', June 2013, at 2, [http://reliefweb.int/sites/reliefweb.int/files/resources/legal\\_status\\_of\\_individuals\\_fleeing\\_syria.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/legal_status_of_individuals_fleeing_syria.pdf).

<sup>188</sup> UNDP 'Iraq: Syrian women and girls struggle to survive in camps' <<http://www.undp.org/content/undp/en/home/ourwork/crisispreventionandrecovery/successstories/alone-in-iraq--syrian-women-and-girls-struggle-to-survive-in-ref/>> accessed 1 January 2015.



Egypt, the regions' most influential nation<sup>189</sup> (and where the headquarters of the Arab League and its human rights bodies exist), as of June 2014 hosts 137,472 Syrian refugees.<sup>190</sup> Although the number decreased since Egypt introduced a Visa scheme in 2013, there exists many challenges of refugees protection.<sup>191</sup> Thus, according to the UNHCR many Syrian refugees continue to leave Egypt, because of their poor living conditions and seeking protection elsewhere. Some even risked their lives in order to depart from Egypt, such as exiting through the sea.<sup>192</sup> Therefore, Egypt a ratifying member of the Convention relating to the Status of Refugees, and its Protocol Relating to the Status of Refugees convention since 1981, failed to enact on its obligation stipulated in these documents, such as protecting the socio-economic rights of refugees.<sup>193</sup>

Similarly, Lebanon, a neighbouring country to Syria is a very small nation (geographically), already holds about 4.4 million inhabitants, hosts about 1.1 million Syrian refugees, and around 53,000 Palestine refugees from Syria.<sup>194</sup> The UNHCR estimates this number will rise to 1,500,000 refugees in total on 31 December 2014. This figure represents about 38 per cent of the Syrian refugees in the region.<sup>195</sup> Like all the other Arab States, half of the population is female and around 53 per cent are under 18 years of age.<sup>196</sup> Lebanon is still struggling to provide efficient housing, education, and health care to its inhabitants.<sup>197</sup> As a result of growing instability in the region there are 'tens of thousands of stateless people' in the country. Equally of concern are the Syrian refugees born in Lebanon, recent statistics (2014) estimate of the 5,779 Syrian

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<sup>189</sup> See for example, HRW, n 124, at 5.

<sup>190</sup> UNHCR '2014 Syria Regional Response Plan - Mid-Year Update' 4  
<<http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-egypt.pdf>> accessed 2 January 2015.

<sup>191</sup> *ibid.*

<sup>192</sup> *ibid.*

<sup>193</sup> See for example, Article 17 (1) of the Convention relating to the Status of Refugees 'The Contracting State shall accord to refugees lawfully staying in their territory the most favourable treatment accorded to nationals of a foreign country in the same circumstances, as regards the right to engage in wage earning employment'. Egypt accessed the Convention relating to the Status of Refugees and its protocol on (22 May 1981 a) see UNTC. Chapter V, Refugees and Stateless Persons, 2. Convention relating to the Status of Refugees, Geneva, 28 July 1951. United Nations, Treaty Series, vol. 189, p. 137. Status at: 20-09-2014 05:02:19. Protocol relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force Oct. 4, 1967.

<sup>194</sup> UNHCR '2014 Syria Regional Response Plan Lebanon Mid-Year Update' (2014) 6  
<<http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-lebanon.pdf>> accessed 1 January 2015.

<sup>195</sup> *ibid.*

<sup>196</sup> *ibid.*, See also 'Syria conflict: Lebanon refugee curb prompts UN concern' BBC News (5 January 2015) <<http://www.bbc.co.uk/news/world-middle-east-30685174>> accessed 5 January 2015.

<sup>197</sup> *ibid.*

new-borns 72 per cent do not own an official birth certificate.<sup>198</sup> As such, the UNHCR is concerned whether or not the Syrian authorities are recognising the nationality of these new-borns.<sup>199</sup>

Iraq is another State that also hosts a high number of Syrian refugees. According the UNHCR, as of June 2014, it hosts 226,000 Syrian refugees, with only 12,186 registered thus far.<sup>200</sup> Like the case of Lebanon, Jordan, and Egypt, women make up a large amount of the refugee population, (almost 42 per cent).<sup>201</sup> While a substantial number of the refugees are under 18 years of age. It is significant to note that more than 45 per cent of Syrian refugees live in camps, and the rest live in host communities.<sup>202</sup> Interestingly, the UNHCR notes that it is not the Iraqi government but the Kurdistan Regional Government who hosts 95 per cent of the Syrian refugees. Unlike Lebanon or Egypt, Kurdistan supports refugee employment (to some extent), and issues residency permits to Syrians.<sup>203</sup> The UNHCR believes this allows the possibility for humanitarian agencies to help and support refugees ‘to access livelihood opportunities’.<sup>204</sup>

It is important at this point to mention, those responding to the humanitarian situation of the Syrian refugees are predominantly UN agencies, the report does not mention efforts by the Arab League or its human rights bodies (i.e. Arab Human Rights Committee or the Arab Permanent Commission on Human Rights).<sup>205</sup>

Finally, it is equally important to note that the only country in the Middle East to have proven by the UNHCR to be effective with hosting and responding to the humanitarian situation of Syrian refugees is Turkey (a non-Member State of the Arab League or the

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<sup>198</sup> UNHCR, ‘2015 UNHCR country operations profile – Lebanon’

<<http://www.unhcr.org/pages/49e486676.html>>

<sup>199</sup> *ibid.*

<sup>200</sup> UNHCR, ‘2014 Syria Regional Response Plan Iraq Mid-Year Update’ (2014) 6

<<http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-iraq.pdf>> accessed 2 January 2015

<sup>201</sup> *ibid.*

<sup>202</sup> *ibid.*

<sup>203</sup> *ibid.*

<sup>204</sup> *ibid.*

<sup>205</sup> According to the UNHCR, there are five-sector working groups are responding to the crisis; ‘the plan is a collaborative effort between the Government of Egypt, six UN agencies (UNHCR, UNICEF, UNFPA, WFP, WHO, UN-HABITAT), the International Organization for Migration and three international NGOs as well as implementing partners, refugees, and host communities, under the overall leadership of the Government of Egypt and UNHCR, and in close coordination with the donor community’. UNHCR ‘2014 Syria Regional Response Plan - Mid-Year Update’ 5 at n 189.

Arab Charter on Human Rights).<sup>206</sup> As of 1 June 2014, Turkey has been hosting 765,000 refugees from Syria (27 per cent of the Syrian refugees in the region).<sup>207</sup> The UNHCR estimates that the ratio of men to women Syrian refugees are much smaller than the above three States; 49 per cent are females and 51 per cent males, while 18 per cent of children under five.<sup>208</sup>

The primary reason the UNHCR considers the Government of Turkey the most effective compared to the above three Arab States, is because it was quick to address refugee response and has been extending ‘Temporary Protection’ to all Syrians in Turkey.<sup>209</sup> In addition to the basic human rights necessities delivered by the government such as providing camps with sanitary living conditions, food, education, and essential services and medical assistance. Although humanitarian partners support the government, Turkey is the predominate benefactor to these Syrian refugees.<sup>210</sup> Additionally, 70 per cent of the total Syrian refugee population live within outside the refugee camps and in various parts of urban areas.<sup>211</sup> However, similar to all host States to Syrian refugees, many still live outside the legal system and thus they can be subject to exploitation. Conversely, the UNHCR argues, significant efforts are still being made at the national level to address the needs the growing number of Syrian urban refugees. For example, the government implemented ‘six sector working groups’ who are mandated to respond to the needs of the affected population.<sup>212</sup> However, Syrian refugees in Turkey, as in many parts of the region, face many challenges and without legal protection, they are subject to discrimination and vulnerability.<sup>213</sup>

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<sup>206</sup> *ibid.*

<sup>207</sup> UNHCR, ‘2014 Syria Regional Response Plan Turkey Mid-Year Update’ 5  
 <<http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-turkey.pdf>> accessed 2 January 2015.  
 Although, Gulf States, such as Saudi Arabia have supported Turkey by sending money and aid. See for example, Al Arabiya ‘Saudi Arabia sends tons of aid to Syrian refugees’ (31 March 2013)  
 <<http://english.alarabiya.net/en/News/middle-east/2013/03/31/Saudi-Arabia-sends-tons-of-aids-to-Syrian-refugees-.html>> accessed 3 January 2014.

<sup>208</sup> UNHCR, ‘2014 Syria Regional Response Plan Turkey Mid-Year Update’ 5  
 <<http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-turkey.pdf>> accessed 2 January 2015.

<sup>209</sup> *ibid.*

<sup>210</sup> *ibid.*

<sup>211</sup> *ibid.*

<sup>212</sup> *ibid.*

<sup>213</sup> See for example, ‘Civil society takes responsibility for Syrian refugees in Turkey’ *SES Türkiye* (28 July 2014)  
 <[http://turkey.setimes.com/en\\_GB/articles/ses/articles/features/departments/national/2014/07/28/feature-01](http://turkey.setimes.com/en_GB/articles/ses/articles/features/departments/national/2014/07/28/feature-01)> accessed 2 January 2015. See also ‘The Situation Of Syrian Refugees In The Neighboring Countries:

## 7.6 Conclusions

Unfortunately, the Arab League finds its jurisdiction in an unstable region and the escalating war in Syria presents an important example of the ineffectiveness of the Arab League to promote and protect human rights. For example, the Arab Human Rights Committee, the only mechanism created by the Arab Charter on Human Rights to monitor its implementation, has failed to gain any relevancy. In fact, as discussed above, the only human rights mission sent by the Arab League is the LAS Observer Mission to Syria. However, the LAS Mission proved to be a disaster and did not achieve any kind of resolution, largely because the League failed to provide the Mission a clear mandate and institutional support.<sup>214</sup>

As this study presented, the situation in Syria is highly complex. The Syrian case-study is particularly relevant for this thesis not only is the situation in Syria a major humanitarian crisis but also because Syria has been a long-standing member of the Arab League.<sup>215</sup> In fact, even before 2011, for decades the Assad regime has been governing with impunity, upholding many discriminatory provisions towards women, ethnic minorities, and the majority Sunni population. Furthermore, although it has been governing with impunity for decades, Syria has been a key participant in a number of human rights treaties, including the Arab Charter on Human Rights. However, regrettably, since there are no accountability mechanisms in the Arab region, Syria is left to violate every human rights provision it has ratified.

In addition to the Arab League's failure to provide an efficient accountability mechanism for State violators of human rights, the Arab League still lacks the institutional framework for providing collective policymaking to incorporate 'regional

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<[http://www.orsam.org.tr/en/enUploads/Article/Files/201452\\_189ing.pdf](http://www.orsam.org.tr/en/enUploads/Article/Files/201452_189ing.pdf)>

<sup>214</sup> 'Arab League suspends Syria monitoring mission' *Reuters* (29 January 2012)

<<http://www.france24.com/en/20120128-arab-league-suspends-syria-monitoring-mission-amid-mounting-violence/>> accessed 2 January 2015. See also Report of the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012. 27/01/12 1 McAULEY, 259.12D 12-21687.

<sup>215</sup> CNN Wire Staff, 'Arab League's Syria mission extended by a month'

(January 25, 2012 ) <<http://edition.cnn.com/2012/01/24/world/meast/syria-unrest/>> accessed 2 January 2015.

conflict resolution'.<sup>216</sup> This is because the League's institutionalisation<sup>217</sup> of sovereignty and 'non-interference of State affairs', led to the League's failure to act as a unified organisation to promote, protect and monitor international human rights, including the rights of stateless people and the rights of refugees. The internal division and dysfunction of the League also hampered its ability to work with the UN Special envoys. As a consequence of the 'deeply divided Arab League',<sup>218</sup> the UN- Arab League special envoys resigned. As such, the failings and disasters bestowed upon Syria and its neighbouring States also reflect the failure of the Arab League as a medium to promote and protect human rights.

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<sup>216</sup> B Tibi, 'Redefining the Arab and Arabism in the Aftermath of the Gulf Crisis, in the Arab World Today' (D Tschirgi ed., L Rienner 1994) 135-136. The League supported the ousting of Qaddafi in Libya, as a result of a joint decision of the League to request UNSC to establish no fly-zone in Libya. However, arguably this was the only time the League took successful action. See D Winther, *Regional Maintenance of Peace and Security Under International Law: The Distorted Mirrors* (Routledge, 2013) 135.

<sup>217</sup> See for example Dawisha (2003) above n 5 at 274, where he states 'few Arabs in the 1980s and 1990s thought about Arab nationalism in the same way an earlier generation had done in the pre-1967 period'.

<sup>218</sup> See Black (2014) above, at n 111.

**PART V: CONCLUSIONS**

‘Regional arrangements play a *fundamental* role in *promoting* and *protecting human rights*. They should *reinforce universal human rights standards*, as contained in international human rights instruments, [..].’<sup>1</sup>

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<sup>1</sup> Para. 37, Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993, (Emphasis added).

## Chapter 8

### Concluding Reflections

The aim of this study has been to highlight the deficiencies of the Arab League as a medium to promote and protect human rights within the Arab World. The study examines the Arab League and its human rights mechanism because in contrast to other regional organisations already established – the Arab League has failed to provide an effective human rights system to promote and protect human rights.

This research takes the position that the Arab League as a regional organisation has proven to be inept to function as a unified body to deal with the current human rights concerns existent in the Arab world.<sup>2</sup> It took several decades after the League was established (1945) that an Arab Charter on Human Rights was adopted (1994) and then another decade for the Arab Charter to come into force in 2008 (after it had been revised in 2004). However, as discussed in this study, there are many theoretical and practical problems within the structure of the Arab League and the mechanisms it has adopted. For instance, since its inception the League has adopted many resolutions to demonstrate on paper its commitment to various agreements passed by the UN for the promotion and protection of human rights.<sup>3</sup> That said, there are strong policies within the legislative frameworks of the Arab League supporting non-interference of State affairs. As such, it seems the League is engaging with the UN human rights Charter and treaty bodies to improve its public image, yet without enforcing laws (or policies) to reflect its support and adherence to the international system. This is also reflected in the fact the Arab League failed to afford a judicial mechanism to hold States accountable to human rights violations, and/or provide a platform for redress for victims of human rights abuse.<sup>4</sup> Unfortunately, the only enforcement mechanism provided by the Arab Charter on Human Rights is the Arab Human Rights Committee, whose main function

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<sup>2</sup> See for example Chapter 4.

<sup>3</sup> Proclamation of Teheran, Final Act of the International Conference on Human Rights, Teheran, 22 April to 13 May 1968, U.N. Doc. A/CONF. 32/41 at 3. See also Council of the League of Arab States, Arab Charter on Human Rights, September 15, 1994, *reprinted in* 18 Hum. Rts. L.J.151 (1997). League of Arab States, Arab Charter on Human Rights, May 22, 2004, *reprinted in* 12 Int'l Hum. Rts. Rep. 893 (2005), *entered into force* March 15, 2008. See list of resolutions adopted at Arab League Summits in Chapter 4.

<sup>4</sup> See for example Chapter 6 and 7.



is to receive State reports and issue concluding observations and recommendations. The Committee cannot receive individual or inter-State complaints<sup>5</sup>, nor can it interpret the provision of the Charter. It therefore appears convincing to argue that the Charter is an inherently weak and ambiguous document that needs to be amended to meet international human rights standards.<sup>6</sup>

As this study has evaluated, the United Nations was initially hesitant to support regional human rights establishments because of the view that regional organisations might detract from the work of the United Nations in promoting and protecting international human rights standards.<sup>7</sup> However, the UN became increasingly interested in supporting and developing regional organisations after seeing the level of success achieved by regional establishments in Europe (with the ECHR) and the Americas (with the OAS human rights system). These organisations demonstrated (at least to an extent) the ability of regional human rights establishments to complement and lend support to the UN human rights scheme.<sup>8</sup> Consequently, since 1968, the UN supported the need for the institution of regional human rights systems and as early as 1977 it adopted resolution 32/127-which ‘appeals’ to member States who have not done so already, to institute ‘suitable regional machinery for the promotion and protection of human rights’.<sup>9</sup> Furthermore, in the 1993 World Conference, the Vienna Declaration and Programme of Action stipulated ‘[r]egional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection’.<sup>10</sup> The UNGA passed many resolutions mandating the UN Commission on Human Rights to provide support to advisory services and technical cooperation in the

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<sup>5</sup> See W Allam, ‘The Arab Charter on Human Rights’ (2014) ALQ 28, 63, at 62-3.

<sup>6</sup> *ibid.*, at 63.

<sup>7</sup> BH Weston, RA Lukes, KM Hnatt ‘Regional Human Rights Regimes: A Comparison and Appraisal’ Vand. J. Transnat’l L (1987) Vol 20, 588.

<sup>8</sup> See chapter 2, for example, T Buergenthal, ‘The U.N. Covenants and Regional Human Rights’ (1986) Vol. 80, ASIL Proc., 422-425.

<sup>9</sup> UN General Assembly, Regional arrangements for the promotion and protection of human rights. 16 December 1977, A/RES/32/127.

<sup>10</sup> Para. 37, Vienna Declaration and Programme of Action, Adopted by the World Conference on Human Rights in Vienna on 25 June 1993.

field of human rights.<sup>11</sup> These different levels of support provided by various bodies of the UN to the Arab League have been discussed throughout this study.

It would appear rational to argue that States, in a particular region, share the same political, economic, cultural, and geographical ties. As such, intrinsically, regional arrangements have the potential to provide better protection for human rights and a stronger framework for sanction and redress.<sup>12</sup> Such a hypothesis has also been advanced by leading scholars. Viljoen, makes the observation that regional human rights mechanisms provide an advanced level of conjunction and consistency between States, by allowing greater norm-specification in the regional thus improving implementation of human rights.<sup>13</sup> Robertson and Merrills further argue that regional arrangements are set up by a group of ‘like-minded countries’ that are willing to give ‘greater powers to a regional organ of restricted membership, in which the other members are its *friends* and *neighbours*, than to a worldwide organ....’<sup>14</sup> Killander also notes the importance of regional human rights tribunals to monitor, promote, and interpret international human rights treaties to fulfil the object and purpose of the treaty in question.<sup>15</sup> These beneficial functions of regional mechanisms have been utilised to some extent by the Inter-American Court of Human Rights and the ECtHR.<sup>16</sup> However,

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<sup>11</sup> UN Commission on Human Rights, Commission on Human Rights Resolution 2004/81: Advisory Services and Technical Cooperation in the Field of Human Rights, 21 April 2004, E/CN.4/RES/2004/81, available at: <http://www.refworld.org/docid/43f3138d0.html> [accessed 13 May 2013] See also UN GA Resolution 926 (X) of 14 December 1955; and Economic and Social Council decision 1987/147 of 29 May 1987, pursuant to which the Secretary-General established the United Nations Voluntary Fund for Technical Cooperation in the Field of Human Rights, as well as Commission resolution 2002/87 of 26 April 2002, and the Vienna Convention on Human Rights. 57/219 of 18 December 2002 and 58/187 of 22 December 2003.

<sup>12</sup> A Durbach, C Renshaw and A Byrnes, ‘A tongue but no teeth?’ The emergence of a regional human rights mechanism in the Asia Pacific region’ (2009) *Sydney L Rev.*, Vol.31, 218. See also M Killander M Killander, ‘Interpreting Regional Human Rights Treaties’ (2010) 13 *SUR Int’l J. on Hum Rts*, 145-170; C.M. Tucker, ‘Regional Human Rights Models in Europe and Africa: A Comparison’ ((1983) 10 *Syracuse J. Int’l L. & Com.* 139 cited in B H. Weston, R A Lukes, Kelly M. Hnatt ‘Regional Human Rights Regimes: A Comparison and Appraisal’ (1987) *Vand. J. Transnat’l L* Vol 20, 590.

<sup>13</sup> F Viljoen, *International Human Rights Law in Africa*, (2<sup>nd</sup> edn, Oxford University Press 2012) 10. In Africa, specifically, the African charter embodies a more collective ‘African conception’ of human rights consistent with the ‘historical tradition and values of African civilization’ (preamble to the African Charter) by providing for ‘peoples’ rights’ and individual duties.

<sup>14</sup> AH Robertson, JG Merrills, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights* (Manchester University Press, 1996) 269.

<sup>15</sup> See M Killander, ‘Interpreting Regional Human Rights Treaties’ (2010) 13 *Sur, Int’l J. on Hum Rts*. 170, 145-147, 154.

<sup>16</sup> *ibid.*, See for example, *Rantsev v. Cyprus and Russia*, App. No. 25965/04 ECHR (2010), 7 January 2010; I/A Court H.R., *Case of Ricardo Canese v. Paraguay*. Merits, Reparations and Costs. Judgment of August 31, 2004. Series C No. 111.

as this study of the Arab League has determined, there are many theoretical and practical problems existent in the regional human rights system of the Arab League, and these factors may undermine the universality of human rights and in this regard impede the work of UN treaty bodies and NGOs.<sup>17</sup>

Further on, chapter 3 observed that Arab States often challenge the universality of human rights, because they believe the western values it enshrines are not their own.<sup>18</sup> Most Arab States use religious principles such as Shariah as bases of their reservations on human rights provisions. However, as this study evaluates these reservations in some cases are based on political motives and not Shariah.<sup>19</sup> The question of how to accommodate international human rights norms with cultural relativity is still a highly complex problem, and part of a long-standing debate.<sup>20</sup> These arguments presented in chapter 3 are important, because, in terms of adherence to universal human rights norms, the Arab region is still the principal exception (compared to other regions).<sup>21</sup> For example, Professor Ali takes the view that the varied cultural practices in many Muslim societies most often contradict universal notions of human rights.<sup>22</sup> She argues traditional interpretations of Shariah have been effected by local culture and traditions, and in many ways served political and patriarchal interest. She therefore suggests the need for Islamic scholars and legislators to utilise the ‘in-built dynamism’ within Shariah.<sup>23</sup>

It has also been determined in this study that Islam is a highly complex religion, and its adherents may ‘falsely’ categorise an individual act or practices (which generally contradict universal human rights standards) as Islamic when it is not.<sup>24</sup> Other added

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<sup>17</sup> See Robertson and Merrills, above n 14, at 269. See also chapter 2.

<sup>18</sup> C M Cerna ‘Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts’ (1994) Vol. 16, No. 4, HRQ., 740.

<sup>19</sup> E Brems ‘Islamic Reservations to Human Rights Conventions’ in *Human Rights: Universality and Diversity* (Martinus Nijhoff Publishers, 2001) 275.

<sup>20</sup> For example see J Rehman, *International Human Rights Law* (London and New York: Longman 2010) 9-10.

<sup>21</sup> J Donnelly ‘International Human Rights: Universal, Relative or Relatively Universal?’ in M Baderin and M Ssenyonjo, *International Human Rights Law, International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Publishing, Ltd., 2013) 31-48, at 34.

<sup>22</sup> SS Ali, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man* (The Hague: Kluwer Law International, 2000), 284.

<sup>23</sup> *ibid.* 284.

<sup>24</sup> W Lee, ‘Children’s Rights and Islam’, cited in *Handbook on Legislative Reform*, (UNICEF unpublished Working Paper, 2000) 34. See also Ali n 22.

aspects of Islam's complexity are the variety of tradition and culture in the region,<sup>25</sup> and the escalating sectarian tensions. Unfortunately, these divisions cause great duress in the region and political rivalry between Arab states. As such, these prevalent problems in the region have contributed to the Arab League's inability to function as a unified body to deal with important matters, such as that of human rights.

Chapter 4 provided a comprehensive analytical understanding of the history of the Arab League, its functioning powers and limitations. The study noted how amongst the Arab States, political cooperation has been very difficult and this division strongly disadvantaged the effectiveness of the League.<sup>26</sup> As submitted in Chapter 4, in addition to the ethnic and sectarian tensions other events happened in the region, such as the Arab-Israeli Wars in 1948, 1952, 1967 and 1973. In addition to the Iran-Iraq War in 1980-1988, and the US-led invasion in Iraq (2003) created a new regional order in the region, and escalating tensions between religious sects such as Sunnis and Shias,<sup>27</sup> particularly in Iraq, Lebanon and Syria.<sup>28</sup> It would appear tribal-ethnic and sectarian conflicts that were initially aggravated by the Colonialists did not end with the attainment of independence, and even with newly established nation-States, the Arab regimes were left with weak institutions and had (and continue to have) problems with alleviating social and economic problems, and utilising the concept of citizenship and democracy.<sup>29</sup>

The study also indicated the limitations of the Arab League Charter. At the outset, despite the League's noted approach towards reform of the institutional framework of the League, it failed to take into account the importance of stipulating a provision that provides reference to human rights in the Charter. The Charter also stipulates that the head of the Arab Permanent Commission on Human Rights is to be appointed as opposed to being democratically elected which represents a major setback in the

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<sup>25</sup> M Cammett, 'The Political Economy of Development in the Middle East' in E Lust, *The Middle East* (12th edn, CQ Press 2010) xxxi.

<sup>26</sup> According to the BBC, 'the Arab League's effectiveness has been severely hampered by divisions among member states.' See 'Profile: Arab League' *BBC News* (Tuesday, 9 August 2011). <[http://news.bbc.co.uk/1/hi/world/middle\\_east/country\\_profiles/1550797.stm](http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/1550797.stm)>

<sup>27</sup> See for example, C Harders and M Legrenzi, *Beyond Regionalism?: Regional Cooperation, Regionalism and Regionalization in the Middle East* (Ashgate Publishing, Ltd., 2008) at 48.

<sup>28</sup> *ibid.*, 47.

<sup>29</sup> See B Tibi, 'Old Tribes and Imposed' in P Khoury and J Kostiner, *Tribes and State Formation in the Middle East*, (University of California Press, 1990) 127-152, at 149.

effective functioning and the credibility of its decisions.<sup>30</sup> Finally, it is submitted that the powers of the Secretariat needs to be strengthened in order for it to be effective, and to enable the League to be relevant to solve regional crises.<sup>31</sup>

In addition, the chapter analysed the Arab League Summits, especially those that discuss human rights. The Arab-Israeli conflict is the primary concern of most of the Summit sessions.<sup>32</sup> In fact, to date this is the only time Arabs are united. However, no solution to the conflict has ever been reached, and this is unfortunate especially since the conflict enhances violence, produces major violations of human rights, and instability in the region. The study also observed that it had taken the League decades before it adopted a regional human rights treaty that is meant to complement international and regional standards. While the League has been engaging with the UN in an effort to satisfy the growing UN and international demands, the documents and resolutions adopted by the League remain toothless. For example, not only do they fail to complement international human rights standards, but also have no binding effect in the region.

Chapter 5 evaluated efforts made by the Arab Permanent Commission on Human Rights and its specialised agencies that ultimately led to the League's adoption of the Arab Charter on Human Rights (1994, 2004). The Commission, like the Arab League summits, was mostly concerned with the rights of Palestinians, rather than the rights of women and minorities, or other important human rights issues arising especially as a result of inter-State conflicts within the Arab world. This chapter argues that despite its potential to act as an effective mechanism, the power of the Arab Permanent Commission on Human Rights is very limited, and to date acts only as an advisory body to the Arab League. The main deficiency is the fact that the Commission is made

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<sup>30</sup> MA Al-Midani, 'Human Rights Bodies in the League of Arab States' (2012) *Jinan Hum. Rts.J.*, No. 3, 135 at 121.

<sup>31</sup> M Pinfari, 'Nothing but Failure? The Arab League and the Gulf Cooperation Council as Mediators in Middle Eastern Conflicts Crisis' (2009) State Research Centre, International Relations Department London School of Economics and Political Science. Working Paper No. 45 -Regional and Global Axes of Conflict, 10  
<<http://www2.lse.ac.uk/internationalDevelopment/research/crisisState/download/wp/wpSeries2/WP452.pdf>> accessed 2 January 2015.

<sup>32</sup> N Gunay 'Arab League Summit Conferences, 1964–2000' Washington institute. (2013)  
<<http://www.washingtoninstitute.org/policy-analysis/view/arab-league-summit-conferences-19642000>> accessed 4 October 2014.

up of State representatives of the Arab League that are not democratically elected or specialised in the field of human rights;<sup>33</sup> this is unfortunate and represents a significant shortcoming in the effective functioning of the Commission.<sup>34</sup> According to Al-Midani, the powers of the Arab Human Rights Commission need to be amended in order to provide investigative missions to monitor and hold violators of human rights accountable.<sup>35</sup> The chapter also discussed other human rights documents adopted such as the UIDHR, and the OIC's Cairo Declaration of human rights; both were supported by most of the Member States of the Arab League, however, these documents, among others discussed in the chapter are strongly criticized and fail to meet international standards.

Chapter 6 critically examined the revised Arab Charter on Human rights. It found that despite all efforts by the NGOs and the international community, the Arab League adopted a revised edition of the Arab Charter on Human Rights that includes many provisions that do not comply with international standards, especially those that concern women's rights and the rights of minorities. It also invokes fundamental human rights provisions up to State discretion, and again (as in 1994) failed to provide an effective enforcement mechanism, such as a judicial mechanism that allows individual petitions. The chapter also critically analysed the legislative framework of the Arab Human Rights Committee. It noted various deficiencies of the Arab Human Rights Committee, and how in comparison to other regional and international human rights mechanisms, the Committee's legislative framework remains weak. For example, the Committee has a restrictive mandate to interpret provisions, and does not provide a platform to receive individual complaints.

Finally, chapter 7 assessed the limitations of the Arab Charter on Human Rights, and its enforcement mechanism (the Arab Human Rights Committee). The case study on the Syrian uprising provides the normative reality the Arab League failed as an organisation, not only to provide a coherent human rights treaty with effective enforcement mechanisms, but also failed to act upon its obligation to prevent human rights atrocities from happening. As discussed in Chapter 7, despite all atrocities

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<sup>33</sup> See LAS, History of the Arab League, 'Standing Committees'.

<sup>34</sup> MA Al-Midani, 'Human Rights Bodies in the League of Arab States' (2012) 3 *Jinan Hum. Rts.J.*,121.

<sup>35</sup> *ibid.*

committed by the Syrian regime, the internal divisions within the Arab League hampered its ability to prevent the Syrian humanitarian crisis. The Syrian crises also reflects the inability of the Arab League to collaborate with the UN: the former UN Secretary General Kofi Annan and Lakhdar Brahimi the UN-Arab League joint special representatives resigned in the midst of their work because of this deep division.

Overall, the situation in the Arab region is highly complicated. The economic and political instability, inter-State conflicts, and secular-Islamic tensions have deeply divided the Arab sense of unity. It seems the only time the Member States are united is when confronting Israel, which appears more as a political front than practical reality.<sup>36</sup> Especially, since to date there has been no settlement of the ongoing problems prevalent between Israel and Palestine. Unfortunately, even within Palestine there exists a long-standing tension between the PLO and Hamas because of Secular-Islamic tensions.<sup>37</sup> Notwithstanding, the Arab League as a regional organisation governing these States, has been unsuccessful to solve and mediate inter-State conflicts.<sup>38</sup> For example, Article 5 of the Arab League Charter regarding conflict resolution and settlement of disputes, as well as the Joint Defence and Economic Co-operation Treaty<sup>39</sup> have rarely been employed in the region.<sup>40</sup>

In addition, as this study examined, the League has had countless opportunities to increase the credibility of the universality of human rights, by providing efficient justice and accountability mechanisms.<sup>41</sup> However, as discussed in chapter 6 despite these opportunities, and support by the OHCHR, the League chose to adopt a human rights charter that does not meet international expectations.<sup>42</sup>

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<sup>36</sup> See for example, AD, 'The Arab League: Development and Difficulties' (1951) Vol. 7, No. 5, W Today, 188.

<sup>37</sup> See for example, D Tuastad 'Hamas-PLO Relations Before and After the Arab Spring' (2013) Vol .XX, No. 3, MEPC, <<http://www.mepc.org/journal/middle-east-policy-archives/hamas-plo-relations-and-after-arab-spring>>

<sup>38</sup> See above Pinfari, n 31.

<sup>39</sup> Joint Defence and Economic Co-operation Treaty Between the States of the Arab League The American Journal of International Law, (1955) Vol. 49, No. 2, Supplement: Official Documents, 51-54.

<sup>40</sup> See Pinfari above, n 31, at 18.

<sup>41</sup> See for example, J Rehman and E Polymenopoulou 'Justice after Democracy in the Arab World: Islamic Law Perspectives on Accountability' (2013) Vol. 54, GYIL 84.

<sup>42</sup> See W Allam, 'The Arab Charter on Human Rights: main features' (2014) ALQ 28, 63, at 42, 45.

One may also wonder as to why since 2004, the Arab Charter on Human Rights has not gained support by Arab States, especially since it is the first human rights treaty in force by the Arab League. In fact, as this study suggests many are unaware of its existence.<sup>43</sup> As discussed in this study there is also a problem with domestic compliance of the Arab Charter on Human Rights, because only five states out of 12 ratifying states submitted their obligatory periodic human rights report as per Art. 48 (1). Therefore, there is an obvious weakness in relying on their submission of reports since submission of these reports is not enforceable as there is no judicial mechanism in place to enforce it. This is especially evident with the case of Syria (as discussed in chapter 7). Despite Syria being a longstanding member of the Arab Charter, it has been failing to adhere to the provisions stipulated in the Charter, as well as enacting on its obligations from other treaties it has also ratified. As such, with the Syrian uprising the government has caused the world's largest humanitarian crisis.<sup>44</sup>

The League failed to take into consideration the recommendations of local and international NGOs.<sup>45</sup> For example, a number of NGOs urged the Arab League to eliminate the consistency gap in the Arab Charter on Human Rights.<sup>46</sup> These NGOs have also written various recommendations in order to strengthen the current enforcement mechanism of the Arab Charter. In addition, Rishmawi asserts that if the Charter is to succeed in advancing human rights, Arab governments and civil

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<sup>43</sup> E Alshejni, Director of Human Rights Department, 'League of Arab States' (2010) 10  
<[http://www.eoi.at/d/Sonderberichte%20-%20Brosch%C3%BCren/Frankreich/1303389570\\_Actes\\_Conference\\_1er\\_fevrier\\_-\\_ENGLISH\[1\].pdf](http://www.eoi.at/d/Sonderberichte%20-%20Brosch%C3%BCren/Frankreich/1303389570_Actes_Conference_1er_fevrier_-_ENGLISH[1].pdf)

<sup>44</sup> See UN Secretary-General, Department of Public Information 'With Violence In Syria Reaching 'Unthinkable Levels', Secretary-General Appeals For End To Tragedy Of World's Biggest Humanitarian, Peace, Security Crisis', (12 March 2014) SG/SM/15703,  
<<http://www.un.org/News/Press/docs/2014/sgsm15703.doc.htm>>

In addition, United Nations, S/PV.6627, Security Council, Sixty-sixth year, 6627th meeting, Tuesday, 4 October 2011, 6 p.m. New York, 2.

<sup>45</sup> European Parliament 'The Role of Regional Human Rights Mechanisms' Directorate-General for External Policies of the Union, Directorate B Policy Department Study. EXPO/B/DROI/2009/25 /November/ 2010 PE 410.206 19  
<<http://www.europarl.europa.eu/committees/en/droi/studiesdownload.html?languageDocument=EN&file=3338>> accessed 12 January 2015.

<sup>46</sup> As the FIDH President Souhayr Belhassen, stated: 'Any project escaping conformity with universal standards would lose sense' cited in FIDH, 'the Establishment of an Arab Court of Human Rights Must Be Consistent With Universal Standards' (Fidh.org, 2014) <<http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/The-establishment-of-an-Arab-Court-of-Human-Rights-must-be-consistent-with-13097>> accessed 6 October 2014. FIDH, 'For an Effective Arab League Human Rights Protection System: LAS Secretary General Welcomes Convergence on Universal Standards, NGO Coalition Develops' (2014) <<http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/For-an-effective-Arab-League-human-12932>> accessed 10 October 2014.



institutions will need to work together and re-examine provisions that contradict international standards.<sup>47</sup>

As such, the Arab League can learn from the European human rights system, where it has developed over the years a number of protocols, which has enhanced its credibility and functions in the region.<sup>48</sup> In fact, the ECHR's extensive jurisprudence has proven to be 'the inspirational force in the consolidation and practical realisation of international human rights norms'.<sup>49</sup> Unlike the collective enforcement mechanism of the Strasbourg human rights system, the Arab League lacks the requisite infrastructure, social, and political support to establish such a framework.<sup>50</sup>

The Arab League might usefully also have regard to the Inter-American Human Rights system and its advisory jurisdiction, which applies not only in relation to the application of the American Convention on Human Rights to the State itself, but has also been extended to a number of other human rights treaties.<sup>51</sup> For example, Pinzon argues that the Inter-American Commission on Human Rights has jurisdiction to review petitions 'that claim violation of the rights of individuals' guaranteed in both the

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<sup>47</sup> M Rishmawi 'The Arab Charter on Human Rights' (October 6, 2009) <<http://carnegieendowment.org/2009/10/06/arab-charter-on-human-rights/fbk1>> accessed 6 October 2014.

<sup>48</sup> N O'Meara 'Reforming the European Court of Human Rights through Dialogue? Progress on Protocols 15 and 16 ECHR' (31 May 2013) <<http://ukconstitutionallaw.org/2013/05/31/noreen-omeara-reforming-the-european-court-of-human-rights-through-dialogue-progress-on-protocols-15-and-16-echr/>> accessed 1 January 2015. See also Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14*, 4 November 1950, ETS 5.

<sup>49</sup> Rehman (2010) n 20, at 184. See for example, *Cyprus v Turkey*, Merits, App no 25781/94, judgement 10 May 2001, ECHR Reports 2001- IV (2002) 35 EHRR 30. *Engel and Others v The Netherlands* No. 5100/71 (1976) 23 November 1976, ECtHR. *Golder Case v. the United Kingdom*, App. No 445/170, (ser. A) No. 18, 1 EHRR, 21 February 1975.

<sup>50</sup> See B Tibi in 'the Simultaneity of the Unsimultaneous: Old Tribes And Imposed Nation-States in the Modern Middle East', in PS Khoury and J Kostiner in *Tribes and State Formation in the Middle East* (University of California Press, 1990) 127-152, at 146.

<sup>51</sup> G L Neuman, 'Import, Export, and Regional Consent in the Inter-American Court of Human Rights' EJIL (2008), Vol. 19 No. 1, 123 at 102. See Charter of the Organization of American States, 119 U.N.T.S. 3, *entered into force* December 13, 1951; amended by Protocol of Buenos Aires, 721 U.N.T.S. 324, O.A.S. Treaty Series, No. 1-A, *entered into force* Feb. 27, 1970; amended by Protocol of Cartagena, O.A.S. Treaty Series, No. 66, 25 I.L.M. 527, *entered into force* Nov. 16, 1988; amended by Protocol of Washington, 1-E Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add. 3 (SEPF), 33 I.L.M. 1005, *entered into force* September 25, 1997; amended by Protocol of Managua, 1-F Rev. OEA Documentos Oficiales OEA/Ser.A/2 Add.4 (SEPF), 33 I.L.M. 1009, *entered into force* January 29, 1996. American Convention on Human Rights, O.A.S.Treaty Series No. 36, 1144 U.N.T.S. 123, *entered into force* July 18, 1978, *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

American Convention on Human Rights and the American Declaration on the Rights and Duties of Man.<sup>52</sup> Thus it is submitted that the Inter-American Commission on Human Rights has the *ratione materiae* broader than the European human rights supervisory bodies, or the Human Rights Committee.<sup>53</sup>

The Arab League also needs to take into account the importance of National Human Rights institutions and ensure that the Member States not only establish National Human rights Institutions but also that these institutions complement the 1993 Paris Principles.<sup>54</sup> The UNGA adopted the Paris Principles in 1993 (Res. 48/134) to promote the importance and observance of the UDHR, the International Covenants and other international instruments.<sup>55</sup> UN Res. 48/134 reaffirms the ‘important and constructive role played by national institutions for the promotion and protection of human rights’ and how national human rights institutions may play an efficient role in ‘remedying human rights violations, in the dissemination of human rights information and in education in human rights’.<sup>56</sup> Nowak argues that although at the domestic level, governments, parliaments and law enforcement officials have primary responsibility for safeguarding and making sure international human rights obligations are actually implemented and enforced;<sup>57</sup> governments at the national level need assistance in their supervisory role with respect to the implementation of human rights at the local level, and National Human Rights institutions can assist them in this endeavour.<sup>58</sup> It appears

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<sup>52</sup> See D R Pinzón ‘the “Victim” Requirement, the Fourth Instance Formula and the Notion of “Person” in the Individual Complaint Procedure of the Inter American Human Rights System’ (2001) Vol. 7, No.1, ILSA Journal of Int’l & Comparative Law, 16, at 2. See for example, American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992). I-A Court HR, Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6), Advisory Opinion OC-8/87 of January 30, 1987, (ser. A) No. 8, para. 18 at p. 37; Mapiripán Massacre v. Colombia, Merits, reparations and costs, Inter-Am. Ct. H.R., Series C No. 134 (Sept. 15, 2005), IHRL 1518 (IACHR 2005).

<sup>53</sup> *ibid.*, Pinzón, at 1.

<sup>54</sup> See M Nowak, ‘Protecting Dignity: an Agenda for Human Rights - Progress report on the eminent Persons Panel by Manfred Nowak, Panel member and rapporteur’ (Genf 2008) 70 <<http://www.udhr60.ch/agenda/Nowak-Agenda.pdf>> accessed 1 January 2015. See also National institutions for the promotion and protection of human rights, G.A. res. 48/134, 48 U.N. GAOR Supp. (No. 49) at 252, U.N. Doc. A/48/49 (1993) (“Paris Principles”).

<sup>55</sup> *Ibid.*, UGA. res. 48/13, para 2.

<sup>56</sup> *ibid.* para 8.

<sup>57</sup> See Nowak n 54, at 70. See also M Killander, ‘Interpreting Regional Human Rights Treaties’ (2010) 13 SUR Int’l J. on Hum Rts, 145-169, 145.

<sup>58</sup> *ibid.*, Nowak, 71.

of the 69 National Human Rights Institutions; only Qatar and Jordan<sup>59</sup> (from the Arab League) are suggested to be in full compliance with the Paris Principles.<sup>60</sup> The Arab League needs to support national human rights institutions to become more independent and impartial; perhaps this collaboration may facilitate greater coherence and effectiveness in implementation of international human rights in the region.

In this regard, Arab States must have the political will to establish a coherent and collective mechanism to promote and protect human rights in the region. These States need to support the Arab League and improve its infrastructure for it to become a supranational supervisory body that unites Arab States and monitor how they implement their international human rights obligations.<sup>61</sup> However, as advocated throughout this study – for this to happen – Arab States must ensure that the principle of rule of law and human rights are fully enshrined and entrenched within their respective constitutional systems.

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<sup>59</sup> OHCHR, 'National Human Rights Institutions' *NHRI Main*, <<http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>> accessed 6 October 2014.

<sup>60</sup> *ibid.*

<sup>61</sup> See for example Donnelly above, n 21 at 42.



## Bibliography

### Books

Abdul-Raof H, *Quran and Schools of Qur'anic Exegesis: Genesis and Development* (Routledge 2013).

Abiad N, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, (BIICL, 2008).

Abu-Sahlieh S, *Les Musulmans face aux Droits de l'Homme* (The Moslems in face of the Human Rights)(Verlag Dr Dieter Winkler, Bochum, 1994).

Adamec LW, *Historical Dictionary of Islam* (2<sup>nd</sup> edn, The Scarecrow Press, Inc. 2009).

Al-Husri S, *al-'Uruba Awalan* (Arabism first) (Beirut: Dar al-Ilm li al- Malayeen, 1965).

Ali SS, *Conceptualising Islamic Law, CEDAW and Women's Human Rights in Plural Legal Settings: A Comparative Analysis of Application of CEDAW in Bangladesh, India and Pakistan* (New Delhi, UNIFEM 2006).

Ali SS, *Gender and Human Rights in Islam and International Law: Equal Before Allah, Unequal Before Man* (The Hague: Kluwer Law International, 2000).

Amin Al-Midani M, *Les droits de l'homme et l'Islam*. Textes des Organisations Arabes et Islamiques. Préface Jean-François Collange, Association des Publications de la Faculté de Théologie Protestante (Université Marc Bloch, Strasbourg, 2003).

An-Na'im A, *Islamic Family Law in a Changing World: A Global Resource Book* (Zed Books, London, 2003).

An-Na'im AA, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press, 2009).

An-Na'im AA, *Toward an Islamic Reformation: Civil Liberties, Human Rights, and International law* (Syracuse University Press, 1996).

Aquinas, T, *The Political Ideas of St. Thomas Aquinas*, ed. D Bigongiari (New York: Hafner Press, 1953).

Arab Information Center (U.S.) United Arab Republic, Document collections #2 (New York, Arab Information Center, 1958).

Arzt D *Religious Human Rights in Global Perspective: Religious Perspectives* (Martinus Nijhoff Publishers 1996).

Bachmann S, *Civil Responsibility for Gross Human Rights Violations: The Need for a Global Instrument* (PULP, 1 Jan 2007).

Baderin M and Ssenyonjo M, *International Human Rights Law, International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Publishing, Ltd., 2013).

Baderin M, *International Human Rights and Islamic Law* (Oxford University Press, 2003).

Baderin M, *International Human Rights and Islamic Law* (Oxford University press, 2009).

Baderin MA and Ssenyonjo M (eds.), *International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Publishing, Ltd., 2010).

Barlas A, *Believing Women in Islam: Unreading Patriarchal Interpretations of the Qur'an* (University of Texas Press, 15 Jun 2002).

Bassouini C ed, *A Compilation of Arab Constitutions and a Comparative Study of International Human Rights Standards* (IHRLI /ISISC, Chicago, USA 2005).

Bassiouni C, *Crimes Against Humanity in International Criminal Law* (Dordrecht, Netherlands: M. Nijhoff, 1992).

Bassiouni C, *The Daft Charter on Human and People's Rights in the Arab World*, Istituto Superiore Internazionale de Science Criminali (Siracusa, 1987).

Bassiouni M. Cherif, *The Shari'a and Islamic Criminal Justice in Time of War and Peace*, (Cambridge University Press, 2013)

Batatu H, *The Old Social Classes and the Revolutionary Movements of Iraq: A Study of Iraq's Old Landed and Commercial Classes and of its Communists, Ba'athists and Free Officers* (Princeton, New Jersey: Princeton University Press, 1978),

Bennoune M, *Making of Contemporary Algeria* (Cambridge University Press, 2002).

Böwering G, Crone P, Mirza M, *The Princeton Encyclopedia of Islamic Political Thought* (Princeton University Press, 2013).

Brems E, *Human Rights: Universality and Diversity* (Martinus Nijhoff Publishers, 2001).

Brownlie I and Goodwin-Gill GS, *Basic Documents on Human Rights* (5th edn, Oxford University Press, 2006).

Brownlie I and Goodwin-Gill GS, *Brownlie's Documents on Human Rights* (Oxford University Press 2010) 1109

Broyles M, *The Six-Day War* (The Rosen Publishing Group, 2003).

Bull H and Watson A (eds), *The Expansion of International Society* (Oxford: Oxford University 1984).

Cassese A, *UN Peacekeeping Legal Essays* (Leiden: Martinus Nijhoff Publishers, 1978).

Clements F, *Arab Regional Organizations*, Vol. 2 (Transaction Publishers, 1992).

Cleveland W and Bunton M, *A History of the Modern Middle East*, (4th ed, Westview press 2009).

Commins D and Lesch DW, *Historical Dictionary of Syria* (2<sup>nd</sup> edn, Scarecrow Press 2004)

Cotran E, Sherif AO, *Democracy: The Rule of Law and Islam* (BRILL, 1999).

D Peretz, *The Middle East Today* (Praeger 1968).

Dalacoura K, *Islam, Liberalism and Human Rights: Third Edition* (3<sup>rd</sup> edn, I.B.Tauris, 2007).

Dam N, *The Struggle for Power in Syria: Sectarianism, Regionalism, and Tribalism in politics, 1961-1978* (New York: St Martin's 1979).

Dawisha A, *Arab Nationalism in the Twentieth Century, From Triumph to Despair* (Princeton University Press, 2003).

Dawisha A, *Iraq: A Political History*, (Princeton University Press, 2013).

de Beco G, *Human Rights Monitoring Mechanisms of the Council of Europe* (Routledge 2012).

Doebbler C, *International Human Rights law: Cases and Materials*, Vol. I, Tashkent State Institute of Law Press, Tashkent, Uzbekistan and CD Publishing (Washington, DC, USA 2006).

Donnelly J, *Universal Human Rights in Theory and Practice* (Ithaca, N.Y.: Cornell University Press, 1989).

Dunstan S, *The Six Day War 1967: Jordan and Syria* (Osprey Publishing, 2013).

Dunwalke EM, *The Wilsonian Moment: Self-Determination and the International Origins of Anticolonial Nationalism* (Oxford University Press, 2007).

Emon AM, Ellis M, Glahn B, *Islamic Law and International Human Rights Law* (Oxford University Press 2012).

Eppel M, *The Palestine Conflict in the History of Modern Iraq: The Dynamics of Involvement, 1928-1948* (London: Frank Cass, 1994).

Fawcett L, *International Relations of the Middle East* (Oxford University Press, 2005)

Feldman N, *The fall and Rise of the Islamic State* (Princeton University Press, 2008).

Forsythe DP, *Encyclopaedia of Human Rights*, vol.1 (Oxford University Press, 2009).

Fromkin D, *A Peace to End all Peace: the Fall of the Ottoman Empire and the Creation of the Modern Middle East* (New York: Henry Holt 1989)

Gelvin J, *The Arab Uprisings: What Everyone Needs to Know* (Oxford University Press, 2012).

Gibbon E, *History of the Decline and Fall of the Roman Empire*, with notes by the Rev. H. H. Milman, 1782 (Written), 1845 (Revised) Vol. 5 (Chap. 59).

Goldschmidt A Jr., *A Concise History of the Middle East* (Westview Press 1999).

Gomaa A, *The Foundation of the League of Arab States: Wartime Diplomacy and Inter-Arab Politics* (London, Longman, 1977).

Griffin J, *On Human Rights* (Oxford University Press, 2008)

Gupta S, *Dynamics of Human Rights in the US foreign Policy* (Northern Book Centre, 1 Jan 1998).

Haider SM, *Islamic concept of human rights* (Lahore Book House, 1978).

Hallaq W, *Sharī'a: Theory, Practice, Transformations* (Cambridge University Press , 2009).

Hallaq W, *A History of Islamic Legal Theories: An Introduction to Sunni Usul Al-fiqh* (Cambridge University Press 1999)

Halliday F, *The Middle East in international relations: power, politics and ideology*. The Contemporary Middle East (Cambridge University Press, Cambridge, UK 2005).

Harders C and Legrenzi M, *Beyond Regionalism?: Regional Cooperation, Regionalism and Regionalization in the Middle East*(Ashgate Publishing, Ltd., 2008).

Harris D and Darcy J, *The European Social Charter* (2<sup>nd</sup> edn, Ardsley, New York, 2001).

Harris DJ and Livingstone S, *the Inter-American System of Human Rights* (Oxford United Kingdom, Clarendon Press 1998 ).



Hawting GR, *The First Dynasty of Islam: The Umayyad Caliphate AD 661-750* (2<sup>nd</sup> edn, Routledge, 2002).

Helgesen G and Risbjerg Thomsen S, *Measuring Political Attitudes in East Asia: The Case of South Korean Democratization* (NIAS Press, 1995).

Heydemann S and Leenders R, *Middle East Authoritarianisms: Governance, Contestation, and Regime Resilience in Syria and Iran* (Stanford University Press, 2013).

Hinnebusch, RA, *Authoritarian Power and State Formation in Ba'athist Syria: Army, Party, and Peasant* (Boulder, Colorado: Westview Press, 1990)

Hourani A, *A History of the Arab Peoples* (New York: Warner Books, 1991),

Hourani A H, and Hourani A, *A History of the Arab Peoples*, (Harvard University Press, 2002) 401

A Hourani, *Arabic Thought in the Liberal Age 1798-1939* (Cambridge University Press, 1962).

Howard RE and Donnelly J, *International handbook of human rights* (Greenwood press, 1987).

Hurewitz JC (ed.), *The Middle East and North Africa in World Politics: A Documentary Record*, Vol. 1 (Yale University Press, New Haven, 1975).

Ibn Khaldun, *The Muqaddimah: An Introduction to History*, tr. Franz Rosenthal, ed. N. J. Dawood. (Princeton, 1967) 50- 116.

Ibp USA, *Arab League (League of Arab States) Investment and Business Guide* (International Business Publications 2007).

Ibn Rushd, *The Distinguished Jurist's Primer, Bidayat al-Mujtahid wa Nihayat al-Muqtasid by Ibn Rush*, tr. I Nyazee, vol. 1, (Garnet, 2000).

İhsanoğlu E, *Islamic World in the New Century: The Organisation of the Islamic Conference* (Publisher: Hurst 2010).

G Isa, K de Feyte, *International Protection of Human Rights: Achievements and Challenge* (Universidad de Deusto, 2006).

John VR, *Human rights and international relations*. (Cambridge University Press, 1986).

Joseph S and McBeth A (eds.), *Research Handbook on International Human Rights Law*. (Cheltenham: Edward Edgar Publishers, 2010).

- Kaikobad KH, Bohlander M (eds.), *International Law and Power: Perspectives on Legal Order and Justice: Essays in Honour of Colin Warbrick* (Martinus Nijhoff Publishers, 2009)  
<<http://www.nottingham.ac.uk/hrlc/documents/publications/ehrl/europeansocialcharterharris.pdf>>
- Kamali MH, *Principles of Islamic Jurisprudence* (1991).
- Kerr M, *The Arab Cold War 1958-1967* (Oxford University Press, 1967).
- Khadduri M, Liebesny HJ, *Origin and Development of Islamic Law: Law in the Middle East* (The Lawbook Exchange, Ltd., 1955).
- Khadduri M, *Political Trends in the Arab World: The Role of Ideas in Politics* (Greenwood Press, 1970).
- Kleinsorge T, *Council of Europe* (Kluwer Law International, 2010).
- Knut V, *Between God and the Sultan: A History of Islamic Law* (Oxford: Oxford University Press, 2005).
- Krivenko EY, *Women, Islam and International Law: Within the Context of the Convention on the Elimination of All Forms of Discrimination Against Women* (BRILL 2009) 14.
- Lapidus I, *Islamic Societies to the Nineteenth Century: A Global History* (Cambridge University Press, 2012)
- Lauren PG, *The Evolution of International Human Rights: Visions Seen* (3<sup>rd</sup> ed. University of Pennsylvania Press 2003).
- Lust E, *The Middle East* (12th ed., CQ Press 2010).
- Makdisi G, *The Rise of colleges: institutions of learning in Islam and the West* (Edinburgh University Press, 1984).
- Mattar P, *Encyclopedia of the Palestinians* (Infobase Publishing, 2005).
- Maududi SA, *Human Rights in Islam* (Lahore: Islamic Publications, 1977).
- Maudoodi SA, *Human Rights in Islam* (IslamKotb, 1976).
- Mayer E, *Islam and Human Rights: Tradition and Politics* (4<sup>th</sup> rev. edn., Westview Press, 2007).
- Mazawi AE and Sultana RG, *World Yearbook of Education 2010: Education and the Arab 'World': Political Projects, Struggles, and Geometries of Power* (Routledge, 2010).

McCarthy J, *The Population of Palestine: Population History and Statistics of the Late Ottoman Period and the Mandate*. Institute for Palestine Studies Series (New York: Columbia University Press, 1990).

Meckled-García S, Cali B, *The legalization of Human Rights* (Routledge 2006).

Merali I and Oosterveld V (eds), *Giving Meaning to Economic, Social and Cultural Rights* (Philadelphia, University of Pennsylvania Press, 2001).

Merrills JG, Robertson AH, *Human Rights in Europe/A Study of the European Convention on Human Rights* (4th edn, Manchester University Press, Glasgow 2001)

Monroe E, *Britain's moment in the Middle East 1914-1971*(London: Methuen, 1971).

Morsink J, *The Universal Declaration of Human Rights: origins, drafting, and intent* (University of Pennsylvania Press 1999).

Mufti M, *Sovereign Creations: Pan-Arabism and political order in Syria and Iraq* (Ithaca, NY: 1996).

Muntarhorn V, *Unity in Connectivity?: Evolving Human Rights Mechanisms in the ASEAN Region* (Martinus Nijhoff Publishers, 17 Apr 2013 ).

Nakash Y, *The Shi'is of Iraq* (Princeton, New Jersey: Princeton University Press, 1994).

Neville P, *Historical Dictionary of British Foreign Policy* (Scarecrow Press, 2013).

UN Office of the High Commissioner for Human Rights/ International Bar Association, *Human Rights in the Administration Of Justice: A Manual On Human Rights For Judges, Prosecutors and Lawyers*, Professional Training Series Series No.9 ( New York- Geneva, UN Publications, 2003).

Orend B, *Human rights: concept and context* (Broadview Press, 2002).

Owen R, *State, Power and Politics in the Making of the Modern Middle East* (3<sup>rd</sup> edn, Routledge New York, 2004).

Paul J, *Human Rights in Syria, Middle East Watch report* (Human Rights Watch, 1990).

Peretz D, *The Middle East Today* (Praeger 1968).

Pevehouse JC, *Democracy From Above: Regional Organizations and Democratization* (Cambridge University Press, 2005).

Pollack KM, Byman DL, Al-Turk A, Baev P, Doran MS, Elgindy K, Grand SR, and Hamid S, *Arab Awakening, The: America and the Transformation of the Middle East* (Brookings Institution Press, 2011).

- Pollock F, *The League of Nations*, (The Lawbook Exchange, Ltd., 1920) 251pp  
Porath Y, *In Search of Arab Unity, 1930–1945* (Routledge, 1986, reprinted in 2014).
- Power S and Allison G, *Realizing Human Rights: Moving from Inspiration to Impact* (Palgrave Macmillan, 2000).
- Rabasa A, *The Muslim World After 9/11* (Rand Corporation, 2004).
- Rehman J, Breau S, *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Brill, 2007).
- Rehman J, *International Human Rights Law* (London and New York: Longman 2010).
- Rehman J, *Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the 'clash of Civilizations' in the New World Order* (Hart Publishing, 2005).
- Roberson AH and Merrills JG, *Human Rights in the Europe* (2<sup>nd</sup> edn, Manchester University Press, 1977).
- Robertson AH and Merrills JG, *Human Rights in the World* (3<sup>rd</sup> edn, Manchester University Press, 1992).
- Robertson AH, and Merrills JG, *Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights* (4<sup>th</sup> edn, Manchester University Press, 1996) .
- Robertson AH, *Human Rights in the World* (Manchester: Manchester University Press, 1972).
- Rogan E, *The Arabs: A History* (Basic Books, 2012).
- Roht-Arriaza N, *Impunity and Human Rights in International Law and Practice* (Oxford University Press, 1995).
- Ruthven M, *Fundamentalism: the search for meaning* (Oxford University Press, 2004)
- Ruthven M, *Islam in the World* (Oxford University Press, 2000).
- Salame G, *The Middle East: Ten Years After Camp David*, ed. Quandt WB . (Washington, D.C.: The Brookings Institution, 1988).
- Samuel, L, *Fundamental Social Rights: Case Law of the European Social Charter* ( 2<sup>nd</sup> edn, Strasbourg: Council of Europe Publishing, 2002).
- Sano H-O, Lagoutte S, Scharff-Smith P (eds.), *Human rights in turmoil. Facing threats, consolidating achievements* (The Hague: Martinus Nijhoff Publishers, 2007).
- Sayegh FA, *Arab Unity* (New York: Arab Information Center, 1958).

Schneer J, *The Balfour Declaration: The Origins of the Arab-Israeli Conflict*. (Bloomsbury Publishing, 2011).

Seale P, *The Struggle for Syria: A study of Post-War Arab politics, 1945-1958* (London, new edn, 1986).

Seiderman I, *Yearbook of International Commission of Jurists: 2004* (Intersentia nv, 2004).

D Shelton, *Regional Protection of Human Rights*, Volume 1, (Oxford University Press, 2010) 12.

Shelton D and Carozza PG, *Regional Protection of Human Rights*, Vol 1 (Oxford University Press, 2013)

Simmons BA, *Mobilizing for Human Rights: International Law in Domestic Politics* (Cambridge University Press, 2009).

Smith CD, *Palestine and the Arab-Israeli Conflict: A History with Documents Paperback* (8<sup>th</sup> edn, Bedford/St. Martin's, 2012).

Smith H, *The World's Religions* (Harper Collins, 1991).

Smith R KM, *Texts & Materials on International Human Rights* (2<sup>nd</sup> edn, London & New York: Routledge-Cavendish, 2010).

Smith R, *Textbook on international human rights*, (3<sup>rd</sup> edn, Oxford University Press, 2007).

Smith R, *Textbook on International Human Rights*, (6<sup>th</sup> edn, Oxford University Press, 2013).

Steiner H, Alston P, and Goodman R, *International Human Rights in Context: Law, Politics, Morals : Text and Materials* (rev. edn, Oxford University Press, 2008).

Syed MH (ed.), *Human Rights in Islam: The modern Approach* (New Delhi: Anmol, 2003).

Toffolo C, *The Arab League* (nfobase Publishing, 2008).

Tomuschat C, *United Nations Audio Visual Library of International Law* (New York, 16 December 1966).

Usa I, *Arab League League of Arab States Investment and Business Guide* (International Business Publications, 2007).

Van der Vy JD, *Religious Human Rights in Global Perspective: Religious Perspectives*, Vol. 1 (Martinus Nijhoff Publishers, 1996).

Van Dijk P and Van Hoof GJH, *Theory and Practice of the ECHR* (the University of California, 1990).

Vasak K, *The international dimensions of human rights: textbook for the teaching of human rights at university level* Vol. 2 (Paris, UNESCO, 1979).

Vatikiotis PJ, *Revolution in the Middle East and Other Case Studies* (London: George Allen Unwin, 1972).

Viljoen F, *International Human Rights Law in Africa* (2<sup>nd</sup> edn, Oxford University Press, 2012).

Wadham J, Mountfield H, Edmundson A, Gallagher C, *Blackstone's Guide to the Human Rights Act 1998* (London, 1999).

Weissbrodt DS and de la Vega C, *International Human Rights law: an introduction* (University of Pennsylvania Press, 2007).

Weissbrodt D, Fitzpatrick J and Newman FC, *International Human Rights: Law, Policy, and Process* (LexisNexis, 2009).

William QB (ed.) *The Middle East: Ten Years After Camp David* (Washington, D.C.: The Brookings Institution, 1988).

Winther D, *Regional Maintenance of Peace and Security Under International Law: The Distorted Mirrors* (Routledge, 2013).

World Bank, *Unlocking the Employment Potential in the Middle East and North Africa: toward a new social contract* (Washington, D.C.: World Bank, 2004).

Zyberi G, *An Institutional Approach to the Responsibility to Protect* (Cambridge University Press, 2013).

### **Chapters in Edited Collections**

Al Din Al Jurshi, S 'The Arab Civil Society: Hindrances and Prospects' in Shalaby A, al-Din al-Jurshi S, El-Nabarawy M, Zaki M, Azzawi Q J, Messarra A N, *Towards a Better Life: How to Improve the State of Democracy in the Middle East and North Africa* (GPoT, 2010) 34-57.

Ali SS 'A Comparative Perspective of the Convention on the Rights of the Child and the Principles of Islamic Law' in UNICEF, *Protecting the World's Children: Impact of the UN Convention on the Rights of the Child in Diverse Legal Systems* (Cambridge University Press, New York 2007) 142- 208.

Aljaghoub MM, Alja IM and Bydoon MS, 'The Arab League' cited in Zyberi G *An Institutional Approach to the Responsibility to Protect* (Cambridge University Press 2013) 289-311.

Al-Jazy I 'Arab League and Human Rights Protection' in Cotran E and Sherif AO(eds.), *Democracy, the Rule of Law and Islam*, (BRILL, 1999) 211- 220.

Arzt D, 'The treatment of religious dissidents under classical and Contemporary Islamic law', in Witte, J Jr. and van der Vy, JD eds., *Religious Human Rights in Global Perspective: Religious Perspectives*, Volume 1 ( The Hague, The Netherlands Martinus Nijhoff Publishers, 1996) 387-453.

Baderin M 'Islam and the Realization of Human Rights in the Muslim World' in Joseph S and McBeth A (eds.), *Research Handbook on International Human Rights Law* (Cheltenham: Edward Edgar Publishers, 2010) 440-466.

Ben Néfissa, S 'NGOs and Governance in the Arab World: A question of Democracy' in Ben Néfissa S and Milani C, *NGOs and Governance in the Arab World* (American Univ in Cairo Press, 2005) 1-18.

Cammett M, 'The Political Economy of Development in the Middle East' in Lust E, *The Middle East* (12<sup>th</sup> edn, CQ Press 2010) 99-142.

Cavanaugh K 'Narrating Law' in Emon A M, Ellis M, and Glahn B, *Islamic Law and International Human Rights Law* (Oxford University Press, 2012) 17-51.

Daoudi R, 'Human Rights Commission of the Arab States' in Bernhardt R, *Encyclopaedia of Public International Law*, Vol. II (Amsterdam: Elsevier, 1995) 913-915.

Donnelly J, 'International Human Rights: Universal, Relative or Relatively Universal?' in Baderin M and Ssenyonjo M, *International Human Rights Law, International Human Rights Law: Six Decades after the UDHR and Beyond* (Ashgate Publishing, Ltd., 2013) 31-48.

Donnelly J, 'The virtues of legalization', in Meckled-Garcia S and Cali B (eds), *The Legalization of Human Rights, Multidisciplinary perspectives on human rights and human rights law* (Routledge, 2005) 61-74.

El Din Hassan B, 'Regional protection of Human Rights in Arab states in Statu Nascendi' in Symonides J (ed.), *Human Rights: International protection, Monitoring, Enforcement* (Ashgate and UNESCO Publishing, Paris, 2003) 239-252.

Ghali BB « La Ligue des Etats Arabes » in *Les dimensions internationales des droits de l'homme* (UNESCO, Paris, 1978)

<<http://unesdoc.unesco.org/images/0013/001342/134209fo.pdf>>

Ghali BB, 'The League of Arab States,' in Vasak K, and Alston P, (eds) *The International Dimensions of Human Rights*, Vol. 2 (Paris, UNESCO and Westport: Greenwood Press 1982). 575-581.

Ghanea N, 'Repressing Minorities and getting away with it? A consideration of Economic, Social and Cultural Rights' in Ghanea N and Xanthaki A, *Minorities, Peoples and Self-Determination* (Martinus Nijhoff 2005) 193-209.

Lauren PG, 'The Foundation of Justice and Human Rights in early legal texts and thought' cited in D Shelton, *The Oxford Handbook of International Human Rights Law*, (Oxford University Press, 2013) 163-193, at 164.

Sahraoui HH (Hadj), "'Modernising" the Arab Charter on Human Rights' in Seiderman I, *Yearbook of the International Commission of Jurists: 2004*. International Commission of Jurists (Intersentia nv 2004) 339- 398.

Harris DJ, 'Chapter One Collective Complaints under the European Social Charter: Encouraging Progress?' cited in Kaikobad KH and Bohlander M, *International Law and Power: Perspectives on Legal Order and Justice: Essays in Honour of Colin Warbrick*, (Martinus Nijhoff Publishers, 2009) 3-24.

Malki M, 'From the Law of the Ruler to the Rule of Law' in B Korany *Arab Human Development in the Twenty-First Century: The Primacy of Empowerment*, 57-60.

McGoldrick D, 'Multiculturalism and Its Discontents' in Ghanea N and Xanthaki A (eds), *Minorities, Peoples and Self Determination* (Martinus Nijhoff 2005) 211-235.

Muntarhorn V, 'Human Rights Monitoring in the Asia Pacific Region' in Alfredsson G, Grimheden J, Ramcharan BG, *International Human Rights Monitoring Mechanisms: Essays in Honour of Jakob Th. Möller* ( 2<sup>nd</sup> rev. edn, Martinus Nijhoff Publishers, 2009) 641-648.

Office of the High Commissioner For Human Rights (OHCHR) in Cooperation With the International Bar Association, 'Human Rights 'European Human Rights Treaties and their Implementation', cited in *The Administration Of Justice: A Manual on Human Rights for Judges, Prosecutors and Lawyers*, Professional Training Series No. 9 (United Nations New York and Geneva, 2003) 95-111.

Owen ERJ, 'Economic aspects of revolution in the Middle East' in Vatikiotis PJ (eds), *Revolution in the Middle East and Other Case Studies* (London: George Allen Unwin, 1972) 43- 64.

Pollack KM, 'Understanding the Arab Awakening' in Pollack KM, Byman DL, Al-Turk A, Baev P, Doran MS, Elgindy K, Grand SR, and Hamid S, *Arab Awakening, The: America and the Transformation of the Middle East* (Brookings Institution Press, 2011) 1-12.

Rishmawi M, 'The League of Arab States: Recent developments on human rights and social justice' in I Lintel, A Buyse, B McGonigle Leyh (Eds.) *Defending Human Rights: Tools for Social Justice: Volume in Honour of Fried van Hoof on the Occasion of his Valedictory Lecture and the 30th Anniversary of the Netherlands Institute of Human Rights* (Cambridge, Antwerp, & Portland: Intersentia, 2012) 41-48.



Romano C, 'Trial and Error in International Judicialization' in Romano C, Alter K, Shany Y, *The Oxford Handbook of International Adjudication*, (Oxford University Press 2013) 111-134.

Romano CPR, 'The Shadow Zones of International Judicialization' in C Romano, K Alter and Y Shany, *The Oxford Handbook of International Adjudication* (Oxford University Press 2013) 90- 110.

R St. John Macdonald. 1992. 'The Margin of Appreciation in the Jurisprudence of the European Court of Human Rights.' In *Collected Courses of the Academy of European Law*, vol. 1, book 2, 95-161. (Martinus Nijhoff Publishers 1990).

Ruthven M 'Afterword 2002' in Hourani AH, Hourani A, Ruthven M, *A History of the Arab Peoples*, (Harvard University Press, 2002) 459-473.

Salame G, 'Inter-Arab Politics: The Return of Geography' in Quandt WB, *The Middle East: Ten Years after Camp David* (Washington, DC: Brookings Institute, 1988) 319-353.

Shelton D, 'The Promise of Regional Human Rights Systems' in Weston B and Marks S (eds), *The Future of human Rights* (Transnational Press, 2000).

Shukr, A, 'Islamic NGOs and the Development of Democracy in Egypt', in Ben Néfissa S and Milani C, *NGOs and Governance in the Arab World* (American Univ in Cairo Press, 2005) 151-167.

Slaughter A and Crisp J 'A surrogate state? The role of UNHCR in protracted refugee situations,' in G Loescher, J Milner, E Newman, and G Troeller (eds.), *Protracted Refugee Situations* (Tokyo: United Nations University Press 2008 ) 123-140.

Stewart DJ, 'Shari'a' in Böwering G, Crone P, Mirza M, *The Princeton Encyclopedia of Islamic Political Thought* (Princeton University Press, 2013) 496-505.

Tibi B, 'The Simultaneity of the Unsimultaneous: Old Tribes and Imposed Nation-States in the Modern Middle East,' in PS Khoury and J Kostiner, *Tribes and State Formation in the Middle East* (Berkeley: University of California Press, 1980) 127-152, at 127 .

B Tibi, 'Old Tribes and Imposed' in P Khoury and J Kostiner, *Tribes and State Formation in the Middle East*, (University of California Press, 1990) 127-152.

Tripp C, 'Regional Organizations in the Arab Middle East', in Fawcett L and Hurrell A, *Regionalism in World Politics: Regional Organization and International Order* (Oxford University Press 1995) 283-308.

Yacoub J, 'Multiculturalism is a Reality in the Arab World' in Kymlicka W, Pfössl E *Multiculturalism and Minority Rights in the Arab World* (Oxford University Press, 2014) 250- 278.

Zaher S, 'The Human Rights to Education in Arab Countries: an international law perspective' cited in Mazawi AE and Sultana RG, *World Yearbook of Education 2010: Education and the Arab 'World': Political Projects, Struggles, and Geometries of Power* (Routledge, 2010) 183- 195.

### Journal Publications

'The Arab Charter on Human Rights and the European Convention on Human Rights: Universal Principles and Regional Guarantees' The Mediator of the French Republic, The Johns Hopkins University, Paris II University Paris, France, (1 February 2010), Selected Workshop Presentations and Proceedings. The Protection Project Journal of Human Rights and Civil Society, Issue 3 (Fall 2010) i-284  
<<http://www.protectionproject.org/wp-content/uploads/2010/11/The-Protection-Project-Journal-of-Human-Rights-Civil-Society-Volume-III.pdf>> accessed 1 January 2015.

Ali SS, 'the conceptual foundations of human rights: A comparative perspective' (1997) 2 Eur Pub L, Vol 3, 261.

Allam W, 'The Arab Charter on Human Rights: main features' (2014) 28 ALQ, 40.

Al-Midani MA and Cabanettes M, 'Arab Charter On Human Rights 2004' (2011) Vol. 24, B.U. Int'l L.J, 147  
<[http://www.eods.eu/library/LAS\\_Arab%20Charter%20on%20Human%20Rights\\_2004\\_EN.pdf](http://www.eods.eu/library/LAS_Arab%20Charter%20on%20Human%20Rights_2004_EN.pdf)> accessed 1 January 2015.

Al-Midani MA, 'the Enforcement Mechanisms of the Arab Charter on Human Rights and the Need for an Arab Court of Human Rights' (2010) 3 the Protection Project J. Of Hum. Rts. And Civ. Soc'y, 64.

Al- Midani, MA 'Human Rights Bodies in the League of Arab States' (2012) 3 Jinan Hum. Rts.J., Al-Jinan University, Tripoli, Lebanon, 109.

An-Na'im A 'Human Rights in the Arab World: A Regional Perspective' (2001) 3 HRQ Vol. 23, 701.

A An-Na'im, 'What do we mean by Universal?' (1994) Index on Censorship, September / October, Vol 23, 120.

Azin T, 'The Organisation of Islamic Cooperation and Regional Challenges to International Law and Security' (2012) 2 ALF Vol. 4, 36.

Baderin MA, 'Identifying Possible Mechanisms within Islamic Law for the Promotion and Protection of Human Rights in Muslim States' (2004) 3 NHRQ 22, 329.

Boutros-Ghali B, 'The Arab League, 1945-1955: Ten Years of Struggle' (1955) 498 Int'l Conciliation, 387.

Boyle K, 'The European Experience: The European Convention on Human Rights' (2009) 1 Victoria U Wellington L Rev, Vol. 40, 167.

Boyle K, 'Stock-taking on Human Rights: The World Conference on Human Rights' (1993) 43, Political Studies, 79.

Buerghenthal T, 'The U.N. Covenants and Regional Human Rights' (1986) Vol. 80, ASIL Proc., 422.

Cerna CM, 'Universality of Human Rights and Cultural Diversity: Implementation of Human Rights in Different Socio-Cultural Contexts' (1994) 4 HRQ, Vol. 16, 740.

Cerone J, 'Legal Implications of the UN General Assembly Vote to Accord Palestine the Status of Observer State' (2012) 37 ASIL Vol.16, <<http://www.asil.org/insights/volume/16/issue/37/legal-implications-un-general-assembly-vote-accord-palestine-status>> accessed 23 May 2014.

Chekir H, 'La modernisation de la Charte arabe des droits de l'homme', Jura Gentium Rivista di filosofia del diritto internazionale e della politica globale, (2004) [originally in French] <<http://www.juragentium.org/topics/islam/rights/fr/chekir.htm>> accessed 23 December 2014.

Crawford J, 'The Creation of the State of Palestine: Too Much Too Soon?' (1990) EJIL, 307 <<http://ejil.org/pdfs/1/1/1137.pdf>>

Cullen H, 'The Collective Complaints System of the European Social Charter: Interpretative Methods of the European Committee of Social Rights' Hum. Rts. L. Rev. (2009) 9 (1), 61.

D A, 'The Arab League: Development and Difficulties' (1951) Vol. 7, No. 5, W Today, 187.

Dennis MJ and Stewart DP, 'Justiciability of Economic, Social, and Cultural Rights: Should There Be an International Complaints Mechanism to Adjudicate the Rights to Food, Water, Housing,' (2004) 3 Am. J. Int'l L , Vol. 98, 462.

Denny F M 'Ummah in the Constitution of Medina' (1977) Vol. 36, No. 1, JNES, 39.

Donoho D 'Human Rights Enforcement in the Twenty-First Century' (2006) 35, Ga. J. Int'l & Comp. L, 1.

Dulitzky A, 'The Inter-American Human Rights System Fifty Years Later: Time For Changes' (2011) Quebec J of Int'l L (Special Edition) 127.

Durbach A, Renshaw C and Byrnes A, 'A tongue but no teeth?' The emergence of a regional human rights mechanism in the Asia Pacific region' (2009) Vol 31. Sydney L.Rev., 211.

Durham CR, 'International Human Rights Law: A Legitimate Influence Or Constraint On Sovereign Jurisdiction' (1997) *Austl. Int'l L. J.*, 56.

Galvani J, 'Syria and the Baath Party' (1974) 25, *MERIP Reports*, 3.

Gittleman R, 'The African Charter on Human and Peoples' Rights: A Legal Analysis' (1982) 4 *Va. J. Int'l L.*, Vol. 22, 667.

Gumedze S, 'Bringing communications before the African Commission on Human and Peoples' Rights', (2003) 3 *Afr. Hum. Rts. L.J.*, 118.

Haddad D, 'Human Rights in Syria: The Never-Ending Emergency', (2009) 4 *Int. J. Middle East Stud.*, Vol 41, 545.

Hallaq W, 'The Arab Charter on Human Rights: main features' (2014) *ALQ Vol* 28, 40.

Harpaz, G, 'The European Court of Justice and its Relations with the European Court of Human Rights: The Quest for enhanced reliance, Coherence and Legitimacy', (2009) 46 *CMLR*, 105.

Helfer, LR, 'Redesigning the European Court of Human Rights: Embeddness as a Deep Structural Principle of the European Human Rights Regime' (2008) 1 *Eur J. Int'l Law*, Vol 19, 125.

Heyns C, Padilla D and Zwaak L, 'A Schematic Comparison of Regional Human Rights Systems: an update' (2006) 4 *Sur, Rev. int. direitos human* Vol.3, 308.

Hughes M, 'From Law and Order to Pacification: Britain's Suppression of the Arab Revolt in Palestine, 1936–39' (2010) 2 *JPS*, Vol. 39, 6.

Jankowski J, 'The Government of Egypt and the Palestine Question, 1936–1939,' (1981) 4 *Middle Eastern Stud.*, Vol. 17, 427.

Khadduri M 'The Arab League As a Regional Arrangement' (1946) Vol. 40, *Am. J. Int'l L* 756.

Khadduri M 'International Affairs towards an Arab Union: The League of Arab States' (1946) 1 *Am. Polit. Sci. Rev.*, Vol. 40, 90.

Khadduri M, 'Human rights in Islam, the annals of American academy of political and social science' (1946), *Annals Am. Acad. Pol. & Soc. Sci.* Vol. 243, 77.

Khashanah K, 'The Syrian Crisis: a systematic framework' *Contemporary Arab Affairs* (2014) Vol. 7, No. 1, 1.

Killander M, 'Interpreting Regional Human Rights Treaties', (2010) 13 *SUR Int'l J. on Hum Rts*, 145.

Kirkup A and Evans T, 'The Myth of Western Opposition to Economic, Social, and Cultural Rights? A Reply to Whelan and Donnelly' (2009) 31(1) HRQ 221.

Klug T, 'Have the Arab Uprisings Lost Their Spring?' (2012) Vol.18 No.1, PIJPEC, <<http://www.pij.org/details.php?id=1409>>

Koraytem T, 'Arab Islamic Developments on Human Rights' (2001) 16 ALQ, 255.

Krüger H C and Polakiewicz J, 'Proposals for a Coherent Human Rights Protection System in Europe/ The ECHR and the EU Charter' (2001) Vol. 22 No. 1- 4, HRLJ, 1.

Marks S, 'La Commission permanente arabe des droits de l'homme' (1970) Vol. III, No. 1, Revue des Droits de l'Homme (French).

Mattar M, 'Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards' (2013) Vol. 26, Harv. Hum. Rts. J. 91.

McCorquodale R, 'the Rule of Law in International and Comparative Perspective' (2010) BIICL.

Morgan-Foster J, 'Third Generation Rights: What Islamic Law Can Teach the International Human Rights Movement' (2005)1, Yale Hum. Rts. & Dev. L.J. Vol. 8. 67.

McCrudden C, 'Human Dignity and Judicial Interpretation of Human Rights' (2008) 19(4) Eur. J. Int'l L., 655–724.

Naldi G and Magliveras K, 'Reinforcing the African System of Human Rights: The protocol on the Establishment of a regional Court of Human and People's Rights' (1998) 16 NQHR. 431.

Nanda VP, 'The Future Under International Law Of the Responsibility To Protect After Libya and Syria' (2013) Vol. 21, No.1, Mich St J Int'l L. Rev. 1.

Naskou-Perraki P, 'The Arab Charter on Human Rights: A New Start for the Protection of Human Rights in the Arab World' (2009) 62, Revue Hellenique De Droit Int'l (Greece).

Neuman GL, 'Import, Export, and Regional Consent in the Inter-American Court of Human Rights' (2008) 1 EJIL Vol. 19, 101-123.

Olowu, D 'The United Nations Human Rights Treaty System and The Challenges Of Commitment and Compliance in The South Pacific the UN Human Rights Treaty System in the South Pacific' (2006) Vol 7, MJIL, <<http://www.law.unimelb.edu.au/files/dmfile/download00c41.pdf>> accessed 12 July 2014.

Otto D, 'Rethinking the "Universality" of Human Rights Law' (1997) Columbia Hum. Rts. L. Rev. 1.

Palmer M, 'The United Arab Republic: An Assessment of Its Failure' (1966) Vol. 20, No. 1, Middle East J. 50.

Paust J J, 'International Law, Dignity, Democracy, and the Arab Spring' (2013) CORNELL INT'L L.J. 1

Pinzón DR, 'the "Victim" Requirement, the Fourth Instance Formula and the Notion of "Person" in the Individual Complaint Procedure of the Inter American Human Rights System' (2001) Vol. 7, No.1, ILSA Journal of Int'l & Comparative Law. 1.

Pinto M, 'Poverty and Constitutional Rights' (2010) Penn St Int'l L Rev., Vol. 28:3, 477.

Pogany I, 'Arab Attitudes toward International Human Rights Law' (1987) Vol.2, Con J. Int'l L. 367.

Powell E J and Mitchell S M, 'The International Court of Justice and the World's Three Legal Systems' GSU, 7

<<http://sitemason.vanderbilt.edu/files/iujnB6/PowellMitchell.pdf>> accessed 1 January 2015.

Putra G G and Santoso Y N 'The Refugees Of Syria: Between Politics and Violation of Human Rights' (2012) Juris Gentium Law Review. 1.

Rehman J and Polymenopoulou E, 'Justice after Democracy in the Arab World: Islamic Law Perspectives on Accountability' (2013) Vol. 54, GYIL. 53.

Rehman J, "War on Terror" and the Future of Muslim Minorities in the United Kingdom: Dilemmas of Multiculturalism,' (2007)HRQ, Vol 29, No. 4, 832.

Rishmawi M, 'The Arab Charter on Human Rights and League of Arab States: an update' (2010) 10 Hum. Rts. L. Rev.

Rishmawi M, 'The Revised Arab Charter on Human Rights: A Step Forward?' (2005) 5 Hum. Rts. L. Rev. 361.

Rishmawi M, 'The Arab charter on human rights: a comment' (1996) 10 (1) Interrights Bulletin.

Sarkees MR. 'The Correlates of War Data on War: An Update to 1997' (2000) 18(1) CMPS. 123.

Sarkin J, 'The Role of Regional Systems in Enforcing State Human Rights Compliance: Evaluating the African Commission on Human and People's Rights and the New African Court of Justice and Human Rights with Comparative Lessons from the Council of Europe and the Organization of American States' (2008) 1 Inter-Am & Eur Hum Rts J. 199.

Schadbach K, 'The Benefits of Comparative Law: A Continental European View' (1998)16 B.U. INT'L L. J. 331.

Schabas W, 'Reservations made by Islamic States to the Convention on the rights of the child' 18 HRQ (1996) 472.

Shelton D, 'Regional Protection Of Human Rights' (2008) GWU Legal Studies Research Paper No. 2013-55; GWU Law School Public Law Research Paper No.55, <<http://ssrn.com/abstract=2235190>> accessed 1 January 2015.

Sohn LB, 'The New International Law: Protection Of The Rights Of Individuals Rather Than States' (2003) Vol. 32:1., Am. U. L. Rev. 1. <<http://www.wcl.american.edu/journal/lawrev/32/sohn.pdf>> accessed 1 January 2015.

Stork J, 'Understanding the Balfour Declaration' (1972), No. 13, MERIP Reports. 9.

Tabet K, 'Arab Islamic Developments on Human Rights' (2001) Vol.16, Arab L.Q. 255.

Tadjini, A 'The Organisation of Islamic Cooperation and Regional Challenges to International Law and Security' (2012) Vol. 4:2. ALF, <<http://ojs.ubvu.vu.nl/alf/Art./viewFile/265/451>> accessed 12 July 2014.

Thornberry P, 'Self-Determination, Minorities, Human Rights' (1989) 38 ICLQ. 867.

Tuastad D, ' Hamas-PLO Relations Before and After the Arab Spring' (2013) Vol .XX, No. 3, MEPC <<http://www.mepc.org/journal/middle-east-policy-archives/hamas-plo-relations-and-after-arab-spring>> accessed 12 July 2014.

Tucker CM, 'Regional Human Rights Models in Europe and Africa: A Comparison' (1983) 10 Syracuse J. Int'l L. & Com. 135.

Turk V and Eyster E, 'Strengthening Accountability in UNHCR' (2010), 22 Int'l J. Refugee L. 159.

Vitkauskaitė-Meurice D, 'The Arab Charter on Human Rights: the Naissance of New Regional Human Rights System or a Challenge to the Universality of Human Rights?' (2013) 1 Jurisprudence ,Vol.119, 165. <<https://www3.mruni.eu/ojs/jurisprudence/article/view/1093/1046>> accessed 20 Dec. 2013.

Weston B H, Lukes R A, Hnatt KM 'Regional Human Rights Regimes: A Comparison and Appraisal' (1987) 4, Vand. J. Transnat'l L., Vol 20, 585.

Zakerian M, 'The Hopes and Obstacles for Democracy and Human Rights among Middle Eastern Citizens' (2008) 4 Int'l Stud. J. 115.

Zaman T 'Lessons learned: Palestinian refugees from Baghdad to Damascus' (2011), 2 IJCIS, Vol. 5, 263.

### UN Documents and Publications

‘The Declaration of Human Rights:A Living Document ‘ Speech by Robinson M, United Nations High Commissioner for Human Rights. Symposium on Human Rights in the Asia-Pacific Region, UNU Headquarters, Tokyo, 27 January 1998.  
<<http://archive.unu.edu/unupress/Mrobinsonhtml>> accessed 1 January 2015.

Organisation of Islamic Cooperation’ UN <<http://www.oicun.org/2/23/>> accessed 1 January 2015.

‘Pillay calls on Algeria to review laws on civil society’ UN  
<[http://www.untogo.org/News/North-Africa/Pillay-calls-on-Algeria-to-review-laws-on-civil-society-freedom-of-assembly\\_br](http://www.untogo.org/News/North-Africa/Pillay-calls-on-Algeria-to-review-laws-on-civil-society-freedom-of-assembly_br)> accessed 1 January 2015.

‘UN Rights Chief Must Clarify Endorsement of Arab Charter with Anti-Semitic Provisions [www.unwatch.org](http://www.unwatch.org) Statement by UN High Commissioner For Human Rights on the Entry Into Force of the Arab Charter on Human Rights’, Geneva, 30 January 2008, [www.unhchr.ch](http://www.unhchr.ch), <[www.pointdebasculecanada.ca/spip.php](http://www.pointdebasculecanada.ca/spip.php)> accessed 1 January 2015.

OHCHR, ‘Annual report 2003: Implementation of Activities and Use of Funds’ (2003) 105 < <http://www.ohchr.org/Documents/AboutUs/annualreport2003.pdf>>.

Abbott M, ‘The Arab Spring, summer, autumn...’ in ‘UNDP Human Rights for Development. New York’ (UNDP 2011) News Brief Vol. 4 4.  
<[http://www.undp.org/content/dam/undp/library/Democratic%20Governance/NewsbriefVol4\\_F\\_WEB.pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/NewsbriefVol4_F_WEB.pdf)> accessed 1 January 2015.

Buey ED, ‘Highlights Of The Noon Briefing Deputy Spokesperson For Secretary-General Ban Ki-Moon’, UN Office of the Spokesperson for the Secretary-General (27 February 2012).  
<[http://www.un.org/sg/spokesperson/highlights/?HighD=2/27/2012&d\\_month=2&d\\_year=2012](http://www.un.org/sg/spokesperson/highlights/?HighD=2/27/2012&d_month=2&d_year=2012)> accessed 1 January 2015.

Convention on the Elimination of All Forms of Discrimination against Women New York, 18 December 1979 1, Entry into force 3 September 1981. United Nations, Treaty Series, vol. 1249, 13  
<[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-8&chapter=4&lang=en#EndDec](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8&chapter=4&lang=en#EndDec)> accessed 1 January 2015.

Convention on the Rights of Persons with Disabilities, 13 December 2006, Entry into force 3 May 2008. 3 May 2008, No. 44910. United Nations, Treaty Series, vol. 2515, p. 3.  
<[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=iv-15&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=iv-15&chapter=4&lang=en)> accessed 1 January 2015.

Economic and Social Council Distr. GENERAL E/CN.4/2004/G/34, (8 April 2005), Commission on Human Rights Sixty-first session Agenda item 18 (b), Effective



Functioning of Human Rights Mechanisms: National Institutions and Regional Arrangements (E/2001/23-E/CN.4/2001/167), para. 22.

Human Rights Council Seventeenth session, Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Report of the Special Rapporteur on violence against women, its causes and consequences, Rashida Manjoo Addendum, Mission to Algeria A/HRC/17/26/Add.3 (19 May 2011).

Human Rights Council Twenty-fourth session Agenda item 3 Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development, 'Regional arrangements for the promotion and protection of human rights' United Nations A/HRC/24/L.35 (23 September 2013).

Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, A/HRC/S-17/2/Add.1 (Nov. 23, 2011).

Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Algeria' Human Rights Council Working Group on the Universal Periodic Review Thirteenth session (Geneva, 21 May–4 June 2012) Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 (A/HRC/WG.6/13/DZA/3).

International Coordinating Committee Of National Institutions For The Promotion And Protection Of Human Rights (ICC) Chart Of The Status Of National Institutions, Accredited by The International Coordinating Committee Of National Institutions for Inter-Parliamentary Union Office Of The United Nations High Commissioner For Human Rights. N 8 – 2005) 52 <[http://www.ipu.org/pdf/publications/hr\\_guide\\_en.pdf](http://www.ipu.org/pdf/publications/hr_guide_en.pdf)> accessed 12 October 2014.

Kagan M “‘We Live in a Country of the UNHCR’”: The UN Surrogate State and refugee policy in the Middle East’ (2011) Research Paper No.201, UNHCR New Issues in Refugee Research, Geneva: Policy Development and Evaluation Service UNHCR. <[http://reliefweb.int/sites/reliefweb.int/files/resources/E562A0C03554F4FD8525783800739D61-Full\\_Report.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/E562A0C03554F4FD8525783800739D61-Full_Report.pdf)> accessed 12 October 2014.

Karama, ‘Syria: NGO Stakeholder Report to the UN Universal Periodic Review’ (Mar. 2011), para. 2.3, p. 3, <<http://lib.ohchr.org/HRBodies/UPR/Documents/session12/SY/KARAMA-eng.pdf>> accessed 1 January 2015.

Letter of understanding between the government of the Hashemite Kingdom of Jordan and the Office of the United Nations High Commission for Refugees, 2222 UNTS 213-216.

Memorandum of Understanding between the Government of Jordan and UNHCR, (5 April 1998) <<http://www.unhcr.org/refworld/docid/3ae6b31920.html>> accessed 30 September 2014.

Nanji A, 'The Right to Development: Social and Cultural Rights and Duties to the Community', in Proceedings Of The Seminar On Islamic Perspectives On The Universal Declaration Of Human Rights, UN Doc. HR/IP/SEM/1999/1 (PART II, Sec. 2), (1999).

Nowak M. *Human Rights: A Handbook for Parliamentarians*, The Handbook was written by, Director of the Ludwig Boltzmann Institute of Human Rights at the University of

Office of the United Nations High Commissioner for Human Rights. N 8 – 2005) 52  
<[http://www.ipu.org/pdf/publications/hr\\_guide\\_en.pdf](http://www.ipu.org/pdf/publications/hr_guide_en.pdf)> accessed 1 January 2015.

OCHAOPT 'United Nations Office For The Coordination Of Humanitarian Affairs - Occupied Palestinian Territory' (2014)  
<<http://www.ochaopt.org/content.aspx?id=1010137>> accessed 1 January 2015.

Office of the United National High Commissioner for Human Rights and UNESCO, "Plan of Action for the Second Phase of the World Programme for Human Rights Education" ( 2012) <[http://www.ohchr.org/Documents/Publications/WPHRE\\_Phase\\_2\\_en.pdf](http://www.ohchr.org/Documents/Publications/WPHRE_Phase_2_en.pdf)> accessed 1 January 2015.

OHCHR – Middle East Regional Office, (2012)  
<<http://www.ohchr.org/EN/Countries/MENARegion/Pages/MenaRegion20122013.aspx>>> accessed 1 January 2015.

OHCHR 'Annual Report 2003 Human Rights Implementation of Activities and Use of Funds' (2003) Prepared by Resource Mobilization Unit of the Office of the High Commissioner for Human Rights, Geneva  
<<http://www.ohchr.org/Documents/AboutUs/annualreport2003.pdf>> accessed 1 January 2015.

OHCHR 'Chapter 3: The Major Regional Human Rights Instruments and the Mechanisms for their Implementation' in 'Human Rights in the Administration of Justice' (2003) University of Minnesota Human Rights Library,  
<<http://www1.umn.edu/humanrts/monitoring/adminchap3.html>> accessed 1 January 2015.

OHCHR 'Human Rights Treaty Bodies – Individual Communications',  
<<http://www2.ohchr.org/english/bodies/petitions/individual.htm>> accessed 1 January 2015.

OHCHR 'Jurisprudence of the treaty bodies' (from November 1993); and 'Judicial Colloquium on the Domestic Application of International Human Rights Norms' - Outcome Document, 23 – 25 March 2009, Bangkok, Thailand.  
<<http://www2.ohchr.org/english/bodies/jurisprudence.htm>> accessed 1 January 2015.

OHCHR ‘OHCHR in the field: Middle East and North Africa’ (2011).

<[http://www2.ohchr.org/english/ohchrreport2011/web\\_version/ohchr\\_report2011\\_web/allegati/25\\_MENA.pdf](http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/25_MENA.pdf)> accessed 1 January 2014.

OHCHR ‘Universal Periodic Review’ (2013)

<http://www.ohchr.org/EN/HRbodies/UPR/Pages/UPRMain.aspx>> accessed 1 January 2015.

OHCHR Opening remarks by UN High Commissioner for Human Rights Navi Pillay at a press conference during her mission to Algeria (Algiers, 19 September 2012)

<<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12542&LangID=E>> accessed 1 January 2015.

OHCHR, ‘Committee on the Elimination of Discrimination against Women’

<<http://www2.ohchr.org/english/bodies/cedaw/>> 1 January 2015.

OHCHR, ‘Council holds panel to commemorate twentieth anniversary of Vienna Declaration and Programme of Action’, MIDDAY, (25 February 2013)

<<http://www2.ohchr.org/english/>> 1 January 2015.

OHCHR, ‘Foreword by the High Commissioner, Navi Pillay, and High Commissioner for Human Rights’ (May 2012) 6 OHCHR Report 2011.

<[http://www2.ohchr.org/english/ohchrreport2011/web\\_version/ohchr\\_report2011\\_web/allegati/1\\_Foreword.pdf](http://www2.ohchr.org/english/ohchrreport2011/web_version/ohchr_report2011_web/allegati/1_Foreword.pdf)> > accessed 1 January 2015.

OHCHR, ‘High Commissioner’s Strategic Management Plan 2010-2011’

<<http://www.ohchr.org/Documents/Press/SMP2010-2011.pdf>> accessed 1 January 2015.

OHCHR, ‘Human Rights Treaty Bodies - Individual Communications’

<<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/IndividualCommunications.aspx#proceduregenerale>> accessed 1 January 2015.

OHCHR, ‘IV. Thematic discussions’, A/HRC/15/39, Report of the High Commissioner containing the conclusion of the 15th Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region (21 to 23 April 2010) A/HRC/15/39, Para. 23 p.8

<[http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.39\\_enpdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.39_enpdf)>

OHCHR, ‘National Human Rights Institutions’ NHRI Main,

<<http://www.ohchr.org/en/countries/nhri/pages/nhrimain.aspx>>, accessed 13 Dec 2013.

OHCHR, International workshop on “Enhancing cooperation between regional and international mechanisms for the promotion and protection of human rights”: Statement by Ms. Navanethem Pillay United Nations High Commissioner for Human Rights. (3 May 2010)

<<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10022&LangID=E>> accessed 12

OHCHR, 'Special Procedures of the Human Rights Council',  
<<http://www.ohchr.org/en/HRBodies/SP/Pages/Welcomepage.aspx>> accessed 1 January 2015.

OHCHR, 'The Human Rights Council adopts outcome of Universal Periodic Review of Bahrain, Ecuador and Tunisia'. Human Rights Council, Morning and Midday (19 September 2012)  
<<http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12546&LangID=>> accessed 12 December 2013.

OHCHR, 'the OHCHR Plan of Action: Protection and Empowerment' Geneva- (May 2005) <<http://www2.ohchr.org/english/planaction.pdf>> accessed 1 January 2015.  
OHCHR, 'Towards the Establishment of an ASEAN Human Rights System'  
<<http://bangkok.ohchr.org/programme/asean/Default.aspx>> accessed 1 January 2015.

OHCHR, Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development Workshop on regional arrangements for the promotion and protection of human rights Report of the United Nations High Commissioner for Human Rights. Distr.: General (8 April 2013)  
<[http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-18\\_enpdf](http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session23/A-HRC-23-18_enpdf)> accessed 1 January 2015.

OHCHR, 'First Optional Protocol to the International Covenant on Civil and Political Rights Overview of procedure'  
<<http://www2.ohchr.org/english/bodies/hrc/procedure.htm>> accessed 1 January 2015.

OHCHR, 'Human Rights Bodies - Complaints Procedures, Complaining about human rights violations' (2013)  
<<http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx>> accessed 1 January 2015.

OHCHR, Opening Statement by Ms. Navi Pillay United Nations High Commissioner for Human Rights at the Human Rights Council 24th Session, (9 September 2013)  
<<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13687&LangID=>> accessed 1 January 2015.

OHCHR, Principles and the ICC Statute, the following classifications for accreditation are used by the ICC: A Compliance with the Paris Principles; B Not fully in compliance with the Paris Principles  
<[http://www.ohchr.org/Documents/Countries/NHRI/Chart\\_Status\\_NIs.pdf](http://www.ohchr.org/Documents/Countries/NHRI/Chart_Status_NIs.pdf)> accessed 1 January 2015.

OHCHR, The OHCHR Plan of Action: Protection and Empowerment (Geneva May 2005) <<http://www2.ohchr.org/english/planactionNo.pdf>> accessed 1 January 2015.

OHCHR, 'Universal Periodic Review' (2013)

<<http://www.ohchr.org/EN/HRbodies/UPR/Pages/UPRMain.aspx>> accessed 1 January 2015.

The Human Rights Council, Eighth session, Agenda item 1 Organizational and procedural matters, 2-18 June 200 A/HRC/8/52, 106. <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/152/83/PDF/G0815283.pdf?OpenElement>> accessed 1 January 2015.

United Nations, Economic and Social Council Distr. GENERAL E/CN.4/2004/G/34. 8 April 2005, Commission on Human Rights Sixty-first session Agenda item 18 (b) (6-8 March 2005). 'Effective Functioning Of Human Rights Mechanisms: National Institutions and Regional Arrangements' Para 6  
<<http://unispal.un.org/UNISPAL.NSF/0/032A377F5D45451E85256FF10063DCEC.>> accessed 27 October 2014.

UN 'Arab rights charter deviates from international standards' UN News Service (2008) <<http://www.un.org/apps/news/printnewsAr.asp?nid=25447>> accessed February 2, 2014.

UN 'Organisation of Islamic Cooperation', <<http://www.oicun.org/2/23/>> accessed 1 January 2015.

UN Commission on Human Rights, Commission on Human Rights Resolution 2004/81: Advisory Services and Technical Cooperation in the Field of Human Rights, 21 April 2004, E/CN.4/RES/2004/81.

UN General Assembly, Convention Relating to the Status of Refugees, 28 July 1951, United Nations, Treaty Series, vol. 189, p. 137.

UN General Assembly, Protocol Relating to the Status of Refugees, 31 January 1967, United Nations, Treaty Series, vol. 606, p.267, UNTC, 'Protocol relating to the Status of Refugees'  
<[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-5&chapter=5&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-5&chapter=5&lang=en)> 1 January 2015.

UN Human Rights Council, Compilation: [Universal Periodic Review] : Syrian Arab Republic / prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 15 (b) of the annex to Human Rights Council resolution 5/1, (5 September 2011) A/HRC/WG.6/12/SYR/2.

United Nations. Office of the High Commissioner for Human Rights, International Bar Association, *Human Rights In The Administration Of Justice: A Manual On Human Rights For Judges, Prosecutors And Lawyers* (United Nations Publications, 2003), <<http://www.ohchr.org/Documents/Publications/training9chapter1en.pdf>> 1 January 2015.

UN Women for Arab States & The Committee on Elimination of Discrimination Against Women (CEDAW Committee) 'Regional Consultation for the Proposed

General Recommendation on Women Human Rights in Situations of Conflict and Post Conflict contexts,' Amman, January 2013, 32.

<<http://www.ohchr.org/Documents/HRBodies/CEDAW/Womenconflictsituations/RegionalConsultationAmmanJan2013.pdf>> accessed 12 September 2014

UN News Centre, 'Arab rights charter deviates from international standards' (30 January 2008)

<[http://www.un.org/apps/news/story.asp/html/realfile/story.asp?NewsID=25447&Cr=human&Cr1=rights#.UmqFosY\\_uGk](http://www.un.org/apps/news/story.asp/html/realfile/story.asp?NewsID=25447&Cr=human&Cr1=rights#.UmqFosY_uGk)> accessed 14 October 2014.

UN News, 'Syria: UN-Arab League envoy Brahimi resigns' (13 May 2014)

<<http://www.un.org/apps/news/story.asp?NewsID=47780>> accessed 1 January 2015.

UN News, 'Kofi Annan resigns as UN-Arab League Joint Special Envoy for Syrian crisis' (2 August 2012)

<<http://www.un.org/apps/news/story.asp?NewsID=42609#.U7O5VfldX-k>> accessed 1 January 2015.

UN News, 'Syria: UN-Arab League envoy Brahimi resigns' (13 May 2014)

<<http://www.un.org/apps/news/story.asp?NewsID=47780#.U7O4bfldX-k>> accessed 1 January 2015.

UN refugee agency, 'Countries urged to offer admission for additional 100,000 Syrians - UN refugee agency' (21 February 2014)

<[http://www.un.org/apps/news/story.asp?NewsID=47200#.U\\_IMrPldWQw](http://www.un.org/apps/news/story.asp?NewsID=47200#.U_IMrPldWQw)> accessed 25

UN Secretary-General Ban Ki-moon's address to the Summit of the League of Arab States in Sirte, Libya, on 27 March. (SG/SM/12811), Department of Public Information – News and Media Division New York.

<<http://unispal.un.org/UNISPAL.NSF/0/AF373D377837401A852576F5004E844E>> accessed 1 January 2015.

UN Secretary-General, '22 May 2004 – Secretary-General's message to the Summit Meeting of the League of Arab States (delivered by Mr. Mohamed Sahnoun, Special Adviser to the Secretary-General on Africa) (Tunis, Tunisia, 2012)', United Nations Secretary-General Ban Ki-Moon's Statements

<<http://www.un.org/sg/statements/?nid=938>> accessed 27 November 2014

UN Secretary-General, Department of Public Information 'With Violence In Syria Reaching 'Unthinkable Levels', Secretary-General Appeals For End To Tragedy Of World's Biggest Humanitarian, Peace, Security Crisis', (12 March 2014)

SG/SM/15703, <<http://www.un.org/News/Press/docs/2014/sgsm15703.doc.htm>> accessed 1 January 2015.

UN, Seminar on the Regional Commissions on Human Rights with Special Reference to Africa, U.N. Doc. ST/TAO/HR/39 (1969) (held in Cairo, United Arab Republic, Sept. 2-15, 1969).

UNHCR, '2014 Syria Regional Response Plan - Mid-Year Update'  
<<http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-egypt.pdf>> accessed 1 January 2015.

UNCHR, 'Comment on Egypt's Second Periodic Report on Implementation of the ICCPR' (9 December 1993) UN Doc CCPR/C/79/Add.23.

UNHCR, 'Global Facts and Figure' (2012)  
<[http://www.unhcr.org.uk/fileadmin/user\\_upload/pdf/Displacement\\_Facts\\_and\\_Figures\\_Final.pdf](http://www.unhcr.org.uk/fileadmin/user_upload/pdf/Displacement_Facts_and_Figures_Final.pdf)> accessed 12 August 2014 .

UNHCR, 'Global Trends' (2013)  
<[http://www.unhcr.org/5399a14f9.html#\\_ga=1.39703971.187048615.1411743986](http://www.unhcr.org/5399a14f9.html#_ga=1.39703971.187048615.1411743986)> accessed 1 January 2015.

UNHCHR, statement by Mary Robinson, United Nations High Commissioner for Human Rights [interactive].  
<<http://www.unhchr.ch/hurricane/hurricane.nsf/view01/2370024D1ECEAC0B8025682A003DE864?opendocument>> accessed 1 January 2015.

United Nations High Commissioner for Refugees 'Introductory Note by the Office of the United Nations High Commissioner for Refugees'  
<<http://www.unhcr.org/3b66c2aa10.html>> 1 January 2015.

UNDP 'About Arab States' (2012)  
<<http://www.undp.org/content/rbas/en/home/regioninfo/#>> accessed 1 January 2015.

UNDP 'Human Rights for Development' News Brief, Vol. 4, (2011)  
<[http://www.undp.org/content/dam/undp/library/Democratic%20Governance/NewsbriefVol4\\_F\\_WEB.pdf](http://www.undp.org/content/dam/undp/library/Democratic%20Governance/NewsbriefVol4_F_WEB.pdf)> accessed 1 January 2015.

UNDP 'Study on the links between economic and social rights and legal empowerment of the poor in the Arab World' (2010), 24 ,  
<[http://204.200.211.31/Update\\_Feb\\_2011/ESC%20and%20LEP\\_6.pdf](http://204.200.211.31/Update_Feb_2011/ESC%20and%20LEP_6.pdf)> accessed 1 January 2015.

UNDP and Arab Fund For Economic and Social Development, 'Arab Human Development Report' (2002) 18.  
<<http://www.arabhdr.org/publications/other/ahdr/ahdr2002e.pdf>> accessed 1 January 2015.

UNDP, 'Arab Human Development Report: Challenges to Human Security in Arab Countries' (2009) 59 <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2009e.pdf>> accessed 1 January 2015.

UNDP 'Arab Human Development Report 2009: Challenges to Human Security in the Arab Countries' (2009) <<http://www.arabhdr.org/publications/other/ahdr/ahdr2009e.pdf>> accessed 1 January 2015.

UNDP, 'The Arab Human Development Report 2005: Towards the Rise of Women in the Arab World' (2006) <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2005e.pdf>> accessed 1 January 2015.

UNDP, 'The Arab Human Development Report 20/04: Towards freedom in the Arab world' (2004) <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2004e.pdf>> accessed 1 January 2015.

UNDP 'The Arab Human Development Report 2003: Building a knowledge society' (2003) <<http://www.arab-hdr.org/publications/other/ahdr/ahdr2003e.pdf>> accessed 1 January 2015.

UNDP, 'Chapter 4 Sustaining momentum' in 'Human Development Report' 93 (2013) 92 <[http://hdr.undp.org/en/media/HDR\\_2013\\_EN\\_complete.pdf](http://hdr.undp.org/en/media/HDR_2013_EN_complete.pdf)> accessed 1 January 2015.

UNDP, 'Human Development Report 2013 the Rise of the South: Human Progress in a Diverse World' (2013) <[http://hdr.undp.org/sites/default/files/reports/14/hdr2013\\_en\\_complete.pdf](http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf)> accessed 1 January 2015.

UNDP, 'Iraq: Syrian women and girls struggle to survive in camps' <<http://www.undp.org/content/undp/en/home/ourwork/crisispreventionandrecovery/successstories/alone-in-iraq--syrian-women-and-girls-struggle-to-survive-in-ref/>> accessed 1 January 2015.

UNDP, 'Responding to the crisis in Syria' (2014) <[http://www.undp.org/content/undp/en/home/ourwork/crisispreventionandrecovery/projects\\_initiatives/Responding\\_to\\_crisis\\_Syria/](http://www.undp.org/content/undp/en/home/ourwork/crisispreventionandrecovery/projects_initiatives/Responding_to_crisis_Syria/)> accessed 1 January 2015.

UNESCO 'Education for All Regional Report 2012 for Arab States' Global Education for All Meeting 11 (Paris, France November 21-23, 2012) <[http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/ED\\_new/pdf/ARB\\_EN.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/ED_new/pdf/ARB_EN.pdf)> accessed 25 September 2014.

UNESCO Regional Bureau – Beirut U.N. EDUC., Scientific, And Cultural Org., Reg'l Bureau for Educ. In The Arab States – Beirut, 'EFA Regional Report for the Arab States' (2011) 26 <[http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Beirut/pdf/Report%20EFA%20\(English\).pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Beirut/pdf/Report%20EFA%20(English).pdf)> accessed 12 November 2014.

UNESCO, '2. Marginalized and Unemployed Arab Youth' The Development Research Centre, The Syria Trust for Development, cited in UNESCO, 'Arab Youth: Civic Engagement & Economic Participation', UNESCO Regional Bureau for Education in the Arab States – Beirut., (Beirut 2011) <[http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Beirut/pdf/YCE%20\\_EN.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/FIELD/Beirut/pdf/YCE%20_EN.pdf)> accessed 27 October 2014.

UNESCO, 'Education for All Regional Report 2012 for Arab State' Global Education for All Meeting 11 (Paris, France November 21-23, 2012)



<[http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/ED\\_new/pdf/ARB\\_EN.pdf](http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/ED/ED_new/pdf/ARB_EN.pdf)> accessed 1 January 2015.

UNESCO, 'Experts Workshop Gender Issues in Education in Arab States', Based on the Right to Education Organized within the framework of the 80th anniversary of the Convention on the Elimination of All Forms of Discrimination against Women (1979) 'countries with relatively low populations have less serious challenges than highly populated countries'. (November 2009) UNESCO Regional Bureau for Education in the Arab States – Beirut  
<<http://unesdoc.unesco.org/images/0021/002107/210798e.pdf>> accessed 25 September 2014.

UNGA, 'National institutions for the protection and promotion of human rights' A/RES/44/64C.3 96a, A/44/PV.78 8 Dec. 1989 without vote A/44/799.

UNGA 'Regional arrangements for the promotion and protection of human rights' United Nations A/HRC/24/L.35 (23 September 2013).

UNGA 'World Conference on Human Rights' A/RES/44/156.

UNGA, 'Compilation Of Guidelines On The Form And Content Of Reports To Be Submitted By States Parties To The International Human Rights Treaties Report of the Secretary-General', U.N. Doc. HRI/GEN/2/Rev.4 (21 May 2007).

UNGA, 'National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21' Bahrain, Human Rights Council, Working Group on the Universal Periodic Review, Thirteenth session, A/HRC/WG.6/13/BHR/1 (Geneva, 21 May-4 June 2012).

UNGA, 'World Conference on Human Rights Vienna', 14-25 June 1993 see para. 35. A/CONF.157/24 (Part I) (13 October 1993).

UNGA, Bahrain, Concluding Observations and Recommendations, Cairo, February 21-26, 2013. 7. See also recommendations for this concern in the 2008 UPR session. Distr. GENERAL A/HRC/8/52, 1 September 2008, Original: English English/French Human Rights Council, Eighth session Agenda item1 Organizational and procedural matters, 2-18 June.

UNGA, Human Rights Council Twenty-first session Agenda item 6 'Universal Periodic Review Report of the Working Group on the Universal Periodic Review, Bahrain' (6 July 2012) UN Doc A/HRC/21/6.

UNGA, Human Rights Council Working Group on the Universal Periodic Review, Thirteenth session, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, 21 May-4 June 2012 Geneva (30 March 2012) (Reissued for technical reasons on 30 April 2012) A/HRC/WG.6/13/BHR/1.

UNGA, Human Rights Council Working Group on the Universal Periodic Review Thirteenth session ‘Compilation prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, Algeria’ (Geneva, 21 May - 4 June 2012) (A/HRC/WG.6/13/DZA/2) (23 March 2012).

UNGA, Human Rights Council, ‘Report of the High Commissioner containing the conclusion of the 15th Workshop on Regional Cooperation for the Promotion and Protection of Human Rights in the Asia-Pacific Region’ (21 to 23 April 2010) Fifteenth session, Agenda items 2 and 3 Annual report of the United Nations High Commissioner for Human Rights and reports of the Office of the High Commissioner and the Secretary-General Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development. A/HRC/15/39, 9 (3 August 2010).

UNGA, Human Rights Council, Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Syrian Arab Republic, A/HRC/18/53 (Sept. 15, 2011).

UNGA, Universal Declaration of Human Rights, Adopted in Paris on 10 December 1948 General Assembly resolution 217 A (III).

UNHCR ‘2014 Syria Regional Response Plan Lebanon Mid-Year Update’ (2014) <<http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-lebanon.pdf>> accessed 1 January 2015.

UNHCR ‘Facts and Figures about Refugees’ <<http://www.unhcr.org.uk/about-us/key-facts-and-figures.html>> accessed 1 January 2015.

UNHCR, ‘2014 Syria Regional Response Plan Turkey Mid-Year Update’ <<http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-turkey.pdf>> accessed 1 January 2015.

UNHCR, ‘2014 Syria Regional Response Plan Iraq Mid-Year Update’ (2014) <<http://www.unhcr.org/syriarrp6/midyear/docs/syria-rrp6-myu-iraq.pdf>> accessed 1 January 2015.

UNICEF ‘Human Rights’ (2004) <[http://www.unicef.org/gender/index\\_bigpicture.html](http://www.unicef.org/gender/index_bigpicture.html)> accessed 1 January 2015.

United Nations (UN). Office of the High Commissioner for Human Rights (OHCHR); International Bar Association (IBA), ‘Human rights in the administration of justice : a facilitator’s guide on human rights for judges, prosecutors and lawyers’, ( New York, NY ; Geneva : UN Office of the High Commissioner for Human Rights (UNOHCHR), 2011 Professional training series ; no. 9) <<http://www.ohchr.org/Documents/Publications/HRAdministrationJustice.pdf>> accessed 1 January 2015.

United Nations, 'Election of the Human Rights Council' (General Assembly of the United Nations 2013) <<http://www.un.org/en/ga/68/meetings/elections/hrc.shtml>> accessed 1 January 2015.

United Nations, Economic and Social Council Distr. General E/CN.4/2004/G/34. 8 April 2005, Commission on Human Rights Sixty-first session Agenda item 18 (b) (6-8 March 2005).

United Nations, Treaty Series, vol. 993, p. 3; depositary notification C.N.781.2001.TREATIES-6 of 5 October 2001 and C.N.7.2002.TREATIES-1 of 3 January 2002.

Universal Periodic Review, Report of the Working Group on the Universal Periodic Review, 'Bahrain' A/HRC/21/6 3 <<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/150/49/PDF/G1215049.pdf?OpenElement>> accessed 1 January 2015.

UNTC '15.a Optional Protocol to the Convention on the Rights of Persons with Disabilities' New York, 13 December 2006 (UN 2013), <[http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=IV-15-a&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-15-a&chapter=4&lang=en)> accessed 1 January 2015.

UNTC 'Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment', New York, 10 December 1984. <[https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-9&chapter=4&lang=en#EndDec](https://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-9&chapter=4&lang=en#EndDec)> accessed 1 January 2015.

UNTC 'International Convention on the Elimination of All Forms of Racial Discrimination' New York, 7 March 1966 2013. <[http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg\\_no=IV-2&chapter=4&lang=en](http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-2&chapter=4&lang=en)> accessed 1 January 2015.

UPR Media Briefing Note, Monday, 21 May 2012 (Morning). <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/Highlights21May2012am.aspx>> accessed 1 January 2015.

UPR, First cycle (2008-2011) <<http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>>

Viljoen F, 'International Human Rights Law: A Short History' (2009) UN Chronicle, Vol. XLVI No. 1 & 2 < <http://unchronicle.un.org/article/international-human-rights-law-short-history/>> 1 January 2015.

### **League of Arab States (LAS) Documents and Publications**

LAS Council, Resolution No. 7523, 138th Ministerial Level Session (5 September 2012).

LAS Council, Resolution No. 7655, 140th Ministerial level session (1-2 September 2013).

LAS Council, Resolution No. 7489 ‘Establishment of an Arab Court on Human Rights’, 24th Summit (Doha, 26 March 2013).

LAS Council, Resolution No. 593 ‘Draft Statute of the Arab Court of Human Rights’, 25th Summit (Kuwait March 25 to 26, 2014).

LAS Council, ‘The development of the League of Arab States’  
<<http://www.lasportal.org/wps/wcm/connect/c24da10040f2884a84a79ca79d151c73/Binder1.pdf?MOD=AJPERES>> accessed 1 January 2015.

LAS Council, Resolution No. 0215, ‘Sirte Declaration’, 22nd Summit (5 March 2010).

LAS Council, Resolution No. 559 ‘Approval of the Statute of the Arab Parliament’ 23rd Summit, (Baghdad Iraq, 29 March 2012).

LAS Council ‘Arab plan for education on human rights principles for the period 2009-2014’,  
<<http://www.lasportal.org/wps/wcm/connect/332918804510fd4dbd95fd6a5847d031/129.pdf?MOD=AJPERES>>

LAS Council ‘The Arab Charter on Human Rights’ Arab League 16th Summit, Tunis (May 22-23, 2004) Resolution No. 270.

LAS ‘The development of the League of Arab States’  
<<http://www.lasportal.org/wps/wcm/connect/c24da10040f2884a84a79ca79d151c73/Binder1.pdf?MOD=AJPERES>> accessed 1 January 2015.

LAS Council ‘The Khartoum Declaration’ 18th Summit on (Khartoum – Sudan, 28 to 29 March 2006).

LAS Council, Resolution No. 221, ‘Arab Peace Initiative’, 14th Arab Summit, (Beirut, 28 March 2002).

LAS Council, Resolution No. 433, ‘Damascus Declaration’, 20th Summit (Damascus, 30<sup>th</sup> March 2008).

LAS, ‘The list of countries that have ratified the Arab Charter on Human Rights’  
<[http://www.lasportal.org/wps/portal/las\\_ar\\_humanrights/inpage!/ut/p/c5/vY9LcoJAFEXX4gq6ZshCkI3HwVaBCYUoiI0CALVRIYfkrlmksq7w3frnjogAXNuGSuLbCzbW1aDCCRYCjmf7C2Dg4aorSBSPIuXQ-RAzIMDiNdzKX5dIuIvExgkRd0eZ9gB56Witc5D14l\\_1M24HqEcXTrorg139HT7kGI7KW1NWJ7XSUVuy-E5qcu7drUCzmUdM3GeB7EYQyoFWS3hsI1KGyf06VG-IGm0zVeMjqcJFY0c8VtosLPd3PuLafa9rCGBnHTrKLBmUAXNFGnXuupiVkzeGXz7\\_fxfnAqBa7bNGcQgUV6uuAogIIJiGITPdk108iv4iQnlTqTaPxydQIKFO9f20UCfU6C3ny5B06D4yCEbixs-](http://www.lasportal.org/wps/portal/las_ar_humanrights/inpage!/ut/p/c5/vY9LcoJAFEXX4gq6ZshCkI3HwVaBCYUoiI0CALVRIYfkrlmksq7w3frnjogAXNuGSuLbCzbW1aDCCRYCjmf7C2Dg4aorSBSPIuXQ-RAzIMDiNdzKX5dIuIvExgkRd0eZ9gB56Witc5D14l_1M24HqEcXTrorg139HT7kGI7KW1NWJ7XSUVuy-E5qcu7drUCzmUdM3GeB7EYQyoFWS3hsI1KGyf06VG-IGm0zVeMjqcJFY0c8VtosLPd3PuLafa9rCGBnHTrKLBmUAXNFGnXuupiVkzeGXz7_fxfnAqBa7bNGcQgUV6uuAogIIJiGITPdk108iv4iQnlTqTaPxydQIKFO9f20UCfU6C3ny5B06D4yCEbixs-)

uHDj6erOUhybLt6zNuI\_suQ\_ZXUNsyUW7K691EutuvGc2oRnwg!!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=dcece004a3e7a18b9f8bd526698d42c> accessed 1 January 2015.

LAS, 'History of the Arab League'

<[http://www.lasportal.org/wps/portal/las\\_ar/inner!/ut/p/c5/vY3LjoJAEEW\\_xQ-YVLUwKEtMI4KZVrqrHemNwWRifCAkOg701wuJiSt1M7Hurk7uPWCgzTG\\_bDf5eVse8wMswXgr7qdy4UoHkWyexv0Jl4IJZzjyWp495gl70f6GbAwJmM2hXHeyqP2YZ51useP44AKEDMzgz3o\\_SqYtxqj5FouYsiBAllui1K6pYru3cmeloD3WtA7\\_vnjYEOma0GsUFzOIT5bQtUpXU6KMsaHPFuM0DPhvPah174Wr\\_0aX80YX-1eXmJTFD1SFvhr-\\_JHfGcVIgOqb/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=5ced5d80425e47cb8f3dff7cf4bbec57](http://www.lasportal.org/wps/portal/las_ar/inner!/ut/p/c5/vY3LjoJAEEW_xQ-YVLUwKEtMI4KZVrqrHemNwWRifCAkOg701wuJiSt1M7Hurk7uPWCgzTG_bDf5eVse8wMswXgr7qdy4UoHkWyexv0Jl4IJZzjyWp495gl70f6GbAwJmM2hXHeyqP2YZ51useP44AKEDMzgz3o_SqYtxqj5FouYsiBAllui1K6pYru3cmeloD3WtA7_vnjYEOma0GsUFzOIT5bQtUpXU6KMsaHPFuM0DPhvPah174Wr_0aX80YX-1eXmJTFD1SFvhr-_JHfGcVIgOqb/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=5ced5d80425e47cb8f3dff7cf4bbec57)> accessed 1 January 2015.

LAS, 'The Arab Human Rights Department'

<[http://www.lasportal.org/wps/portal/las\\_ar/inner!/ut/p/c5/vZJLj4IwFIV\\_Cz\\_AtKU8I4yAttoqFFDYGFbKEPE9PvrrR5NJZuW4mXjP5ibnnvttDsjAXZv8XFf5qd5u8jWYgsyYuXYQJlqIIYxGBiRq3w054tj6MO5--tyn6EV6AIIICRH64L9lfp49HDx8-GQeCFGTmb74XDDRIAqFzKsbI6UEQgSnUZmJ12xHZyHAlBeKezpmcX9jQZ7zRkJA9FHkneovkkdEHs2QsMgfoKONEj\\_wHHpjC7tRXrDUN7LwG1noX1kUZNV6W9wrNknS1nS37OI5YvZZ0hzb053hD5qqzps6NfoOa85tEbP11fKSbL-A4opxFzIL2g3W\\_pCpq6P88MrbqHPEzW7VFS7Z-145F6So2HRz0XWymHUzHQmVolLND0ZeyI6MeefL0ly5H7eRRc1MJkvoLNWzjStFAby\\_bUuwa-NzHVroR7hyFOUbQ3tIdA!!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=593ef70049c3e6d59fde9f526698d42c](http://www.lasportal.org/wps/portal/las_ar/inner!/ut/p/c5/vZJLj4IwFIV_Cz_AtKU8I4yAttoqFFDYGFbKEPE9PvrrR5NJZuW4mXjP5ibnnvttDsjAXZv8XFf5qd5u8jWYgsyYuXYQJlqIIYxGBiRq3w054tj6MO5--tyn6EV6AIIICRH64L9lfp49HDx8-GQeCFGTmb74XDDRIAqFzKsbI6UEQgSnUZmJ12xHZyHAlBeKezpmcX9jQZ7zRkJA9FHkneovkkdEHs2QsMgfoKONEj_wHHpjC7tRXrDUN7LwG1noX1kUZNV6W9wrNknS1nS37OI5YvZZ0hzb053hD5qqzps6NfoOa85tEbP11fKSbL-A4opxFzIL2g3W_pCpq6P88MrbqHPEzW7VFS7Z-145F6So2HRz0XWymHUzHQmVolLND0ZeyI6MeefL0ly5H7eRRc1MJkvoLNWzjStFAby_bUuwa-NzHVroR7hyFOUbQ3tIdA!!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=593ef70049c3e6d59fde9f526698d42c)> accessed 1 January 2015.

LAS Council, Decision No. 540, 22nd Summit, (Sirte 27-28 March 2010).

LAS, 'Standing Committees',

<[http://www.lasportal.org/wps/portal/las\\_ar/inner!/ut/p/c5/vZLBkoIwEES\\_xQ-wkgiiHtGgiAJLCEi4WICIGgKiIOfRf2sPe3K9bDI9maqe6Xdp4INOedAck-B2LPLgBDzgS1s8sYgrEgFCakpwOVAXMZA hjKdS57PXvobefG8AmwE7qLrF\\_v0Gft04YuRITDU4hwDBvzRb8rCWolwadIDQ7O\\_kLyAgAIPils7fZRLnnGScmLQDLY0VO46Vh6UOi2F0sPGhmk7V06hyG2nXFHKEBpPkDu3FBnX7ah1em9Ygw-yhA-y0L-yNOAnpyLsirZRo2OLr3qCFY-E4\\_yObgd-6492dUp2mWYm0yS7y2mc7VffG8ZVA bP1mrl-zVTc7K1hdU53hjhr5oI-O0nJKG4j0m-ZLvA44NBrEj2\\_TNVtlJtKEUbuenqtK0-YH9TADOHky9GbQi\\_3l7DEnFhyxHqgPDvNkYyN\\_Y\\_0b9NFPug!!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=5ced5d80425e47cb8f3dff7cf4bbec57](http://www.lasportal.org/wps/portal/las_ar/inner!/ut/p/c5/vZLBkoIwEES_xQ-wkgiiHtGgiAJLCEi4WICIGgKiIOfRf2sPe3K9bDI9maqe6Xdp4INOedAck-B2LPLgBDzgS1s8sYgrEgFCakpwOVAXMZA hjKdS57PXvobefG8AmwE7qLrF_v0Gft04YuRITDU4hwDBvzRb8rCWolwadIDQ7O_kLyAgAIPils7fZRLnnGScmLQDLY0VO46Vh6UOi2F0sPGhmk7V06hyG2nXFHKEBpPkDu3FBnX7ah1em9Ygw-yhA-y0L-yNOAnpyLsirZRo2OLr3qCFY-E4_yObgd-6492dUp2mWYm0yS7y2mc7VffG8ZVA bP1mrl-zVTc7K1hdU53hjhr5oI-O0nJKG4j0m-ZLvA44NBrEj2_TNVtlJtKEUbuenqtK0-YH9TADOHky9GbQi_3l7DEnFhyxHqgPDvNkYyN_Y_0b9NFPug!!/dl3/d3/L2dBISEvZ0FBIS9nQSEh/?pcid=5ced5d80425e47cb8f3dff7cf4bbec57)> accessed 1 January 2015.

LAS Council, Report and recommendations of the Arab Permanent Human Rights Committee, Resolution No. 6898, 127<sup>th</sup> Ministerial Level session (28-31 January 2008). <<http://www.lasportal.org/wps/wcm/connect/332918804510fd4dbd95fd6a5847d031/129.pdf?MOD=AJPERES>> accessed 1 January 2015.

LAS Council, Riyadh Declaration, 19<sup>th</sup> Arab League Summit, (Riyadh, 29 March 2007)  
<<http://www.arableague.org.uk/uk/The%20RIYADH%20DECLARATION.pdf>>  
accessed 1 January 2015.

Statement of the Arab Human Rights Committee (Committee Charter) about their participation in the Observer Mission of the Arab League to Syria. (Press Statement February 1 2012)  
<<http://www.lasportal.org/wps/wcm/connect/8c6afd804a7fc699b52dbd526698d42c/Human+Rights+Commission+Statement+On+Syria.pdf?MOD=AJPERES>> accessed 1 January 2015.

LAS Council 23rd Summit, Resolution No. 565 (29 March 2012).

LAS Council, ‘Tunis Declaration’ 16th Summit, (Tunis, 22-23 May, 2004).

Arab Human Rights Committee Press Statement on April 21 2011.  
<[http://www.lasportal.org/wps/wcm/connect/1d2d72804a7facc3b2a4be526698d42c/2011-08-14+02-15-47\\_0201.JPG?MOD=AJPERES](http://www.lasportal.org/wps/wcm/connect/1d2d72804a7facc3b2a4be526698d42c/2011-08-14+02-15-47_0201.JPG?MOD=AJPERES)> accessed 1 January 2015.

LAS Council\_ ‘Doha Declaration’, 24<sup>th</sup> Summit (March 26, 2013).

LAS Council, Resolution No. 572, 24th Summit (26 March 2013).

LAS Council, Resolution No. 573, 24th Arab Summit (Doha, 26 March 2013).

LAS Council, Resolution No. 540, 22nd Summit, (Sirte 27-28 March 2010).

LAS Council, ‘Beirut Declaration’ (March 27-28 2002).  
<[http://www.lasportal.org/wps/wcm/connect/69bb79004ee1250ba972bda79d151c73/\\_\\_\\_\\_+\\_\\_\\_\\_+14.pdf?MOD=AJPERES](http://www.lasportal.org/wps/wcm/connect/69bb79004ee1250ba972bda79d151c73/____+____+14.pdf?MOD=AJPERES)> 1 January 2015.

### **Other Regional Documents**

‘Resolution on the African Commission on Human and Peoples’ Rights’, 29th Ordinary Session of the Assembly of Heads of State and Government of the Organization of African Unity, 28-30 June 1993, Cairo, Egypt, AHG/Res. 227(XXIX) Rev. I.

ACHPR ‘Algeria / Decisions on Communications / ACHPR’  
<[http://www.achpr.org/communications/decision/104.94-109.94\\_126.94/](http://www.achpr.org/communications/decision/104.94-109.94_126.94/)> accessed 1 January 2015.

ACHPR ‘Cairo Institute for Human Rights Studies’  
<<http://www.achpr.org/sessions/51st/ngo-statements/11/>> accessed 1 January 2015.

ACHPR ‘Ratification Table: Protocol to the African Charter on Human and Peoples’ Rights on the Establishment of the African Court on Human and Peoples’ Rights’  
<<http://www.achpr.org/instruments/court-establishment/ratification/>>

African (Banjul) Charter on Human And Peoples' Rights (Adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

African Commission 'Peoples' Democratic Republic of Algeria, 'African charter on human and Peoples' Rights' Third and fourth periodic reports. (August 2006) <[http://www.achpr.org/files/sessions/42nd/state-reports/3rd,4th-2006/staterep34\\_algeria\\_2006\\_eng.pdf](http://www.achpr.org/files/sessions/42nd/state-reports/3rd,4th-2006/staterep34_algeria_2006_eng.pdf)> accessed 1 January 2015.

African Commission on Human & Peoples' Rights (ACHPR) 'Concluding Observations On the 3rd and 4th Combined Periodic Reports of the People's Democratic Republic of Algeria' Presented at the 42nd Ordinary Session of the African Commission held from 14th to 28th November 2007 in Brazzaville, Congo. 7. <[http://www.achpr.org/files/sessions/42nd/conc-obs/3rd-4th-2001-2006/achpr42\\_conc\\_staterep34\\_2007\\_algeria\\_eng.pdf](http://www.achpr.org/files/sessions/42nd/conc-obs/3rd-4th-2001-2006/achpr42_conc_staterep34_2007_algeria_eng.pdf)> accessed 1 January 2015.

African Commission on Human and Peoples' Rights (2013), Ratification Table: African Charter on Human and Peoples' Rights. <<http://www.achpr.org/instruments/achpr/ratification/>> accessed 1 January 2015.

African Commission on Human and Peoples' Rights ACHPR) 'Algeria / states / ACHPR' <<http://www.achpr.org/states/algeria/>>[accessed: 1 Jan 2014 (Achpr.org (2013). 104/94-109/94\_126/94 Centre of the Independence of Judges and Lawyers.

African Court of Human and Peoples' Right, 'Jurisdiction' <<http://www.african-court.org/en/index.php/about-the-court/jurisdiction>> accessed 1 January 2015.

African Court of Human and Peoples' Rights, 'Quick Facts', <<http://www.african-court.org/en/index.php/about-the-court/quick-facts-menu>> accessed 1 January 2015.

Ambassade de la Republique Algerienne Democratique et Populaire Le Caire, 'Supplementary Report' (For the period March 2011 to October 2012) For the first periodic report of Algeria on human rights Cairo 15-16 October 2012. Law 04-12 of Jan. 12, 2012 on political parties, published in the Official Gazette, No. 2, Jan. 15, 2012, p. 9, <<http://www.joradp.dz/FTP/JO-ARABE/2012/A2012002.pdf>> accessed 1 January 2015.

American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948),reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 17 (1992). Decision No.2259 (XLVI), December 9 1966.

CoE 'About the European Social Charter.' (2013) <[http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/aboutcharter\\_EN.asp](http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/aboutcharter_EN.asp)> accessed 1 January 2015.

CoE 'Council of Europe | Roma and Travellers | Collective complaints under the Social

Charter' (2013) <[http://www.coe.int/t/dg3/romatravellers/charter\\_en.asp](http://www.coe.int/t/dg3/romatravellers/charter_en.asp)> accessed 1 January 2015.

CoE 'Rules of the European Committee of Social Rights', (adopted during the 201st session on 29 March 2004 and revised during the 207th session on 12 May 2005, during the 234th session on 20 February 2009, during the 250th session on 10 May 2011, during the 251st session on 28 June 2011 and during the 266th session on 12 September 2013) <[http://www.coe.int/t/dghl/monitoring/socialcharter/ESCRrules/Rules\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/ESCRrules/Rules_en.pdf)> accessed 11 September 2014.

CoE, 'Annual Report 2011 of the European Court of Human Rights, Council of Europe', (2011) History and development of the Convention system, 11, <[http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE053358F536B3/0/2011\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE053358F536B3/0/2011_Rapport_Annuel_EN.pdf)> accessed 29 April 2012.

CoE, 'Committee for Human Rights' (2010) 10, <[http://www.eoi.at/d/Sonderberichte%20-%20Brosch%C3%BCren/Frankreich/1303389570\\_Actes\\_Conference\\_1er\\_fevrier\\_-\\_ENGLISH\[1\].pdf](http://www.eoi.at/d/Sonderberichte%20-%20Brosch%C3%BCren/Frankreich/1303389570_Actes_Conference_1er_fevrier_-_ENGLISH[1].pdf)> accessed 29 April 2012.

CoE, 'Supervision of execution of judgments of the European Court of Human Rights' <[http://www.coe.int/t/cm/humanrights\\_en.asp](http://www.coe.int/t/cm/humanrights_en.asp)>

CoE, Additional Protocol to the European Social Charter Providing for a System of Collective Complaints CETS No.: 158. Treaty open for signature by the member States signatories to Treaty ETS 35. (Status as of November 23, 2013) accessed 11 September 2013.

CoE, *European Social Charter Collected texts* (6th edition) Régis Brillat, Head of the Department of the European Social Charter Executive Secretary of the European Committee of Social Rights, 30 June 2008, (updated to 30 June 2008) <[http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/ESCCollectedTexts\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/presentation/ESCCollectedTexts_en.pdf)> accessed 12 May 2014.

CoE, FORM for the reports to be submitted in pursuance of the European Social Charter (revised) adopted by the Committee of Ministers, 26 March 2008, (30 March 2008) <[http://www.coe.int/t/dghl/monitoring/socialcharter/reportforms/FormRESC2008\\_en.pdf](http://www.coe.int/t/dghl/monitoring/socialcharter/reportforms/FormRESC2008_en.pdf)> accessed 1 January 2015.

CoE, 'Collective Complaints System of the European Social Charter' <[http://www.coe.int/t/dg3/romatravellers/charter\\_enasp](http://www.coe.int/t/dg3/romatravellers/charter_enasp)> accessed 1 January 2015.

Concluding Observations on the 3rd and 4th Combined Periodic Reports of the Peoples Democratic Republic of Algeria Presented at the 42nd Ordinary Session of the African Commission held from 14th to 28th November 2007 in Brazzaville, Congo 7th point P.6.



Consolidated version Of the Treaty On European Union and the Treaty On The Functioning Of The European Union, Charter Of Fundamental Rights Of The European Union Charter Of Fundamental Rights Of The European Union (March 2010), <[http://europa.eu/pol/pdf/qc3209190enc\\_002.pdf#page=20](http://europa.eu/pol/pdf/qc3209190enc_002.pdf#page=20)> accessed 1 January 2015.

Council of Europe 1961, European Social Charter. (nd.). Retrieved from [http://www.equalrightstrust.org/ertdocumentbank/CoE-ITA-RPT-2667-EN-European%20Social%20Charter.pdf\\_br](http://www.equalrightstrust.org/ertdocumentbank/CoE-ITA-RPT-2667-EN-European%20Social%20Charter.pdf_br) . ETS 163 – European Social Charter (revised), 3.V.1996.

Europarl, Parliamentary questions, (26 January 2007) E-5000/2006, Answer given by Mr Frattini on behalf of the Commission For further information on this position. (OJ C 293, 05/12/2007).

<<http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2006-5000&language=EN>> accessed 12 September 2014

Europe Aid « Lawyers for Lawyers » File N°10: The Arab Charter on Human Rights crisis 2008 165-110, EuropeAid/126412/C/ACT/Multi, <<http://www.observatoire-avocats.org/wp-content/uploads/File-10-Arab-charter-on-human-rights.pdf>> accessed 12 May 2014.

European Council in Copenhagen - 21-22 June 1993- Conclusions of the Presidency - European Council - DOC/93/3 (22 June 6 1993) press release database <[http://europa.eu/rapid/press-release\\_DOC-93-3\\_en.htm?locale=en](http://europa.eu/rapid/press-release_DOC-93-3_en.htm?locale=en)> accessed 1 January 2015.

Europa.eu, ‘European Commission - Press Releases - Press Release - European Council In Copenhagen - 21-22 June 1993- Conclusions of the Presidency’ Directorate-General for External Policies of the Union, Directorate B Policy Department Study. EXPO/B/DROI/2009/25 /November/ 2010 <[http://europa.eu/rapid/pressrelease\\_DOC-93-3\\_en.htm?locale=en](http://europa.eu/rapid/pressrelease_DOC-93-3_en.htm?locale=en)> accessed 1 November 2014.

European Commission, European Parliament ‘The Role of Regional Human Rights Mechanisms’ <<http://www.europarl.europa.eu/committees/en/droi/studiesdownload.html?languageDocument=EN&file=3338>> accessed 12 January 2014.

European Social Charter (ETS No. 163) Explanatory Report, para. 10. <<http://conventions.coe.int/Treaty/EN/Reports/Html/163.htm>> accessed 12 January 2014.

S Greer, ‘The Margin of Appreciation: Interpretation and Discretion Under the European Convention on Human Rights’ (2000) Council of Europe Publishing, 5-45 <<http://www.echr.coe.int/LibraryDocs/DG2/HRFILES/DG2-EN-HRFILES-17%282000%29.pdf>> accessed 12 October 2014.

Advisory Opinion OC-11/90, August 10, 1990, Inter-Am. Ct. H.R. (Ser. A) No. 11 (1990).

I-A Court HR, Habeas Corpus in Emergency Situations (arts. 27(2), 25(1) and 7(6), Advisory Opinion OC-8/87 of January 30, 1987, Series A, No. 8, para. 18 at p. 37.

IACHR, Resolution 1/2013 ‘Reform Of the Rules of Procedure, Policies and Practices’ <<http://www.oas.org/en/iachr/decisions/pdf/Resolution1-2013eng.pdf>> accessed 1 January 2015.

OAS, ‘Brief History of the Inter-American Human Rights System’ (2011) (2011)<<http://www.oas.org/en/iachr/mandate/what.asp>> accessed 1 January 2015.

OAS, ‘OAS :: IACHR : What is the IACHR?’ (2013) <<http://www.oas.org/en/iachr/mandate/what.asp>> accessed 1 January 2015.

OAS ‘OAS: IACHR: Activities: Sessions’ (2013) <<https://www.oas.org/en/iachr/activities/sessions.asp>> accessed 1 January 2015.

OAS ‘Rules of Procedure of the Inter-American Commission on Human Rights’ Approved by the Commission at its 137th regular period of sessions, held from October 28 to November 13, 2009, and modified on September 2nd, 2011 and during the 147th Regular Period of Sessions, held from 8 to 22 March 2013, for entry into force on August 1st, 2013’, OAS, ‘Basic Documents in the Inter-American System’ <<http://www.oas.org/en/iachr/mandate/Basics/rulesiachr.asp>> accessed 1 January 2015.

OAS, ‘IACHR in loco Visits’ <[http://www.oas.org/en/iachr/activities/countries\\_all.asp](http://www.oas.org/en/iachr/activities/countries_all.asp)> accessed 1 January 2015.

OAS, ‘Reports on Cases’ <[http://www.oas.org/en/iachr/decisions/cases\\_reports.asp](http://www.oas.org/en/iachr/decisions/cases_reports.asp)> accessed 1 January 2015.

OAS, ‘IACHR Presents Second Report on the Situation of Human Rights Defenders in the Americas’ (6 March 2012). <[http://www.oas.org/en/iachr/media\\_center/PReleases/2012/025.asp](http://www.oas.org/en/iachr/media_center/PReleases/2012/025.asp)> accessed 1 January 2015.

OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force 21 October 1986).

OAU, Rules of Procedure of the African Commission on Human Rights, (2010) Adopted by the African Commission on Human and Peoples’ Rights during its 2nd ordinary session held in Dakar (Senegal) from February 2 to 13, 1988 and it was revised during its 18th ordinary session held in Praia (Cabo-Verde) from October 2 to 11, 1995. Rules Of Procedure Of The African Commission on Human and Peoples’ Rights, Approved by the African Commission on Human and Peoples’ Rights during its 47th ordinary session held in Banjul (The Gambia) from May 12 to 26, 2010 <[http://www.achpr.org/files/instruments/rules-of-procedure\\_2010/rules\\_of\\_procedure\\_2010\\_enpdf](http://www.achpr.org/files/instruments/rules-of-procedure_2010/rules_of_procedure_2010_enpdf)>

Organization of American States (OAS), American Convention on Human Rights, 'Pact of San Jose', Costa Rica, 22 November 1969, <<http://www.refworld.org/docid/3ae6b36510.html>> accessed 1 January 2015.

Ratification of International Human Rights Treaties – Algeria, <<http://www1.umn.edu/humanrts/research/ratification-algeria1a.html>> accessed 1 January 2015.

Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights, June 9, 1998, OAU Doc. OAU/LEG/EXP/AFCHPR/PROT (III).

Registry of the European Court of Human Rights Strasbourg, 'Annual Report 2011' (2012) Strasbourg <[http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011_Rapport_Annuel_EN.pdf)> accessed 1 January 2015.

Resolution ResChS (2006) 4, Collective complaint No. 27/2004 by the European Roma Rights Centre against Italy. (Adopted by the Committee of Ministers on 3 May 2006). Rules of the European Committee of Social Rights. <<http://conventions.coe.int/Treaty/en/Treaties/Html/142.htm>> accessed 1 January 2015.

Statute of the Inter-American Court on Human Rights, O.A.S. Res. 448 (IX-0/79), O.A.S. Off. Rec. OEA/Ser.P/IX.0.2/80, Vol. 1 at 98.

Inter-American Court on Human Rights, OEA/Ser.L/V.III.3 doc. 13 corr. 1 at 16 (1980), reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 133 (1992).

The Council of Europe Parliamentary Assembly right to petition, recommendation 1795 (24 May 2007) <[www.assembly.coe.int](http://www.assembly.coe.int)> accessed 1 January 2015.

The Draft Protocol to the African Charter on Human and peoples' rights on the establishment of an African court on human and peoples' rights by the assembly of heads of State and governments of the organisation of the African Unity, Conference of Ministers/Attorney-general on the establishment of an African Court of human and peoples' rights OAU/LEG/MIN/AFCHPR/PROT (1) Rev.2 (1997).

## Newspapers

'Arab League Asks U.N. Unit To Seek End to Iran-Iraq War' *The New York Times* (October 4, 1986) <<http://www.nytimes.com/1986/10/04/world/arab-league-asks-un-unit-to-seek-end-to-iran-iraq-war.html>> 1 January 2015.

'Arab jurists hail HM the King's initiative for establishing the Arab Human Rights Court' *Bahrain News Agency* (Cairo, 25 June 2013) <<http://www.bna.bh/portal/en/news/567229>> 1 January 2015.

‘Arab League seeks UN help for Syria mission’ *Aljazeera* (9 February 2012)  
<<http://www.aljazeera.com/news/middleeast/2012/02/201228224311826930.html>>  
accessed 1 January 2015.

‘Arab League suspends monitoring mission in Syria’, *Telegraph reporter and agencies in Cairo*, (28 January 2012)  
<<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9046461/Arab-League-suspends-monitoring-mission-in-Syria.html>> accessed 1 January 2015.

‘Arab League suspends Syria monitoring mission’ *Reuters* (29 January 2012)  
<<http://www.france24.com/en/20120128-arab-league-suspends-syria-monitoring-mission-amid-mounting-violence/>> accessed 1 January 2015.

‘Arab observer calls Syria mission a 'farce'’ *Aljazeera* (11 January 2012)  
<<http://www.aljazeera.com/news/middleeast/2012/01/201211163519970727.html>>  
accessed 1 January 2015.

‘Arbour Backs Plan That Seeks End to Zionism’ *The Ottawa Citizen* (2014)  
<<http://www.canada.com/ottawacitizen/news/story.html?id=621d0497-8ed7-4b74-a300-370b106faeb2>> accessed 4 October 2014.

‘Bahrain raps UN rights chief's comments’ *Tradedarbaia* (Manama, 10 September 2013)  
<[http://www.tradedarabia.com/news/LAW\\_242478.html](http://www.tradedarabia.com/news/LAW_242478.html)> 1 January 2015.

‘Bashar al-Assad's support for armed groups might lead to his regime's demise’ *Al Jazeera* (29 Mar 2014 ) <<http://www.aljazeera.com/indepth/opinion/2014/03/al-assad-fatal-strategic-mistak-201432910353132476.html>> accessed 12 August 2014

‘BBC inside Arab League summit in Kuwait’ *BBC News* (25 March 2014)  
<<http://www.bbc.co.uk/news/world-middle-east-26727681>> 1 January 2015

‘BBC World Service | Young in the Arab World’ *BBC Archive*  
<[http://www.bbc.co.uk/worldservice/specials/1723\\_youngarabworld/](http://www.bbc.co.uk/worldservice/specials/1723_youngarabworld/)> accessed 1 January 2015.

‘Civil society takes responsibility for Syrian refugees in Turkey’ *SES Türkiye* (28 July 2014)  
<[http://turkey.setimes.com/en\\_GB/articles/ses/articles/features/departments/national/2014/07/28/feature-01](http://turkey.setimes.com/en_GB/articles/ses/articles/features/departments/national/2014/07/28/feature-01)> accessed 2 January 2015.

‘Conference regarding the establishing of the Arab Human Rights Tribunal, begins in Manama today’ *Bahraini News Agency* (Manama, 25 February 2013)  
<<http://www.bna.bh/portal/en/news/548153>> accessed 1 January 2015.

‘Conference regarding the establishing of the Arab Human Rights Tribunal, begins in Manama today’ *Bahraini News Agency* (Manama, 25 February 2013)  
<<http://www.bna.bh/portal/en/news/548153>> accessed 1 January 2015.

‘Ex-Arab League monitor labels Syria mission “a farce”’ *BBC News* (11 January 2012) <<http://www.bbc.co.uk/news/world-middle-east-16507805>> accessed 1 January 2015.

‘Flashback: 1991 Gulf War’ *BBC News* (20 March 2003) <[http://news.bbc.co.uk/1/hi/world/middle\\_east/2754103.stm](http://news.bbc.co.uk/1/hi/world/middle_east/2754103.stm)> accessed 12 August 2014

‘Has the Arab League failed in Syria?’ *Aljazeera* (8 January 2012), <<http://www.aljazeera.com/programmes/insidesyria/2012/01/201218895746271.html>> accessed 1 January 2015.

‘Implementation of the Bahrain Independent Commission of Inquiry Recommendations’ *Bahrain News agency* (Manama, 20 March 2012) <<http://www.bna.bh/portal/en/news/499728>> 1 January 2015

‘In Doha, first Arab conference on human rights’ *Asia News* (13 December 2008) <<http://www.asianews.it/news-en/In-Doha,-first-Arab-conference-on-human-rights-14000.html>> 1 January 2015.

‘Key Maps: 1967: Six Day War’ *BBC News* <[http://news.bbc.co.uk/1/shared/spl/hi/middle\\_east/03/v3\\_israel\\_palestinians/maps/html/six\\_day\\_war.stm](http://news.bbc.co.uk/1/shared/spl/hi/middle_east/03/v3_israel_palestinians/maps/html/six_day_war.stm)> accessed 1 January 2015.

‘London 2012 Olympics: Saudi Arabian women to compete’ *BBC News* (12 July 2012) <<http://www.bbc.co.uk/news/world-middle-east-18813543>> accessed 1 January 2015.

‘Ministry Foundation and 'human rights' wings for human rights work in Bahrain’ *Alwast News* (in Arabic) (Manama, 23 July 2013) <<http://www.alwasatnews.com/3972/news/read/795075/1.html>> accessed 1 January 2015.

‘National Institution for Human Rights praises Teachers’ Role’ *Bahrain News Agency* (Manama, 4 October 2013) <<http://www.bna.bh/portal/en/news/582785>> accessed 1 January 2015.

‘NIHR's statement on International Day for Tolerance’ *Bahrain News Agency*, (Manama, 15 November 2013) <<http://www.bna.bh/portal/en/news/588353>> accessed 1 January 2015.

‘Opposition fail to get Syria Arab League seat’ *Aljazeera News* (March 27 2014) <<http://www.aljazeera.com/news/middleeast/2014/03/opposition-fail-get-syria-arab-league-seat-2014326144447997621.html>> accessed 12 August 2014

‘Opposition takes Syria seat at Arab League summit’ *BBC News* (26 March 2013) <<http://www.bbc.co.uk/news/world-middle-east-21936731>> accessed 1 January 2015.

‘Profile: Arab League’ *BBC News* (9 August 2011). <[http://news.bbc.co.uk/1/hi/world/middle\\_east/country\\_profiles/1550797.stm](http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/1550797.stm)> accessed 1 January 2015.

'Profile: European Court of Human Rights' *BBC News* (7 February 2012) <[http://news.bbc.co.uk/1/hi/world/europe/country\\_profiles/4789300.stm](http://news.bbc.co.uk/1/hi/world/europe/country_profiles/4789300.stm)> accessed 1 January 2015.

'Profile: Syria's ruling Baath Party' *BBC News* (9 July 9, 2012) <<http://www.bbc.co.uk/news/world-middle-east-18582755>> accessed 1 January 2015.

'Q&A: Palestinians' upgraded UN status' *BBC News* <<http://www.bbc.co.uk/news/world-middle-east-13701636>> accessed 1 January 2015.

'Q&A: Reforming European Court of Human Rights' *BBC News* (2012), <<http://www.bbc.co.uk/news/world-europe-17748313>> accessed 15 May 2012,

'Saudi Arabia calls for SNC seat at Arab summit' *Al-Arabiya* (25 March 2014) <<http://english.alarabiya.net/en/News/middle-east/2014/03/25/Syria-takes-center-stage-at-Arab-League-summit-.html> > accessed 1 January 2015.

'Saudi Arabia king swears in first women on Shura Council' *BBC News* (20 February 2013) <<http://www.bbc.co.uk/news/world-middle-east-21516955>> accessed 12 August 2014

'Similarities and Differences between National Institutions and Human Rights NGOs' *Bahrain Human Rights Monitor* <<http://www.bahrainmonitor.org/articles/a-019-01.html>> accessed 1 January 2015.

'Saudi Women to Compete in Games' *BBC News* (2012) <<http://www.bbc.co.uk/news/world-middle-east-18813543>> accessed 26 November 2014.

'Saudi Arabia sends tons of aid to Syrian refugees' *Al Arabiya* (31 March 2013) <<http://english.alarabiya.net/en/News/middle-east/2013/03/31/Saudi-Arabia-sends-tons-of-aids-to-Syrian-refugees-.html>> accessed 3 January 2014.

'Sudan profile' *BBC News* (14 March 2013) <<http://www.bbc.co.uk/news/world-africa-14094995>> 1 January 2015.

'Syria and the Arab League: no end in sight' *The Economist* (7 January 2012) <<http://www.economist.com/node/21542428>> accessed 12 August 2014

'Syria crisis: Guide to armed and political opposition' *BBC News* (17 October 2013) <<http://www.bbc.co.uk/news/world-middle-east-15798218>> accessed 1 January 2015.

'Syria crisis: Kofi Annan quits as UN-Arab League envoy' *BBC News* (2 August 2012) <<http://www.bbc.co.uk/news/world-middle-east-19099676>> accessed 1 January 2015.

'Syria crisis: Lakhdar Brahimi resigns as UN Arab League envoy' *BBC News* (13 May 2014) <<http://www.bbc.co.uk/news/world-middle-east-27395386>> accessed 1 January 2015.

‘Syria in focus on eve of Arab League meeting’ *Gulf News* (March 23, 2013) <<http://m.gulfnews.com/news/gulf/qatar/syria-in-focus-on-eve-of-arab-league-meeting-1.1162412>> accessed 1 January 2015.

‘Syria Iraq: The Islamic State militant group’ *BBC News* (2 August 2014) <<http://www.bbc.co.uk/news/world-middle-east-24179084>> accessed 1 January 2015.

‘Syria unrest: Arab League delays sending more observers’ *BBC News* (12 January 2012) <<http://www.bbc.co.uk/news/world-middle-east-16522961>> accessed 1 January 2015.

‘Syrian warplanes hammer ISIS targets in Raqqa’ *Al Arabiya News* (17 August 2014) <<http://english.alarabiya.net/en/News/2014/08/17/ISIS-closes-in-on-rebel-stronghold-in-north-Syria.html>> accessed 1 January 2015.

‘The Camp David Accords of 1979’ *BBC News* (29 November 2001) <[http://news.bbc.co.uk/1/hi/in\\_depth/middle\\_east/2001/israel\\_and\\_the\\_palestinians/key\\_documents/1632849.stm](http://news.bbc.co.uk/1/hi/in_depth/middle_east/2001/israel_and_the_palestinians/key_documents/1632849.stm)> accessed 1 January 2015.

‘The Sykes-Picot agreement’ *BBC News* (29 November 2001) <[http://news.bbc.co.uk/1/hi/in\\_depth/middle\\_east/2001/israel\\_and\\_the\\_palestinians/key\\_documents/1681362.stm](http://news.bbc.co.uk/1/hi/in_depth/middle_east/2001/israel_and_the_palestinians/key_documents/1681362.stm)> accessed 1 January 2015.

‘Timeline: Arab League. A chronology of key events’ *BBC News* (15 November 2011) <[http://news.bbc.co.uk/1/hi/world/middle\\_east/country\\_profiles/1550977.stm](http://news.bbc.co.uk/1/hi/world/middle_east/country_profiles/1550977.stm)> accessed 1 January 2015.

‘Timeline: Arab League’ *BBC News* <<http://news.bbc.co.uk>> accessed 12 July 2014.

‘Tunisia Votes in Historic Free Election’ *BBC News* (23 October 2013) <<http://www.bbc.co.uk/news/world-africa-15416702>> accessed 12 May 2014.

‘UN Human Rights Chief Calls on Algeria to Review Laws on Civil Society, Freedom of Assembly,’ *UN News Centre* (19 September 2012) <<http://www.un.org/apps/news/story.asp?NewsID=42936&Cr=algeria#.VHZZNIusWAU>> accessed 12 July 2014.

‘Who are Isis? The rise of the Islamic State in Iraq and the Levant’ *The Independent* (16 June 2014) <<http://www.independent.co.uk/news/world/middle-east/who-are-isis-the-rise-of-the-islamic-state-in-iraq-and-the-levant-9541421.html>> accessed 12 August 2014

‘Young in the Arab World: Lebanon’ *BBC News* (8 February 2005) <[http://newsvote.bbc.co.uk/1/hi/world/middle\\_east/4212973.stm](http://newsvote.bbc.co.uk/1/hi/world/middle_east/4212973.stm)> accessed 1 January 2015.  
<<http://edition.cnn.com/2014/08/04/world/meast/gaza-israel-why-civilian-deaths/>> accessed 1 January 2015.

Anderson S 'Why the Middle East's borders will never be the same again?' *CNN* (June 20, 2014) <<http://edition.cnn.com/2014/06/20/opinion/middle-east-borders-redrawn/>> accessed 1 January 2015.

Bahrawi N, 'ASEAN's Human Rights Divide' (2008) *Singapore News* <[www.ips.org.sg/Media/yr2008/Today\\_Asean's%20human%20rights%20divide\\_130608.pd](http://www.ips.org.sg/Media/yr2008/Today_Asean's%20human%20rights%20divide_130608.pd)>

Ben Bouazza B, 'Tunisian Islamist Leader Re-Elected as Party Head', *Associated Press* (17 July 2012) <<http://bigstory.ap.org/Art./tunisian-islamist-leader-re-elected-party-head>> 1 January 2015.

Black I 'UN Syria envoy Lakhdar Brahimi resigns after failure of Geneva talks' *The Guardian* (13 May 2014) <<http://www.theguardian.com/world/2014/may/13/un-syria-envoy-lakhdar-brahimi-resigns>> accessed 12 August 2014

Bowen J, 'Sharpening Sunni-Shia schism bodes ill for Middle East' *BBC News* (20 December 2013) <<http://www.bbc.co.uk/news/world-middle-east-25458755>> accessed 12 July 2014

Chulov M, 'Syria claims 90% of voters backed reforms in referendum' *The Guardian* (27 February 2012) <<http://www.theguardian.com/world/2012/feb/27/syria-bashar-al-assad>> accessed 1 January 2015.

CNN Wire Staff, 'Arab League's Syria mission extended by a month' *CNN* (25 January 2012) <<http://edition.cnn.com/2012/01/24/world/meast/syria-unrest/>> accessed 1 January 2015.

Dominique S, 'Libya's Elections Give Women a Good Starting Point' UPI NEWS, July 19, 2012, [http://www.upi.com/Top\\_News/World-News/2012/07/19/Libyas-elections-give-women-a-good-starting-point/WEN-9691342733884/](http://www.upi.com/Top_News/World-News/2012/07/19/Libyas-elections-give-women-a-good-starting-point/WEN-9691342733884/) 3 May 2014.

E Sciolino 'U.S. Rejects Notion That Human Rights Vary With Culture' *New York Times* (15 June 1993) <<http://www.nytimes.com/1993/06/15/world/us-rejects-notion-that-human-rights-vary-with-culture.html>> 3 May 2014.

Fantz A, 'Why are so many civilians dying in Hamas-Israel war?' *CNN* (August 6, 2014)

Lyon A, 'Arab League turns to U.N. as Gulf observers quit Syria' *Reuters* (Beirut, 24 January 2012) <<http://www.reuters.com/article/2012/01/24/us-syria-idUSTRE8041A820120124>> accessed 1 January 2015.

Oweis KY, 'Syria approves new constitution amid bloodshed' *Reuters* (27 February 2012) <<http://www.reuters.com/article/2012/02/27/us-syria-idUSL5E8DB0BH20120227>> accessed 1 January 2015.

Rifkindm M, 'The Middle East is ready to join the rest of the world' *London Evening Standard* (24 February 2011) <<http://www.standard.co.uk/news/the-middle-east-is-ready-to-join-the-rest-of-the-world-6570716.html>> accessed 24 February 2014.



Ryan Y, 'How Tunisia's revolution began' *Aljazeera* (26 January 2011) <<http://english.TheGuardian.net/indepth/features/2011/01/2011126121815985483.html>> accessed 1 February 2013.

Shlaim, A 'It's now clear: the Oslo peace accords were wrecked by Netanyahu's bad faith' *The Guardian* (12 September 2013) <<http://www.theguardian.com/commentisfree/2013/sep/12/oslo-israel-renege-colonial-palestine>> accessed 3 October 2014.

Sherlock R and Spencer R, 'Syria's Assad accused of boosting al-Qaeda with secret oil deals' *The Telegraph* (20 January 2014) <<http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10585391/Syrias-Assad-accused-of-boosting-al-Qaeda-with-secret-oil-deals.html>> accessed 24 June 2014.

Toumi H 'Arab Court for Human Rights forum in Bahrain King calls for Arab contributions to international justice, fairness' *Gulf News* (24 May 2014) <<http://gulfnews.com/news/gulf/bahrain/arab-court-for-human-rights-forum-in-bahrain-1.1338036>> accessed 12 October 2014.

### Online Publications

'Discover Islam', <[http://www.discoverislam.com/poster.asp?poster=DIP2004\\_28&page=1](http://www.discoverislam.com/poster.asp?poster=DIP2004_28&page=1)> accessed 12 August 2014.

'Legal Status of Individuals Fleeing Syria', Syria Needs Analysis Project, June 2013 <[http://reliefweb.int/sites/reliefweb.int/files/resources/legal\\_status\\_of\\_individuals\\_fleeing\\_syria.pdf](http://reliefweb.int/sites/reliefweb.int/files/resources/legal_status_of_individuals_fleeing_syria.pdf)> accessed 16 October 2014.

'Saudi Arabia ratifies Arab Charter on Human Rights' Royal Embassy of Saudi Arabia (April 15, 2009) <[http://www.saudiembassy.net/latest\\_news/news04150902.aspx](http://www.saudiembassy.net/latest_news/news04150902.aspx)> accessed 1 January 2015.

'The Situation Of Syrian Refugees In The Neighboring Countries: Findings, Conclusions and Recommendations', ORSAM Report No: 189, (April 2014) <[http://www.orsam.org.tr/en/enUploads/Article/Files/201452\\_189ing.pdf](http://www.orsam.org.tr/en/enUploads/Article/Files/201452_189ing.pdf)> accessed 1 January 2015.

van Vollenhoven WJ, 'Chapter Three Human Rights: The logistics for the journey' (2006) University of Pretoria <<http://upetd.up.ac.za/thesis/available/etd-06142006-130531/unrestricted/03chapter3.pdf>> accessed 1 January 2015.

Al Roken M 'The Arab Charter on human rights affirms the universality and indivisibility of human rights' *Bridging the Gulf* (28 December 2010). <[http://www.bridgingthegulf.org/en/about\\_us/editorials/The\\_Arab\\_Charter\\_on\\_human\\_rights\\_affirms\\_the\\_universality\\_and\\_indivisibility\\_of\\_human\\_rights.html?id=69](http://www.bridgingthegulf.org/en/about_us/editorials/The_Arab_Charter_on_human_rights_affirms_the_universality_and_indivisibility_of_human_rights.html?id=69)> accessed 1 January 2015.

Alkarama, 'SYRIA, The Permanent Agency – A Breeding Ground for Torture', Report submitted to the Committee against Torture in the context of the review of the initial periodic report of the Syrian Arab Republic, (Geneva, 9 April 2010)  
<<http://www.arabhumanrights.org/publications/countries/syria/shadowreports/Alkarama-Syria44-2010e.pdf>> accessed 1 January 2015.

Alshejani E, Director of Human Rights Department, 'League of Arab States', (2010) 10  
<[http://www.eoi.at/d/Sonderberichte%20-%20Brosch%C3%BCren/Frankreich/1303389570\\_Actes\\_Conference\\_1er\\_fevrier\\_-\\_ENGLISH\[1\].pdf](http://www.eoi.at/d/Sonderberichte%20-%20Brosch%C3%BCren/Frankreich/1303389570_Actes_Conference_1er_fevrier_-_ENGLISH[1].pdf)> accessed 1 January 2015.

Altwaijri, AO, Human Rights in Islamic Teachings,  
<<http://www.isesco.org.ma/pub/Eng/humanrights/page8.htm>> 1 January 2015.

Amnesty International 'Document - A guide to the African Commission guide on human and peoples' rights' A guide to the African Commission guide on human and peoples' rights  
<<http://www.amnesty.org/en/library/asset/IOR63/005/2007/en/693a5f5e-d36a-11dd-a329-2f46302a8cc6/ior630052007enhtml>> 1 January 2015.

Amnesty International 'Middle East and North Africa Region Re-drafting the Arab Charter on Human Rights: Building for a better Future' 1-7  
<<http://www.amnesty.org/en/library/asset/MDE01/002/2004/ar/63b5cabe-d60d-11dd-bb24-1fb85fe8fa05/mde010022004enpdf>> accessed 12 August 2014.

Amnesty International, 'Syria - Amnesty International Report 2010',  
<<http://www.amnesty.org/en/region/syria/report-2010>> accessed 12 August 2014.

Amnesty International 'Facts & Figures: Syria refugee crisis & international resettlement' (5 December 2014) <<http://www.amnesty.org/en/news/facts-figures-syria-refugee-crisis-international-resettlement-2014-12-05>> accessed 2 January 2015.

Arab League (LAS) – General Secretariat, (2006) 'The Arab Charter of Human Rights', Informational letter, Information and Communication Sector.  
<<http://www.arableague.org.uk/uk/League%20of%20Arab%20State%20and%20Human%20Rights.pdf>> accessed 1 January 2015. .

Bröning M, 'The End of The Arab League? What the Organization Can Learn From the African Union' (March 30, 2014)  
<<http://www.foreignaffairs.com/articles/141077/michael-broening/the-end-of-the-arab-league>> accessed 1 January 2015.

CFR, 'The Sunni- Shia Divide' <[http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news\\_release-news\\_release-the\\_sunni\\_shia\\_divide-link2-20140715&sp\\_mid=46474712&sp\\_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmxkLmNvbQS2](http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news_release-news_release-the_sunni_shia_divide-link2-20140715&sp_mid=46474712&sp_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmxkLmNvbQS2)> accessed 1 January 2015.

Chekir, H 'La modernisation de la Charte arabe des droits de l'homme', *Jura Gentium Rivista di filosofia del diritto internazionale e della politica globale*, (2004) [originally in French] <<http://www.juragentium.org/topics/islam/rights/fr/chekir.htm>> accessed 1 January 2015.

Child Rights International Network (CRIN) 'Child Rights and the League of Arab States' (04/08/2012) Publication (general) <<http://www.crin.org/resources/infoDetail.asp?ID=18054&flag=report>> accessed 1 January 2015.

Centre On Housing Rights And Evictions (COHRE) 'In Search Of Equality: A Survey of Law and Practice Related to Women's Inheritance Rights In The Middle East And North Africa (Mena) Region' Geneva, Switzerland. (October 2006). <[http://www.gewamed.net/share/img\\_documents/41\\_in\\_search\\_of\\_equity-\\_a\\_survey\\_of\\_law\\_and\\_practice\\_related\\_to\\_women\\_inheritance\\_rigths.pdf](http://www.gewamed.net/share/img_documents/41_in_search_of_equity-_a_survey_of_law_and_practice_related_to_women_inheritance_rigths.pdf)> accessed 1 January 2015.

Council on Foreign Relations, 'Arab Peace Initiative' (March 28, 2002) <<http://www.cfr.org/israel/arab-peace-initiative-2002/p13966>> accessed 1 January 2015.

Council on Foreign Relations, 'The Global Human Rights Regime Issue Brief' (June 19, 2013) <<http://www.cfr.org/human-rights/global-human-rights-regime/p27450>> accessed 1 January 2015.

Council on Foreign Relations, 'The Sunni-Shia divide' <[http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news\\_release-news\\_release-the\\_sunni\\_shia\\_divide-link2-20140715&sp\\_mid=46474712&sp\\_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmlkLmNvbQS2](http://www.cfr.org/peace-conflict-and-human-rights/sunni-shia-divide/p33176#!/?cid=nlc-news_release-news_release-the_sunni_shia_divide-link2-20140715&sp_mid=46474712&sp_rid=Z3Njb2JsZXRIQHJlYWxjbGVhcnRvcmlkLmNvbQS2)> accessed 1 January 2015.

Department of South Asian, Middle East and African Affairs, 'The League of Arab States' (2010) Ministry of Foreign Affairs, Thailand. <<http://sameaf.mfa.go.th/en/organization/detail.php?ID=200>> accessed 1 January 2015.

Deuja S 'Establishing a Robust Regional Human Rights Mechanism in South Asia' Vol. 6: 1 (June 2010) South Asia Regional Human Rights Mechanism <<http://forumasia.org/documents/South%20Asia%20HRM%20-%20Surya's%20Article%20in%20AHRD.pdf>> accessed 1 January 2015.

Dunne M and Williamson S, 'Egypt's Unprecedented Instability by the Numbers' (March 24, 2014) <<http://carnegieendowment.org/2014/03/24/egypt-s-unprecedented-instability-by-numbers/h5j3>> accessed 1 January 2015.

FIDH 'Arab League should postpone action to establish a court of human rights' (2 September 2014) <<http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/15957-arab-league-should-postpone-action-to-establish-a-court-of-human-rights#nb1>> accessed 1 January 2015.

FIDH ‘The Arab League and Human Rights: Challenges Ahead’ (Regional Seminar held in Cairo 16-17 February 2013) <[http://www.fidh.org/IMG/pdf/arab\\_league\\_human\\_rights\\_challenges.pdf](http://www.fidh.org/IMG/pdf/arab_league_human_rights_challenges.pdf)> 1 January 2015.

FIDH, ‘For An Effective Arab League Human Rights Protection System: LAS Secretary General Welcomes Convergence On Universal Standards, NGO Coalition Develops’ (Fidh.org, 2014) <<http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/For-an-effective-Arab-League-human-12932>> accessed 1 January 2015.

FIDH, ‘Proposed Arab Court of Human Rights: An empty vessel without substantial changes to the draft statute’ (6 June 2014) <<http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/15489-proposed-arab-court-of-human-rights-an-empty-vessel-without-substantial>> 1 January 2015.

FIDH, ‘the Establishment of an Arab Court of Human Rights Must Be Consistent With Universal Standards’ (Fidh.org, 2014) <<http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/The-establishment-of-an-Arab-Court-of-Human-Rights-must-be-consistent-with-13097>> accessed 6 October 2014.

Georgia v. Russia (nos. I and II) 12 <[http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE-053358F536B3/0/2011_Rapport_Annuel_EN.pdf)> accessed 16 October 2014.

Gui C, ‘Arab league summit dealing with hr,’ L’Archivio Pace Diritti Umani è stato istituito in base all’Art. 2 della L.R. del Veneto 30 marzo 1988, n18 e successiva L.R. 16 dicembre 1999, 55 (2013) <<http://unipd-centrodirittiumani.it/en/schede/Arab-League-Summits-dealing-with-human-rights/299>> 1 January 2015.

Gunay N ‘Arab League Summit Conferences, 1964–2000’ Washington institute. (2013) <<http://www.washingtoninstitute.org/policy-analysis/view/arab-league-summit-conferences-19642000>> accessed 1 January 2015.

Helpdesk Research Report: Effects of the ‘Arab Spring’ on the Middle East and North Africa (MENA) region (1 July 2011). Egypt Programme, GSDRC, 1, <<http://www.gsdrc.org/docs/open/HD774.pdf>> accessed 1 January 2015.

Human Rights Watch (HRW) ‘Civil Society Denounces Adoption of Flawed ASEAN Human Rights Declaration’ (November 19, 2012) <<http://www.hrw.org/news/2012/11/19/civil-society-denounces-adoption-flawed-asean-human-rights-declaration>> accessed 1 January 2015.

HRW, ‘Death from the Skies Deliberate and Indiscriminate Air Strikes on Civilians’ (2013) <[http://www.hrw.org/sites/default/files/reports/syria0413webwcover\\_1\\_0.pdf](http://www.hrw.org/sites/default/files/reports/syria0413webwcover_1_0.pdf)> accessed 1 January 2015.

HRW, ‘Syria: Strong Evidence Government Used Chemicals as a Weapon Civilian Casualties in Barrel Bomb Attacks on 3 Towns’ (13 May 2014)

<<http://www.hrw.org/news/2014/05/13/syria-strong-evidence-government-used-chemicals-weapon>> 1 January 2015.

HRW, 'World Report' Events of 2012' Human Rights Watch, (2013)  
<[http://www.hrw.org/sites/default/files/wr2013\\_web.pdf](http://www.hrw.org/sites/default/files/wr2013_web.pdf)> accessed 1 January 2015.

HRW, 'Arab League: Improve Regional Court Proposal, Draft Would Bar Victims from Filing Rights Complaints' (JUNE 6, 2014)  
<<http://www.hrw.org/news/2014/06/06/arab-league-improve-regional-court-proposal>> accessed 1 January 2015.

ICJ 'Arab League should postpone action to establish a court of human rights'(2 September 2014) <<http://www.icj.org/arab-league-should-postpone-action-to-establish-a-court-of-human-rights/>> accessed 1 January 2015.

ICJ, 'The complementarity meeting of the second session of the Permanent Arab Commission for Human Rights devoted to updating of the Arab Charter on Human Rights.' Comments of the International Commission of Jurists. (originally in French) (February 2004) Geneva. <[http://www.humanrights.ch/upload/pdf/061015\\_Comment-Charte-arabe.pdf](http://www.humanrights.ch/upload/pdf/061015_Comment-Charte-arabe.pdf)> accessed 1 January 2015.

ICJ, 'ICJ condemns fatally flawed ASEAN Human Rights Declaration', (November 19, 2012) <<http://www.icj.org/icj-condemns-fatally-flawed-asean-human-rights-declaration/>> accessed 1 January 2015.

ICJ, 'Arab League should postpone action to establish a court of human rights' (2 September 2014) <<http://www.icj.org/arab-league-should-postpone-action-to-establish-a-court-of-human-rights/>> accessed 1 January 2015.

ICJ, 'The Process of "Modernising" the Arab Charter on Human Rights: a Disquieting Regression'. Position Paper of the International Commission of Jurists, 20 December 2003, p 2, [www.icj.org](http://www.icj.org).

Irish Centre for Human Rights National University of Ireland, Galway  
(2008) <[http://www.nuigalway.ie/human\\_rights/Projects/Project\\_Ireland/ireland\\_v\\_uk.html](http://www.nuigalway.ie/human_rights/Projects/Project_Ireland/ireland_v_uk.html)> accessed 1 January 2015.

Luther P, 'Bahrain: UN human rights review must spur action not hollow pledges' Middle East and North Africa Programme Director at Amnesty International. (19 September 2012) <<https://www.amnesty.org/en/news/bahrain-un-human-rights-review-must-spur-action-not-hollow-pledges-2012-09-19>> accessed 16 October 2014.

Macaulay M, 'Syria: The Need to Reform Monitoring of States of Emergency', (December 2, 2005)  
<[http://www.lrwc.org/ws/wpcontent/uploads/2012/03/Syria.StateofEmergency.Macaulay.Feb\\_..06.pdf](http://www.lrwc.org/ws/wpcontent/uploads/2012/03/Syria.StateofEmergency.Macaulay.Feb_..06.pdf)> accessed 1 January 2015.

Masters J, 'The Arab League' (2012) Council on Foreign Relation  
<<http://www.cfr.org/middle-east-and-north-africa/arab-league/p25967>> accessed 16 March 2014.

Miller V, 'Is adherence to the European Convention on Human Rights a condition of European Union membership?' SN/IA/6577, 25 March 2014, International Affairs and Defence Section, 2 <<http://www.parliament.uk/briefing-papers/SN06577.pdf>> 1 January 2015.

Müller L F, 'The Most Recent Development in the Reform Process of the Control System of the European Convention on Human Rights – the Additional Protocol No. 14bis', (2009) <[http://www.zaoerv.de/69\\_2009/69\\_2009\\_2\\_b\\_397\\_402.pdf](http://www.zaoerv.de/69_2009/69_2009_2_b_397_402.pdf)> 1 January 2015.

Museum With No Frontiers (MWNF) & League of Arab States, 2011-2013,  
<<http://www.museumwnf.org/league-of-arab-State/?page=LAS-highlights-in-history.php>> 1 January 2015.

Nowak M, 'Protecting Dignity: an Agenda for Human Rights - Progress report on the eminent Persons Panel by Manfred Nowak, Panel member and rapporteur' (Genf 2008) 70 <<http://www.udhr60.ch/agenda/Nowak-Agenda.pdf>> 1 January 2015.

Permanent Observer Mission of the State of Palestine to the United Nations 'Background Paper Related to Palestine Status of Palestine at the United Nations' <<http://www.un.int/wcm/content/site/palestine/pid/11550>> 1 January 2015.

Registry of the European Court of Human Rights Strasbourg, 'Annual Report 2011' (2012) Strasbourg 12 <[http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE053358F536B3/0/2011\\_Rapport\\_Annuel\\_EN.pdf](http://www.echr.coe.int/NR/rdonlyres/219E9A92-716A-4337-99DE053358F536B3/0/2011_Rapport_Annuel_EN.pdf)> 1 January 2015.

Report of the Head of the League of Arab States Observer Mission to Syria for the period from 24 December 2011 to 18 January 2012. 27/01/12 1 McAULEY, 259.12D 12-21687, online,  
<[http://www.columbia.edu/~hauben/Report\\_of\\_Arab\\_League\\_Observer\\_Mission.pdf](http://www.columbia.edu/~hauben/Report_of_Arab_League_Observer_Mission.pdf)> accessed 16 October 2014.

Rishmawi M, 'The Arab Charter on Human Rights' (October 6, 2009)  
<<http://carnegieendowment.org/2009/10/06/arab-charter-on-human-rights/fbk1>> accessed 6 October 2014.

Rishmawi M 'The League of Arab States in the Wake of the "Arab Spring"' (2012) CIHRS, <<http://www.cihrs.org/wp-content/uploads/2013/09/Arab-Leage.pdf>> accessed 12 May 2014.

Royal Embassy of Saudi Arabia, 'Saudi Arabia ratifies Arab Charter on Human Rights' (April 15, 2009) <[http://www.saudiembassy.net/latest\\_news/news04150902.aspx](http://www.saudiembassy.net/latest_news/news04150902.aspx)> accessed 12 May 2014.

Sadek G, 'Legal Status of Refugees: Egypt, Jordan, Lebanon, and Iraq' (2013) <<http://www.loc.gov/law/help/refugees/legal-status-refugees.php>> accessed 1 January 2015.

Syrian Human Rights Committee, 'Special Report – Repressive Laws in Syria,' The International Center for Not-for-Profit Law (ICNL), 'NGO Law Monitor: Organization of Islamic Cooperation' <<http://www.icnl.org/research/monitor/oic.html>> accessed 1 January 2015.

The International Federation for Human Rights is a non-governmental federation for human rights organizations (FIDH), 'Arab League should postpone action to establish a court of human rights' (2 September 2014) <<http://www.fidh.org/en/north-africa-middle-east/league-of-arab-states/15957-arab-league-should-postpone-action-to-establish-a-court-of-human-rights#nb1>> 1 January 2015.

UK. Imperial Conference, Inter-Imperial Relations Committee: Report, Proceedings and Memoranda, 1926E (IR/26) Series.

<[http://www.foundingdocs.gov.au/resources/transcripts/cth1\\_doc\\_1926.pdf](http://www.foundingdocs.gov.au/resources/transcripts/cth1_doc_1926.pdf)> accessed 12 September 2014.

United Kingdom Foreign & Commonwealth Office, 'Human Rights and Democracy: The 2011 Foreign & Commonwealth Office Report' (April 2012) Presented to Parliament by the Secretary of State for Foreign and Commonwealth Affairs by Command of Her Majesty, 42

<<https://www.gov.uk/government/uploads/system/...data/.../Cm-8339.pdf>> accessed 1 January 2015

Van Vollenhoven W J, 'Chapter Three Human Rights: The logistics for the journey', (2006) University of Pretoria 17 <<http://upetd.up.ac.za/thesis/available/etd-06142006-130531/unrestricted/03chapter3.pdf>> 1 January 2015.

Zerrougui L, the Special Representative of the Secretary-General for Children and Armed Conflict at the Under Secretary-General, in L Zerrougui 'The Arab Charter on Human Rights' (2008) 7 <<http://projects.essex.ac.uk/ehrr/V7N2/Zerrougui.pdf>> accessed 12 July 2014.

Zawya, 'Think tank forecasts 19 million unemployed in region by 2020' (17 Feb 2011)<[http://www.zawya.com/Story.cfm/sidDS17022011\\_dsart57/Think%20Tank%20Forecasts%2019%20Million%20Unemployed%20In%20Region%20By%202020](http://www.zawya.com/Story.cfm/sidDS17022011_dsart57/Think%20Tank%20Forecasts%2019%20Million%20Unemployed%20In%20Region%20By%202020)> accessed 1 January 2015.

### **Thesis/ Working Papers**

Ahmari-Moghaddam A 'Towards International Islamic Human Rights: A comparative study of Islamic Law, Shari'ah, with universal human rights as defined in the International Bill of Human Rights' (2012) (A thesis submitted in conformity with the requirements for the degree of Master of Laws Graduate Department of Faculty of Law University of Toronto).

Al-Ajaji M S 'The league of Arab States and the promotion and protection of human rights', (Master of Laws Thesis UBC 1990).

<[https://circle.ubc.ca/bitstream/handle/2429/28821/UBC\\_1990\\_A6\\_4%20A42.pdf?sequence=1](https://circle.ubc.ca/bitstream/handle/2429/28821/UBC_1990_A6_4%20A42.pdf?sequence=1)> accessed 12 November 2013.

Deacon B, Ortiz I and Zelenev S, DESA Working Paper No. 37.

ST/ESA/2007/DWP/37. June 2007. Regional Social Policy, United Nations Department of Economic and Social Affairs,

<[http://www.un.org/esa/desa/papers/2007/wp37\\_2007.pdf](http://www.un.org/esa/desa/papers/2007/wp37_2007.pdf)> accessed 12 November 2013.

Emanuel J, 'Discriminatory National Laws in Jordan and Their Effect on Mixed Refugee Families' 12 (Program on Law & Hum. Dev., Univ. of Notre Dame Law Sch., Student Research Papers No. 2012-4, Apr. 2012) <<http://www3.nd.edu/~ndlaw/prog-human-rights/student-research-papers/NationalityLawsInJordan.pdf>> accessed 1 May 2014.

Kidanemariam F F, 'Enforcement of Human Rights under Regional Human Rights Mechanism: A Comparative Analysis' (University of Georgia School of Law, LLM Theses and Essays. USA: University of Georgia 2006)

<[http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1079&context=stu\\_llm](http://digitalcommons.law.uga.edu/cgi/viewcontent.cgi?article=1079&context=stu_llm)> accessed 1 March 2014.

Lee W 'Children's Rights and Islam' (UNICEF unpublished Working Paper, 2000).

Pinfari M 'Nothing but Failure? The Arab League and the Gulf Cooperation Council As Mediators In Middle Eastern Conflicts' (March, 1 2009) LSE Crisis States Research Centre, Working Paper no. 45/2999.

<<http://www.lse.ac.uk/internationalDevelopment/research/crisisStates/download/wp/wpSeries2/WP452.pdf>> accessed 1 January 2015.

R Bahdi, 'Background Paper on Women's Access to Justice in the MENA Region' (2007) Prepared for International Development Research Center Women's Rights and Citizenship Program and the Middle East Regional Office Middle East and North African Regional Consultation, Cairo, Egypt, December 9-11 2007.

<[http://www.uwindsor.ca/law/rbahdi/sites/uwindsor.ca.law.rbahdi/files/womens\\_access\\_to\\_justice\\_in\\_mena-bahdi\\_en.pdf](http://www.uwindsor.ca/law/rbahdi/sites/uwindsor.ca.law.rbahdi/files/womens_access_to_justice_in_mena-bahdi_en.pdf)> accessed 12 May 2014.