

The Arab Charter of Human Rights:  
A Voice for Sharia in the Modern World

by

Ahmed Mohamed El Demery  
Egypt



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1 QURAN chapter 27, verse 19, an electronic version of the Quran and its English translation is available at <http://www.searchtruth.com> (last visited Jan. 1, 2013). Each chapter in the Quran is composed of several verses, which vary in length. When citing the Quran in this book, the number of the chapter precedes the number of the verse. The chapter and the verse are separated by a colon.



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## Preface

This book by Ahmed El-Demery is a welcome addition to the literature on human rights in the Arab world.

The Arab world, like Africa, and before it Latin America and Europe, has seen the need over the last few decades to enhance regional human rights as a way of strengthening domestic human rights. The *European Convention on Human Rights and Fundamental Freedoms*, adopted in 1950, was the first document to have set the path towards the achievement of that goal. The establishment of a European Court of Human Rights produced effective results by enhancing human rights at the national and regional levels. Its counterpart in the Americas, though not as effective, nevertheless produced significant results. Africa and the Arab world are lagging behind. In 1970, the Arab League decided to establish a committee of experts to draft an Arab charter on human rights, but nothing came out of it for years. In 1985, I convened a high level committee of Arab Experts at the International Institute of Higher Studies in Criminal Sciences (ISISC) in Siracusa, Italy to draft an *Arab Charter of People's and Human Rights*. The highly dedicated expert group that produced the text deserves much credit, and the project was published by ISISC in 1986.<sup>1</sup> Thereafter ISISC formally submitted the text to the League of Arab States. Its secretary general, Dr. Esmat Abdel-Meguid, was instrumental in having the member-states agree to establish a committee of experts to review the text and eventually to have it adopted as an Arab regional instrument. It took many years for the Arab League's committee of experts to produce a text that was ultimately approved at a heads-of-state summit meeting in Tunis, Tunisia in 2005, where it was my privilege to be there as the official guest of the Tunisian government, the host country. There I saw the work that I started in 1985 come to fruition, even though it took 20 years to achieve that modest result. Even so, during the course of these 20 years a number of Arab states felt that the text was too progressive. They claimed that Islamic Law required less, and they proceeded to develop a more "conservative" text through a committee of experts, whose seat was in Jeddah, Saudi Arabia, they produced *The Cairo Declaration on Human Rights in Islam* (1990). That text was substantially less protective of human rights than that of the Arab Charter, which in turn was much less liberal than the European and the Inter-American Conventions.

One of the merits of Dr. Al-Demery's book is that in analyzing the Arab Charter it compares it with Islamic law, and more particularly with the *Sharī'â*, in order to show that the provisions contained in the Arab Charter, though drafted with

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1 See International Institute of Higher Studies in Criminal Sciences (ISISC), <http://www.isisc.org/dms/>.

modern terminology, are in conformity with Islamic values and are not in violation of any of the norms of the *Sharf'â*. Thus the author not only contributes to the knowledge of human rights in the Arab world, but also links human rights in that part of the world with Islam and the *Sharf'â*. This in itself is a valuable contribution to human rights and to Islam. The author does not, however, address the contents of the OIC's Islamic Charter to compare the texts of both documents. That would have been an even more valuable contribution since the OIC's text is claimed by the more conservative Islamists to be more in conformity with Islamic law and the *Sharf'â* than the Arab Charter – I for one disagree with that conclusion.

The author of this book also addresses the enforcement of the Arab Charter. Initially those of us who drafted the draft *Arab Charter of People's and Human Rights* (1986) were hoping that there would be a Commission and a Court to enforce the provisions of the Charter, modeled after the European system, but that was not the case. Arab governments were satisfied with an instrument that did not have an enforcement mechanism. It took seven years since that Charter's adoption in Tunis for Bahrain, at the suggestion of this writer, to propose an initiative in the Committee of Ministers of Foreign Affairs of the League of Arab States to establish an "Arab Court of Human Rights" to enforce the provisions of the Arab Charter of Human Rights. The Kingdom of Bahrain deserves much credit for that initiative, particularly after King Hamad had taken the bold and courageous decision in 2011 to establish the Bahrain Independent Committee of Inquiry ("BICI"), which I had the honor of chairing.<sup>2</sup>

Within a short span of two years, a committee of experts was established under that chair of Professor Badria el-Awadi (Kuwait) who had also served on the BICI Commission. The text produced by the el-Awadi committee was completed at the beginning of 2014, but has not to date been formally adopted. The author of this book, to his credit, discusses this text and offers his own proposals for improvement in the hope that they may be taken into account before the text is submitted to the committee of experts once again and to the Committee of Ministers of Foreign Affairs (and also, as is expected, to the Committee of Ministers of Justice). This process is expected to take a few more years before one can hope to see a convention adopted and a court established. In the meantime, Bahrain has graciously offered to host the future Arab Court of Human Rights. But, in the interim, the proposed convention will have to be approved, by the league of Arab

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2 See *Report of the Bahrain Independent Commission of Inquiry*, 23 November 2011, <http://www.bici.org.bh/>.

states, Arab states will have to join it, and their legislative bodies will have to ratify it and eventually adopt nationally implementing legislation.

The road to enforcing human rights in the Arab world is still a long one ahead, but as the Arabic proverb goes, "The longest journey starts with the first step."

At this historic stage of Arab transformation, what is more important than having another convention, is for Arab societies to make human rights part of their social values and the practice them. Accountability for human rights violations must be established and the judiciary must be more diligent in enforcing the rule of law.

Regrettably, governments fail to respect human rights in most Arab societies.<sup>3</sup> Nevertheless, the Arab peoples are keen on advancing the ideals of human rights, even though they have not yet incorporated them into their daily lives and into their individual and collective dealings with one another. Arab societies still have to learn that the road to democracy and social progress, as well as economic development, is through the respect for an observance of human rights. When the value of individual human dignity becomes paramount in Arab societies, these societies will progress.

Anyone following events in that part of the world during the last three years saw the "Arab Spring" turn into a bitter winter.<sup>4</sup> The latest and so far the worse conflict, in Syria, brought about, by July 2014, an estimated 200,000 persons killed in addition to an estimated 11,000 persons who were systematically tortured to death by the Assad regime.<sup>5</sup> Some three to four million persons have become refugees or internally displaced persons. Internationally prohibited weapons such as chemical weapons, barrel bombs, indiscriminate attacks upon civilian population, and the prevention of humanitarian relief remain common practice. These are not only violations of internationally protected human rights, they are also war crimes and crimes against humanity. Yet not a single international or regional organization is willing or capable to prevent this ongoing harm, let alone to hold its perpetrators accountable for such crimes. So much for Islamic values and

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3 See for example in Egypt, M. Cherif Bassiouni, *Chronicles of Egypt Revolution: Egypt Updates*, at <http://mcherifbassiouni.com/egypt-updates/>.

4 Esam Al-Amin, *The Arab Awakening Unveiled: Understanding Transformations and Revolutions in the Middle East*, (American Educational Trust 2013) & Marc Lynch, *The Arab Uprising: The Unfinished Revolutions of the New Middle East*, (Public Affairs 2012). See also e.g. Eugene M. Fisher and M. Cherif Bassiouni, *Storm over the Arab World: A People in Revolution*, (Follett Publishing Company: Chicago 1972).

5 See Josh Rogin, *U.S.: Assad's 'Machinery of Death' Worst Since the Nazis*, *The Daily Beast*, 7 July 2014 (<http://www.thedailybeast.com/articles/2014/07/07/u-s-assad-s-machinery-of-death-worst-since-the-nazis.html>).

specific norms, that continue to be violated in the name of Islam by Muslim extremists and Muslim regimes.

The same tragedy has occurred in Iraq, and continues to unfold with new protagonists. Since Iraq was liberated by the “coalition of the willing” in 2003, an estimated 300,000 people have been killed in an internal conflict between *Sunni* and *Shīʿā*, in the name of Islam. This resulted in the countless death of innocent civilians. In recent times, we have witnessed the emergence of the Islamic State of Iraq and Syria (“ISIS”), which has committed atrocities in both Syria and Iraq, also in the name of Islam.

These and other similar groups in the Arab world and elsewhere in the Muslim world, claim to act in the name of Islam, while at the same time committing violations of both the precepts and norms of Islam.<sup>6</sup> They indiscriminately kill civilians, prisoners, and children as well as indiscriminately attack civilian areas in violation of the specific norms of the *Sharfā*.<sup>7</sup> They also claim some type of legitimacy arising out of their self-professed claims of being Muslim jihadists in total violation of what Islam dictates.<sup>8</sup> They act as if whatever ends they perceive to be legitimate justifies whatever means they engage in, no matter what the human rights violations may be.

Whether it is in Syria, Iraq, or to a much lesser extent in Yemen, Egypt, Tunisia, and Libya violent Islamist groups claim justification under Islam where none exists, while at the same time rejecting or ignoring the applicability of International Human Rights Law and International Humanitarian Law. The individuals that form these groups are a product of their environments and social experiences. What they have in common is a human development deficit, which is enhanced by misleading religious teachings. They come from or have lived in countries which they have been victimized by tyrannical regimes and exploited by corrupt ruling elites. The consequences of such environments, in which the powerless and oppressed have suffered for decades without a glimmer of hope that things might change, have certainly been a factor in breeding the violence we are witnessing. History teaches us that when human dignity and justice are trampled,

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6 M. Cherif Bassiouni, *The Sharfā and Islamic Criminal Justice in the Time of War and Peace*. (Cambridge University Press, 2014). See also Ahmed al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York, USA: Palgrave, 2011).

7 *Id.*

8 M. Cherif Bassiouni, *Evolving Approaches to Jihad: From Self-Defense to Revolutionary and Regime-Change Political Violence in Jihad: Challenges to International and Domestic Law*, co-edited with Amna Guellali (T.M.C. Asser Press 2010).

people rebel and they are likely to engage in indiscriminate violence when that is the only remaining alternative to what they experience.

Arab governments hardly address these human and social conditions, and hardly redress the inequities caused by their governments and the exploitation of their ruling elites. On occasion, they pay lip service to the postulates of human rights by ratifying international conventions, which are seldom enforced. But even these symbolic achievements are hard fought. Maybe the initiative of having an Arab Court of Human Rights will make a difference – and to that extent it deserves our support.

July 2014

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## Introduction

No one can deny that human rights are one of the significant achievements for the protection of human dignity. International human rights are the fundamental rights that empower human beings to shape their lives in accordance with liberty, equality, and respect for human dignity.<sup>1</sup> International human rights are the sum of civil, political, economic, social, cultural, and collective rights recognized by international law. Human rights are the achievements of natural law and positive law and include the powerful process of possible sanctions, under positive law, in case of violation.

Regional human rights systems are considered an important pillar for the safeguarding and protection of human rights internationally.<sup>2</sup> It is of significant importance to have regional human rights protection, as some countries may be unwilling or unable to protect human rights domestically.

The human rights situation in the Middle East is a very hot issue of debate. The United Nations and several specific countries criticize the human rights protection of people in Arab Countries. It was stated in one of the reports issued by the United Nations Development Program:

Most Arab states have acceded to the major international charters pertaining to human rights which stipulate both the right to life and the right to freedom. Accession and ratification entail an obligation on the concerned Arab states to bring national legislation and practices in line with these conventions, an obligation that is however more honoured in the breach than the observance. At the regional level, the norms on human rights adopted by states and reflected in the Arab Charter on Human Rights (2004) are inconsistent with international standards. Indeed, the death penalty, which more than half the countries of the world have abolished and which the United Nations condemns, is applied liberally in several Arab countries, which do not limit it to the most serious crimes or exclude its imposition in cases of political crime.<sup>3</sup>

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- 1 MANFRED NOWAK, INTRODUCTION TO THE INTERNATIONAL HUMAN RIGHTS REGIME 1 (2003).
  - 2 EUROPEAN PARLIAMENT DIRECTORATE-GENERAL FOR EXTERNAL POLICIES, POLICY DEPARTMENT, THE ROLE OF REGIONAL HUMAN RIGHTS MECHANISM 1 (Nov. 2010), <http://www.europarl.europa.eu/committees/de/droi/studiesdownload.html?languageDocument=EN&file=33385> (last visited May 27, 2012).
  - 3 U.N. Development Programme, Regional Bureau for Arab States (RBAS), Challenges to Human Security in the Arab Countries, Arab Human Development Report 5 (2009), <http://www.arab-hdr.org/contents/index.aspx?rid=5> (last visited May 26, 2012).

In the past years, human rights violations and abuses were common occurrences in the Middle East. Several Arab countries declared a state of emergency for many years to justify derogation of fundamental human rights principles. Torture, violence, and inhuman treatment were widespread throughout much of the Middle East.<sup>4</sup> On the other hand, many Arab and Western countries are criticizing the efforts of imposing a Western style of human rights on the Middle East. It was stated at the U.S. House of Representatives in the joint hearing before the Subcommittees on Europe and the Middle East and Human Rights and International Organizations of the Committee on Foreign Affairs:

Over the years, government officials from the Middle East have suggested that given the profound differences in cultural and social norms and values, it would be unrealistic and inappropriate to impose western-style democracy in the Middle East. This may be true, but cultural and societal differences are no excuse for torture and repression. Many Middle Eastern countries have ratified key international human rights treaties, yet they have done little, if anything, to enforce them.<sup>5</sup>

An as example regarding women's rights, the kingdom of Saudi Arabia explained in one of its reports submitted to the United Nations that they are using a different perspective than that used by Western countries. It explained, "The Islamic Shariah respects these natural differences and accords woman a privileged position in order to achieve justice for her. For example, it charges the man with earning a living to provide for himself and his wife as compensation for the woman's role as conceiver, child bearer and mother."<sup>6</sup>

All of the previous points of views clearly show that there are different perspectives. I will give an in-depth explanation of the Arab system of human rights. My goal is to determine whether or not the Arab Charter on Human Rights is promoting human rights and how it can be promoted.

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4 Human Rights in the Middle East: Joint Hearing Before the Subcommittees on Europe and the Middle East and Human Rights and International Organizations of the Committee on Foreign Affairs, House Of Representatives, 102nd Cong., 2nd Sess. (Sept. 15, 1992) [hereinafter Human Rights in the Middle East].

5 *Id.* at 1.

6 U.N. Committee on the Elimination of All Forms of Discrimination against Women (CEDAW), Combined Initial and Second Periodic Reports of States Parties, Saudi Arabia,,U.N. Doc. CEDAW/C/SAU/2, at 11 (Mar. 29, 2007). <http://www.unhcr.org/refworld/publisher,CEDAW,STATEPARTIESREP,SAU,467bc0982,0.html> (last visited May 1, 2012).



### A. The Status of Human Rights in the Middle East

It has been stated that the Middle East and North Africa are considered fertile grounds for the infringements of human rights. In fact, there are several Middle Eastern countries currently seriously violating human rights.<sup>7</sup> A severe human rights situation exists in several countries parties to the League of Arab States. Several Arab countries used to rely on repression and inhuman treatment in order to maintain control over their nations.<sup>8</sup> Amnesty International's 2008 report regarding the state of the world's human rights states, "Indeed, it is only now, in the 60th anniversary year of the UDHR, that an Arab Charter on Human Rights is about to take effect. . . . The international human rights system has been slow to develop in the Middle East and North Africa region for many and complex reasons."<sup>9</sup> For instance, in Iraq:

Sectarian violence caused thousands of deaths, and gross mutilation and torture. Many Iraqis were forced to flee their homes – some 2 million refugees and a further 2.2 million internally displaced. . . . More than 60,000 people were being detained without trial by the US-led Multinational Force and the Iraqi authorities; torture was common and used by Iraqi security forces with impunity; and those accused of attacks and killings were hauled before courts where they failed to get a fair trial, yet, increasingly, were sentenced to death.<sup>10</sup>

In Algeria, an attack by an armed group led to the deaths of 130 people, including many civilians. With regards to the violence against women, the report explained that women remained in roles that were subordinate to men under family laws and other legislation in most of the region. In Egypt, it was reported that almost 250 women were killed by violent husbands or other family members in the first half of 2007. Thousands of people across the region were detained without trial for political reasons. In 2011, the Egyptian Ministry of Interior declared that there were no longer any administrative detainees in the prisons.<sup>11</sup>

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7 Human Rights in the Middle East and North Africa, <http://www.derechos.org/human-rights/mena/> (last visited Jan. 4, 2010); see also U.S. DEPARTMENT OF STATE: COUNTRY REPORT ON HUMAN RIGHTS PRACTICES (2007), <http://www.state.gov/g/drl/rls/hrrpt/2007/> (last visited Jan. 4, 2010).

8 Human Rights in the Middle East, *supra* note 4.

9 AMNESTY INT'L, MIDDLE EAST AND NORTH AFRICA, HUMAN RIGHTS REPORT (2008), <http://report2008.amnesty.org/eng/regions/middle-east-and-north-africa.html> (last visited July 1, 2012).

10 *Id.*

11 AMNESTY INT'L, *supra* note 9. In 2008, the Egyptian Ministry of Interior stated that the number of detainees does not exceed one thousand. The Statement of the Assistant of Minister of Interior before the Human Rights Commission of the People's Assembly can be found at:

The 2007 Report on Human Rights Practices report by the US Department of State states that in Morocco “[t]he law does not prohibit arbitrary arrest or detention, and police use both practices.”<sup>12</sup> The report also states that in Djibouti “[t]he law does not prohibit sexual harassment.”<sup>13</sup> In 2012, in Egypt “[m]ore than 70 people have been killed in a Port Said stadium in the worst outbreak of football violence in Egyptian history.”<sup>14</sup> In Egypt, the National Council of Human Rights states in its 2006/2007 report that complaints received by the Complaint Committee in the Council (in which citizens and different bodies asserted they have suffered from different sorts of infringements and violations of their rights) have increased by 25% in comparison with the year before.

In 2002, the concluding observation of the Human Rights Committee of the International Covenant on Civil and Political Rights (ICCPR) with respect to Egypt states, “the Committee notes that women are underrepresented in most areas of the public sector. . . . The Committee is disturbed by the fact that the state of emergency proclaimed by Egypt in 1981 is still in effect, meaning that the State party has been in a semi-permanent state of emergency ever since.”<sup>15</sup> With respect to Lebanon, the Report of the Special Rapporteur on the human rights, which examines aspects of victims of human trafficking, especially cases involving women and children, states, “Discrimination must be regarded as one of the root causes of demand for trafficking. Many of the Special Rapporteur’s interlocutors, including senior government officials, acknowledged that discriminatory attitudes on the basis of race, colour and ethnicity continue to be held by significant parts of Lebanese society.”<sup>16</sup> With respect to Jordan, the Report of the Special

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<http://www.masrawy.com/News/Egypt/Politics/2008/June/1/inter.aspx> (last visited Jan. 4, 2010).

12 US DEPARTMENT OF THE STATE, 2007 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES MOROCCO (2007), <http://www.state.gov/g/drl/rls/hrrpt/2007/100602.htm> (last visited Jan. 4, 2010).

13 US DEPARTMENT OF THE STATE, 2007 COUNTRY REPORT ON HUMAN RIGHTS PRACTICES DJIBOUTI (2007), <http://www.state.gov/g/drl/rls/hrrpt/2007/100478.htm> (last visited Jan. 4, 2010).

14 Richard Spencer, *Egypt Football Riot: Dozens Killed in Egyptian Football Stadium Riot*, THE TELEGRAPH, (Feb. 2, 2012), <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/9055387/Egypt-football-riot-Dozens-killed-in-Egyptian-football-stadium-riot.html>; see also Port Said Stadium disaster WIKIPEDIA.COM, [http://en.wikipedia.org/wiki/Port\\_Said\\_Stadium\\_disaster](http://en.wikipedia.org/wiki/Port_Said_Stadium_disaster) (last visited May 1, 2012).

15 U.N. International Covenant on Civil and Political Rights, Concluding Observations of the Human Rights Committee: Egypt, U.N. Doc. CCPR/CO/76/EGY (Nov. 28, 2002), [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.CO.76.EGY.En?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.CO.76.EGY.En?Opendocument) (last visited Jan. 4, 2010).

16 U.N. Office of the High Commissioner for Human Rights, The Report of the Special Rapporteur on the human rights aspects of the victims of trafficking in persons, especially women and children, <http://www.ohchr.org/EN/Issues/Trafficking/Pages/TraffickingIndex.aspx> (last visited Jan. 4, 2010).

Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment concludes “that the practice of torture persists in Jordan because of a lack of awareness of the problem, and because of institutionalized impunity.”<sup>17</sup> The report that was issued by the United Nations Development Program on the Arab countries states:

State constitutions do not adhere in several key respects to the international norms implicit in the charters to which Arab countries have acceded. . . . Arab countries’ constitutions also routinely delegate the definition of rights to state regulation. In doing so, they allow freedoms and individual rights to be violated at the point when the latter are translated into ordinary law. While Arab laws and constitutions generally do not mandate discrimination between citizens on the basis of language, religion, doctrine, or confession, discrimination against women is quite evident on the law books of several states.<sup>18</sup>

A defect in the laws was highlighted in the concluding observation of the Human Rights Committee of the ICCPR with respect to Egypt; it was found that some articles of the Egyptian Penal Code include discrimination with respect to the unequal treatment of men and women with respect to issues of adultery.<sup>19</sup> In 2007, the concluding observation of the Human Rights Committee of the ICCPR with respect to Algeria stated that the state of emergency proclaimed in Algeria has been in place since 1992.<sup>20</sup> In 2006, the concluding observations of the Committee on the Elimination of Racial Discrimination with respect to Oman emphasized that “article 17 of the Basic Law of the State, on equality and non-discrimination, does not include ‘race,’ ‘descent,’ and ‘national or ethnic origin’ among the prohibited grounds of discrimination.”<sup>21</sup>

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17 U.N. Human Rights Council, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Manfred Nowak: addendum: mission to Denmark, U.N. Doc. A/HRC/10/44/Add.2 (Feb. 18, 2009), <http://www.unhcr.org/refworld/docid/49b794bb2.html> (last visited Jan. 4, 2010).

18 ARAB HUMAN DEVELOPMENT REPORT, *supra* note 3, at 5.

19 U.N. International Covenant on Civil and Political Rights, Concluding Observations of the Human Rights Committee, *supra* note 15.

20 U.N. International Covenant on Civil and Political Rights, Concluding Observations of the Human Rights Committee on Algeria, U.N. Doc. CCPR/C/DZA/CO/3 (Dec. 12, 2007), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/457/74/PDF/G0745774.pdf?OpenElement> (last visited Jan. 4, 2010).

21 U.N. Committee on the Elimination of Racial Discrimination (CERD), U.N. Committee on the Elimination of Racial Discrimination: Concluding Observations, Oman, U.N. Doc. CERD/C/OMN/CO/1 (Oct. 19, 2006), <http://www.unhcr.org/refworld/docid/45c30bc70.html> (last visited January 10, 2013).

Similarly, Human Rights Watch noted inadequacies in the justice system in Tunisia by stating, “[t]he Judiciary lacks independence. Prosecutors and judges usually turn a blind eye to torture allegation, even when the subject of formal complaint submitted by lawyers.”<sup>22</sup> The 2007 concluding observations of the Human Rights Committee with respect to Libya explains, the “State party has not yet adopted legislation concerning the protection of women against violence, especially domestic violence.”<sup>23</sup> The 2006 conclusions and recommendations of the UN Committee against Torture stated that in Qatar “there is a lack of comprehensive definition of torture in domestic law necessary to meet the requirements of article 1 of the Convention.”<sup>24</sup> The 2002 conclusions and recommendations of the Committee against Torture with respect to Saudi Arabia provide that, “[w]hile noting the State party’s indication that Shariah expressly prohibits torture and other cruel and inhuman treatment, the State party’s domestic law itself does not explicitly reflect this prohibition, nor does it impose criminal sanctions.”<sup>25</sup>

Human rights violations were noted in the Casablanca Declaration of the Arab Human Rights Movement (1999), which states:

Despite the relative relaxation in the human rights situation in a number of Arab Countries, the general picture remains gloomy in comparison with the progress realized in other parts of the world. This is exacerbated by the failure of the League of Arab States to provide an effective regional conflict-resolution system and mechanisms for the protection of human rights in the Arab world.<sup>26</sup>

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22 HUMAN RIGHTS WATCH, WORLD REPORT, TUNISIA (2008), <http://hrw.org/englishhwr2k8/docs/2008/01/31/tunisi17621.htm> (last visited Jan. 4, 2010).

23 U.N. International Covenant on Civil and Political Rights, Concluding Observations of the Human Rights Committee on Libya, U.N. Doc. CCPR/C/DZA/CO/3 (Nov. 15, 2007), <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G07/453/27/PDF/G0745327.pdf?OpenElement> (last visited Jan. 12, 2013).

24 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Conclusions and recommendations of the Committee against Torture: Qatar, U.N. Doc. CAT/C/QAT/CO/1 (July 25, 2006), [http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/4b6bc620e633dfd1c12571ee00286e7f/\\$FILE/G0643239.pdf](http://www.unhchr.ch/tbs/doc.nsf/898586b1dc7b4043c1256a450044f331/4b6bc620e633dfd1c12571ee00286e7f/$FILE/G0643239.pdf) (last visited Jan. 4, 2013).

25 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Conclusions and recommendations of the Committee against Torture: Saudi Arabia, U.N. Doc. CAT/C/CR/28/5 (June 12, 2002), [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CAT.C.CR.28.5.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CAT.C.CR.28.5.En?OpenDocument) (last visited Jan. 4, 2010).

26 *The Casablanca Declaration of the Arab Human Rights Movement*, 17(3) N.Q.H.R. 363-369, (1999).

An Amnesty International report released in 2008 stated that the Universal Declaration of Human Rights was

“depicted by many leaders as representing an attempt to impose ‘Western’ values in the aftermath of the Second World War. The UDHR’s references to non-discrimination, for example, jarred with legal and customary systems in countries in the region, views on freedom of religion, and the different roles and positions of women and men.”<sup>27</sup>

Also, some people may think that there is a hidden political agenda in the international human rights reports and some countries may use human rights as a way to interfere in the national affairs of other countries. The Egyptian National Council for Human Rights expressed this view in its 2007/2008 yearly report. It stated that some of the international reports (whether governmental or non-governmental) criticize the human rights situation in Egypt and that these reports use double standards and contain hidden political agendas. The report added that it seems necessary to examine these reports, as human rights are concerned with international as well as national affairs.<sup>28</sup> In addition, some Arab scholars doubt the attitude taken by some Western governments towards democracy and human rights in Muslim countries.<sup>29</sup>

## B. Research Problem

The idea of the protection of human rights knows no international boundaries. The international community has an obligation to ensure that governments guarantee and protect human rights wherever they are being violated. Therefore, international protection is an important final strategy for the protection of human rights. On the other hand, international protection is not always effective as countries may refrain from ratifying internationally binding treaties and protocols. Regional protection is more effective as it is supposed to balance international human rights and regional cultures and traditions.

The United Nations Charter and the Universal Declaration on Human Rights (UDHR) are considered important first steps towards the protection of human rights. There are three regional human rights systems: European, American, and African. The first-ever regional human rights system for the Middle Eastern

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27 AMNESTY INT’L, MIDDLE EAST AND NORTH AFRICA, HUMAN RIGHTS REPORT, *supra* note 9.

28 THE YEARLY REPORT OF THE NATIONAL COUNCIL FOR HUMAN RIGHTS (2008), [http://www.nchr.org.eg/popup\\_window.html?pdf\\_url=annual\\_pdf/07/report.pdf](http://www.nchr.org.eg/popup_window.html?pdf_url=annual_pdf/07/report.pdf) (last visited Jan. 4, 2010).

29 Azizah Al-Hibri, *ISLAM, LAW AND CUSTOM: REDEFINING MUSLIM WOMEN’S RIGHTS*, 12 AM. U. J. INT’L L. & POL’Y 4 (1997).

countries is the Arab Charter on Human Rights. The Charter entered into force in 2008. The Arab Charter on Human Rights is considered to be the only binding human rights instrument for many Arab countries that did not ratify other human rights treaties. Also, Arab countries consider the Charter to be the only human rights instrument that reflects and respects their own cultures and traditions. The Charter provides for the establishment of a committee that is responsible for examining reports submitted by states parties every three years. After examining these reports, the Committee includes its comments and recommendations in its annual report submitted to the Council of the League of the Arab States.

Although the Arab Charter on Human Rights is a late achievement in the realm of regional human rights systems, it has still made important progress that should be encouraged, implemented, and promoted in order to further develop an effective Arab regional human rights system for the Middle East. The Arab Charter on Human Rights strikes a balance between the protection of international human rights standards and respect for domestic cultures and traditions. Most of the Middle Eastern Arab cultures and traditions originated from Islamic Sharia.<sup>30</sup> Several Arab countries use Islamic Sharia law as a main component of the constitution. Therefore, Sharia law is not merely a religion to follow, but also a legal system to apply. The goal of the Arab Charter is to balance both respect of Sharia law and the implementation of international principles of human rights. However, the Charter still does not have an effective mechanism supervising the implementation of international human rights principles. This Charter should be implemented effectively and further developed in order to protect human rights in this region. It would be very useful to have effective supervisory bodies to oversee the implementation of the rights protected by the Charter. This supervisory body would be trusted more if its members would be expert nationals of the member countries of the League of Arab States.

### C. Research Questions

Applying Sharia law as a main source of law may raise questions with respect to universalism and cultural relativism. Can we find common ground between Sharia law and international human rights standards? Is there a minimum universal core of human rights that is compatible with Sharia law? What should we consider to be the essence of Sharia law and where should we look for guidance with respect to the development of a new consensus between Sharia law and

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30 As to the transliteration, Arabic words have certain transliteration rules. For instance, the correct transliteration of some Arabic words are Shari<sup>ʿ</sup>a, Qur'<sup>'</sup>an and Ijma<sup>ʿ</sup>. However, for ease of reading of the book I have not made the proper transliteration.

international human rights? Can we have a moderate Islamic human rights theory that is the common ground between Sharia principles and international principles on human rights?

These questions continue: Does the Charter not need further amendments? Or is it still in an embryonic stage that requires further solidification and greater coherence? How can it be made more effective? Does the Arab Charter allow for the amendment of its articles to enable the establishment of an Arab Court and to modify the structure and role played by the Committee? Does the Charter have rights that are in extreme contradiction with international human rights principles? Does the Charter include rights that are contrary to views associated with Western human rights? Does success of the Charter require the imitation of another regional system that already has proven itself as successful? Or can the Charter still be effective and successful while reflecting and respecting the national and regional cultures and traditions on the condition that they are not contrary to the international minimum standards of human rights? Does the Arab Charter already protect and promote human rights in the Arab region? If not, what can be done to promote and protect human rights through the Arab Charter? Does the Charter have an effective mechanism that can supervise the implementation of the rights protected by the Arab Charter? Is Sharia law the standard for the Arab Charter? Or is Sharia used to evaluate the rights outlined in the Arab Charter?

#### D. Research Methodology

The goal of this book is to find answers to all of the previous questions through a comparative study. Determining how best to improve the efficiency of the Arab Charter must be done through a comparative analysis between the Charter and other regional human rights systems. The European system is considered to have the best regional human rights mechanisms. While not considered the most effective, the African human rights system is still very important because some Arab countries are parties to both the African Charter and the Arab Charter. In addition, the African and the Arab systems have some cultures and traditions in common.

Due to the fact that many Arab countries apply Sharia law as a legal system, it will be necessary to explain the nature, source, goals, and purpose of Sharia law in a subsequent chapter. The chapter will examine the possibility of reconciliation between Sharia law and human rights. The chapter will outline interpretations of Islam that demonstrate alignment with the core of shared human rights principles. Through the use of evidence, I will show that there is no need to reject

Sharia law in order to secure human rights.<sup>31</sup> This common ground between international human rights principles and Islam will establish the possibility for greater dialogue between the two. This idea is expressed by the Council of Europe in the conclusions adopted by the Interregional Meeting in advance of the World Conference on Human Rights: The Council stated:

We must go back to listening. More thought and effort must be given to enriching the human rights discourse by explicit reference to other non-Western religions and cultural traditions. By tracing the linkages between constitutional values on the one hand and the concepts, ideas and institutions which are central to Islam or Hindu-Buddhist traditions or other traditions, the base of support for fundamental rights can be expanded and the claim to universality vindicated. The Western World has no monopoly or patent on basic human rights. We must embrace cultural diversity but not at the expense of universal minimum standards.<sup>32</sup>

This discussion will draw from the decisions of different Arab domestic courts, but will focus particularly on cases from the Egyptian courts.

Recognizing that there are parts of the Charter that reflect the rights of the cultures and traditions of the Arab countries and seem to be in contradiction with international human rights principles, this book will provide suggestions and recommendations as to how the Arab Charter can be improved through amending articles and additional protocols. In its most recent report, Amnesty International states that "this Charter has positive features which enlarge on the rights enshrined in international human rights treaties, but it also has severely negative aspects – such as failing to outlaw the executing of children – that states could seek to use to undermine their obligations under binding global standards."<sup>33</sup> Weak points, such as these, need to be addressed.

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31 KATERINA DALACOURA, *ISLAM, LIBERALISM AND HUMAN RIGHTS* 39 (3d ed. 2007).

32 Conclusions by the General Rapporteur, Mary Robinson, President of Ireland, *Human Rights at the Dawn of the 21st Century*, Council of Europe Doc. CE/CMDH (93), at 16 (January 1993) (citing World Conference on Human Rights, *Status of Preparation of Publications, Studies and Documents for the World Conference*, U.N. Doc. A/CONF.157/PC/62/Add.11/Rev.1 (Apr. 22, 1993), [http://www.bayefsky.com/expertreport/expertreport\\_1993.pdf](http://www.bayefsky.com/expertreport/expertreport_1993.pdf) (last visited Jan. 16, 2010)).

33 AMNESTY INT'L, *MIDDLE EAST AND NORTH AFRICA, HUMAN RIGHTS REPORT*, *supra* note 9.



#### E. The Significance of the Study

This book seeks to achieve certain specific goals. First, through comparing Western and Arab societies, it will explain the primary concepts within Western society and Western views on human rights in such a way that they can be clearly understood by the Arab countries. At the same time, it will try to assist Western society in the development of a deeper understanding of the Arab view on human rights and Arab cultures, traditions, as well as religious beliefs related to human rights. Second, it will highlight the history of human rights violations in Arab states. In addition, it will clarify how the Arab Charter on Human Rights will help in rectifying the human rights situation in Arab countries. This will assist the League of Arab States in improving the effectiveness of the Charter, which can be particularly enabled through the enactment of the necessary amendments that it proposes upon a comparative study of other regional human rights systems.

Third, I hope to help the states parties of the League of Arab States understand the rights protected by the Arab Charter such that these rights can be applied on the national level in cases where they are matching Sharia law. In addition, this book will provide a detailed explanation of the different mechanisms for the supervision of the protection of human rights in order to help legislators issue additional optional protocols for the improvement of the Arab Charter. Both the comparative studies and the theoretical discussion will guide states parties to become more acquainted with the best procedures, rules, and theories relevant to the promotion and the protection of human rights. The theoretical discussion will help uncover the theory that best balances compliance with international human rights standards and respect to the Middle Eastern cultures and traditions. The discussion will focus not only on substantive rights, but also on procedural rules. The discussion of the procedures related to the other regional human rights treaties will contribute to ensuring the solidity and concreteness of the Arab Charter. This is because most countries in the world (both developed and developing) have ratified most of the international and regional human rights treaties. As a result, there are many treaties and many domestic laws guaranteeing human rights. However, there still are continuing human rights violations by countries that have ratified these treaties. This means that the treaties and how they deal with human rights are not the only, or even the primary, issue. Instead, the primary issue is the implementation of the rights enshrined within in these treaties, which can only be done through effective procedures. Indeed, the implementation is the heart and soul of the success of every treaty. In this way, it is also vitally important to focus on implementation.

Fourth, many people in the Middle East do not have full knowledge of their human rights. This book should help to expand the knowledge of the peoples

living in the Middle East such that they have a better understanding of their rights and duties, as much it hopes to be a positive contribution to the literature on human rights and for professionals seeking to improve the Arab Charter on Human Rights.

#### F. The Need for a Regional Charter

There is a long-standing debate about the right of the international community to protect individuals of other states from human rights violations. In 1924, the Permanent Court of International Justice determined that "it is an elementary principle of international law that a State is entitled to protect its subjects, when injured by acts contrary to international law committed by another State."<sup>34</sup> The idea of protecting individual rights in international law began to develop more formally on August 8, 1945, with the Charter of the International Military Tribunal. The Charter of the International Military Tribunal established the Nuremberg Tribunal whereby individuals, not states, could be tried for:

- a. Crimes Against Peace: namely, planning, preparation, initiation, or waging of a war of aggression, or a war in violation of international treaties, agreements, or assurances, or participation in a common plan or conspiracy for the accomplishment of any of the foregoing;
- b. War Crimes: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to slave labor or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity;
- c. Crimes against humanity: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the country where perpetrated.<sup>35</sup>

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34 Mavrommatis Palestine Concession, 1924 P.C.I.J. (ser A) No. 2, at 12 (Aug. 30 1924).

35 International Committee of the Red Cross, *Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, and Charter of the International Military Tribunal*. London, (Aug. 8 1945), <http://www.icrc.org/ihi.nsf/WebART/350-530014?OpenDocument> (last visited May 21, 2012).

In 1946, the judgment of the Nuremberg Tribunal confirmed the non-positivist norm that both individuals and states are subject to international law. The Nuremberg judgment states:

It was submitted that international law is concerned with the actions of sovereign states, and provides no punishment for individuals; and further, that where the act in question is an act of state, those who carry it out are not personally responsible, but are protected by the doctrine of the sovereignty of the State. In the opinion of the Tribunal, both these submissions must be rejected. That international law imposes duties and liabilities upon individuals as well as upon states has long been recognized. In the recent case of *Ex Parte Quirin* (1942, 317 U.S. 1, 63 S.Ct. 2, 87 L.Ed. 3), before the Supreme Court of the United States, persons were charged during the war with landing in the United States for the purposes of spying and sabotage. The late Chief Justice Stone, speaking for the Court, said:

"From the very beginning of its history this Court has applied the law of war as including that part of the law of nations which prescribes for the conduct of war the status, rights and duties of enemy nations as well as enemy individuals."

He went on to give a list of cases tried by the Courts, where individual offenders were charged with offences against the law of nations, and particularly the laws of war. Many other authorities could be cited, but enough has been said to show that individuals can be punished for violations of international law. Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.<sup>36</sup>

The Nuremberg Judgment clearly showed that human rights of individuals are protected under international law and that persons committing these violations are legally responsible under international law. The Charter of the United Nations also mentioned the same principle. The Charter states that the United Nations shall promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."<sup>37</sup>

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36 The Nuremberg Trial, 1946, 6 F.R.D. 69, 110 (1946); see also, Judgment: The Law of the Charter, LAW.YALE.EDU, <http://avalon.law.yale.edu/imt/judlawch.asp> (last visited May 21, 2012).

37 United Nations, *Charter of the United Nations*, 1 UNTS XVI, art. 55 (c) (Oct. 24, 1945),

Article 1 of Rome Statue of the International Criminal Court mentions explicitly that the jurisdiction of the International Criminal Court extends over individuals as they are responsible under international law. It provides that,

An International Criminal Court ('the Court') is hereby established. It shall be a permanent institution and shall have the power to exercise its jurisdiction over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions. The jurisdiction and functioning of the Court shall be governed by the provisions of this Statute.<sup>38</sup>

The Crimes within the jurisdiction of the International Criminal Court are the most serious crimes. Article 5 of Rome statue provides that,

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:
  - (a) The crime of genocide;
  - (b) Crimes against humanity;
  - (c) War crimes;
  - (d) The crime of aggression.<sup>39</sup>

The jurisdiction of the International Criminal Court clearly shows that individuals are currently subject to the international jurisdiction. "The development of a body of international criminal law which imposes responsibilities directly on individuals and punishes violations through international mechanisms is relatively recent."<sup>40</sup>

Cherif Bassiouni, listed twenty-five categories of international crimes, that is crimes which affect a significant international interest or consist of egregious conduct offending commonly shared values which involve more than the State where they are committed because of differences of nationality of victims or perpetrators or the means employed, or which concern a lesser protected interest which cannot be defended without international criminalization.<sup>41</sup>

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<http://www.un.org/en/documents/charter/index.shtml> (last visited Feb. 2, 2013).

38 Article 5 of Rome Statue of the International Criminal Court (*opened for signature July. 17, 1998*) (*entered into force July. 1, 2002*), <http://www.icc-cpi.int/NR/rdonlyres/ADD16852-AEE9-4757-ABE7-9CDC7CF02886/283503/RomeStatutEng1.pdf>

39 Article 5 (1) of Rome Statue of the International Criminal Court.

40 ROBERT CRYER ET. AL., AN INTRODUCTION TO INTERNATIONAL CRIMINAL LAW AND PROCEDURE (2<sup>nd</sup> ed. 2010).

41 Id. (Citing. M. CHERIF BASSIOUNI (ED.), INTERNATIONAL CRIMINAL LAW, 3 (3<sup>rd</sup> ed. 2008)).

Professor William A. Schabas explained that the Rome Statute safeguards international human rights. He elaborates that,

The Rome Statute provides for the creation of an international criminal court with power to try and punish for the most serious violations of human rights in cases when national justice systems fail at the task. It constitutes a benchmark in the progressive development of international human rights, whose beginning dates back more than sixty years, to the adoption on 10 December 1948 of the Universal Declaration of Human Rights by the third session of the United Nations General Assembly.<sup>42</sup>

Although it may seem that both the international criminal law and international protection of human rights are two branches of law independent of each other, there is a direct link between them. The international criminal law is based mainly on the criminalization of violations of fundamental human rights.<sup>43</sup> "The growth and expansion of international and national human rights protection have impacted ICL through the criminalization of violations of fundamental human rights, providing for victims' rights (including accountability) and by means of establishing standards of fairness and due process."<sup>44</sup>

The UDHR, which is not a binding instrument for states, was the first international declaration to deal with the issue of human rights. Since it is non-binding, the rights outlined in the Declaration are not enforceable. The ICCPR was very important for the ratifying countries because it is a binding instrument. The European Convention on Human Rights was similarly important for the protection of human rights in Europe because it, too, is a binding instrument.<sup>45</sup> On the other hand, some of the Arab countries have still not ratified many of the international treaties. The Committee of the United Nations Convention on Elimination of All Forms of Discrimination against Women mentioned:

States' adherence to the nine major international human rights instruments enhances the enjoyment by women of their human rights and fundamental freedoms in all aspects of life. Therefore, the Committee encourages the Government of Saudi Arabia to consider ratifying the treaties to which it is not yet a party, namely, the International Cove-

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42 WILLIAM A. SCHABAS, *AN INTRODUCTION TO THE INTERNATIONAL CRIMINAL COURT*, ix (4<sup>th</sup> ed. 2011).

43 M. CHERIF BASSIOUNI & KHALED M. AHMED, *INTERNATIONAL AND REGIONAL INSTRUMENTS ON CRIMINAL JUSTICE, PART II, INTERNATIONAL CRIMES AND COOPERATION IN CRIMINAL MATTERS*, 1 (2007).

44 M. CHERIF BASSIOUNI, *INTRODUCTION TO INTERNATIONAL CRIMINAL LAW*, cxxii (2<sup>nd</sup> ed. 2012).

45 MARK W. JANIS & RICHARD S. KAY, *EUROPEAN HUMAN RIGHTS LAW* 21 (1990).

nant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, the International Convention for the Protection of All Persons from Enforced Disappearance, and the Convention on the Rights of Persons with Disabilities.<sup>46</sup>

Even some of the Arab countries that have ratified the international treaties have put many reservations on the rights protected by these treaties. Therefore, it is better and more efficient to have an effective regional treaty that is ratified by the countries of the entire region.

## G. Roadmap

Chapter 1 of this book focuses on broadly defining human rights. This chapter explains the meaning and origins of human rights and also briefly highlights sources and theories of human rights.

Chapter 2 of this book focuses on Sharia law. This chapter explains how understanding Sharia law is important to being able to understand the Arab Charter and the role it plays in interpreting the Charter. Nearly all member countries of the Arab League apply Sharia law as a foundational component of their constitution. As such, in my book I will focus on the explaining that the Sharia law (Islamic law) does not contradict the values of Western societies. It has also been argued that Sharia law facilitates authoritarianism and opposes many human rights principles.<sup>47</sup> Similarly, it has been argued that democracy is contrary to Islam because democracy permits the adoption of laws that are incompatible with Islam.<sup>48</sup> On the other hand, many Muslim scholars demonstrate there is a direct link between Sharia law and human rights and that the misunderstanding of Islam (which prevents others from seeing this connection) is because of a lack of knowledge and the strong influence of the media.<sup>49</sup> This could also be due to

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46 U.N. Committee the Elimination of All Forms of Discrimination against Women, Concluding Comments of the Committee on the Elimination of Discrimination against Women: Saudi Arabia, U.N. Doc. CEDAW/C/SAU/CO/2, at 9 (Apr. 8, 2008), [http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SAU.CO.2\\_en.pdf](http://www2.ohchr.org/english/bodies/cedaw/docs/CEDAW.C.SAU.CO.2_en.pdf) (last visited March 10, 2012).

47 DANIEL E. PRICE, *ISLAMIC POLITICAL CULTURE, DEMOCRACY, AND HUMAN RIGHTS: A COMPARATIVE STUDY* xi (1st ed. 1999).

48 David F. Greenberg & Valerie West, *Siting the Death Penalty Internationally*, 33 *LAW & SOC. INQUIRY* 295 (2008).

49 El-Ghirani, *The Legal Concept of Human Rights in Islam*, <http://www.theses.com/idx/scripts/it.asp?xml=F:\index\idx\docs\all\37\it00154142.htm&subfolder=/search> (last visited Jan. 4, 2010); See also *Advice from a Muslim: Don't stereotype Muslims as bombers, billionaires or belly*

acts of Islamic extremists that misrepresent the religion, which results in a misunderstanding of Islam by the West. For instance, if a terrorist who is a Muslim becomes a suicide bomber and kills innocent civilians, Western society may believe that Islam has encouraged Muslims to commit such an act. However, according to Islamic Sharia, this act is entirely forbidden and against Sharia law. This chapter, which focuses entirely on Sharia law, will speak to all of these issues by highlighting the pillars of Islam and the principles, objective, and purpose of Sharia law. This chapter also explains the origins of Sharia law and outlines what is considered against the public order of Sharia law. The Arab Charter on Human Rights strikes a balance between the protection of international human rights standards and respect for domestic cultures and traditions.

Chapter 3 shows how Sharia law fits with my own theory of human rights. Furthermore, this chapter explains different theories of human rights, such as moderate cultural relativism, universalism, strict cultural relativism, and reverse moderate relativism. These human rights theories will, in an important way, help in explaining the need for human rights. I am here suggesting a new theory of human rights that justifies the evaluation process used in my dissertation. In addition, this chapter mentions the possibilities of reconciliation between international human rights and Islamic law.

Chapter 4 outlines the Arab Charter on Human Rights. The chapter explains the history of the Arab League and the background, philosophy, and scope of the Arab Charter. Furthermore, this chapter details the rights protected by, and the supervisory mechanism within, the Arab Charter. In addition, I refer to an interview that I conducted with Dr. Nabil El Araby, the Secretary General of the Arab League and I mention his opinion regarding several important topics.

Chapter 5 offers an evaluation of substantive human rights protections in the Arab Charter. In addition, this chapter outlines a comparison between the Arab Charter on Human Rights and other international and regional instruments. It examines the rights incorporated in the Arab Charter through a comparative lens (by contrasting it with international and regional human rights instruments). Specific rights from the Arab Charter (such as the right to life, the right to not be tortured, equality between men and women, freedom of religion, prohibition of slavery, and freedom of movement) are reviewed and evaluated to determine whether they do, or do not, promote human rights. This chapter analyzes various

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*dancers*, <http://www.news.cornell.edu/stories/Feb06/bajwa.cover.cp.html> (last visited Feb, 3, 2013).

problematic substantive human rights guarantees whereby Arab concepts may seem to collide with 'universal' concepts.

Chapter 6 offers an evaluation of the procedural human rights protections outlined by the Arab Human Rights Committee. I will explain the duties of the existing Committee. I will highlight the work being done by the Arab Committee. I will briefly highlight the Jordanian and the Algerian reports that were submitted by the governments of Jordan and Algeria to the Arab Committee on Human Rights. I will also state the conclusions and recommendations of the Committee with respect to the report of Jordan.

In Chapter 7, I will explain and suggest what can be done to improve the work of the Committee to make it more effective and efficient. For instance, I will suggest that the Committee should have a method through which to receive complaints from states and individuals. This is a very important chapter, as it will focus on procedural aspects. It compares the existing mechanisms of the Arab Charter's Committee with the Committee of African Charter on Human and Peoples' Rights. This comparison extends to the jurisdiction and jurisprudence. I will also propose a protocol that includes all of my recommendation for establishing an Arab Committee on Human Rights.

Chapter 8 offers an evaluation of the procedural human rights protections in the Arab Charter through an Arab Court on Human Rights. The existing Arab Charter does not have such a Court, nor did it outline the establishment of one. I will suggest a proposal for an optional protocol to establish an Arab Court. This chapter is an important evaluation of the Charter and it suggests the considerable value of an Arab Court. I will suggest the ways in which the court judges should be chosen and will outline the immunities they could be given. I will also propose a protocol that includes all of my recommendation for establishing an Arab Court on Human Rights. My suggestions and proposals will be based on a comparative analysis with the European Court of Human Rights.



## Chapter 9 : Conclusion

### A. The Arab Charter

Human rights situations in the Arab World face many challenges in most of the states parties of the Arab League. There is a need to have a minimum floor of human rights below which no country should go. There were several efforts to adopt an Arab Charter on Human Rights for the twenty-two countries that are members of the Arab League. The idea of having an Arab Charter sparked in 1969, then, after several meeting the old Arab Charter on Human Rights, was adopted in 1994. However, no country ratified this Charter. Iraq was the only country that signed the Charter. The old Charter was replaced by a new Charter, which was adopted in 2004 and entered into force in 2008. As of August 2014, fourteen countries have ratified this Charter.

It is not unfortunate that the first Arab Charter (1994) was not ratified; rather, the Arab countries insisted on a new Arab Charter so another Charter was adopted. The most important thing is the collective will and the motivation to have a regional Charter for the Arab countries. The European human rights system also faced a lot of obstacles. Although the European Convention is currently the best regional Charter, it is still facing some challenges. For instance, Protocol 14 of the European Convention did not enter into force for several years, so another Protocol was needed to get around the problem. Protocol 14 was first issued in 2004 and in May 2009 Protocol 14 bis was opened for signature. In October 2009, it entered into force.<sup>1624</sup> After that in June 2010, protocol 14 entered into force.<sup>1625</sup> This example clearly shows that the presence of motivation and will can result in success.

In this book I showed that nearly all of the Arab countries have articles in their constitution declaring that Sharia law is the main source of legislation. Therefore, in order to understand the use of the Sharia as a legal system, it was necessary to have a full chapter dedicated to explaining Sharia law and its origins, objectives, and purposes. My aim was to make it easy for scholars and even lay-people to be able to easily understand the Sharia legal framework, such that they could evaluate the Arab Charter from the Sharia law point of view and comprehend why its articles were written as they were. I examined different human rights theories after which I developed and explained my proposed theory. I stated that it is not practical to have a nice theory that remains on a shelf but, rather, that it

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1624 Protocol 14 bis signatures and ratifications, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=204&CM=7&DF=&CL=ENG> (last visited Jan. 6, 2013).

1625 *Protocol 14 signatures and ratifications*, <http://conventions.coe.int/Treaty/Commun/ChercheSig.asp?NT=194&CM=7&DF=&CL=ENG> (last visited Jan. 6, 2013).

is wise to have a moderate theory that can be applied and welcomed by Arab countries. It is important to keep that in mind as a possibility in the future. Therefore, it is wise to encourage and respect my proposed theory as long as it strikes a balance between cultures, traditions, and religious beliefs of the region while complying with the main principles of international human rights law. My theory is grounded in a belief that there is the presence of universal human rights that need to be protected everywhere. On the other hand, this theory is based on a perspective that we should leave a lot of room for the culture and traditions of each region to determine the details.

I also mentioned the history of the Arab Charter and the Arab League. I explained the many steps taken for the Charter to get to where it is currently. Then I explained the supervisory mechanisms of the Arab Charter. I also mentioned the efforts being taken to establish an Arab Court of Human Rights. I mentioned Bahrain's proposal regarding the establishment of an Arab Court. This proposal was submitted to the Arab League in 2011. I conducted an interview with the Secretary General of the Arab League who stated his frank opinion regarding the lack of effectiveness of the international judicial system.<sup>1626</sup> I stated that both the Secretary General of the Arab League and the Bahrain's proposal mentioned that the Arab Court will not be established overnight rather it will take time.<sup>1627</sup> I referred to the principle of gradualism and mentioned that even the European human rights system, which is the most effective regional system, took time to develop. I explained the substantive rights protected by the Charter from the perspective of Sharia law in order to show why the articles were written as they were and also to evaluate the rights from the Sharia perspective. I concluded that the Sharia legal system is in compliance with the international human rights system.

We should not criticize the Charter all of the time, nor should we say that it is the best human rights instrument in the world. The Charter does not have efficient supervisory mechanisms and some of the rights in the Charter could be more effective. On the other hand, no one can deny that the Charter is an important step toward the protection of human rights in the Arab world. The Arab Charter on Human Rights is a good evolutionary start in the Arab region. For the first time ever in the Middle East and North Africa, an Arab Charter on Human Rights has entered into force. This Charter is compatible with international human rights treaties and at the same time it respects Sharia law and the cultures of the Arab countries. The Charter is inspired by Sharia law. Sharia law is not just mentioned in the Charter as a legal system to be applied; instead Sharia law is used as a

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1626 See chapter 4.

1627 See chapter 4.

standard to evaluate the Arab Charter and as a reason to explain why the Arab Charter was written as it was.

In this book I hope I succeeded in establishing a common ground between the Arab Charter and international human rights principles. I explained the objectives and purposes of Sharia law in order to show how it is aligned with international law.<sup>1628</sup> In addition, I examined different theories of human rights and then suggested a new proposed theory.<sup>1629</sup> I stated that many of the theories that were written by different scholars either focusing on the Western concept of human rights as the base which the Islamic concept should follow or focusing on the Islamic concept of human rights and ignoring the Western approach. My proposed theory establishes a common ground for shared principles. In my theory, Sharia law is implemented and the international human rights principles are respected. The theory understands the objectives and purposes of Sharia law and then examines the articles of the domestic laws to see whether they are in alignment with, or contrary to, Sharia law. Furthermore, the theory examines Islamic jurisprudence to determine whether there is any Islamic interpretation that is compatible with the international human rights standards. These previous studies help to establish a common ground for shared values and principles that should not be derogated.

My theory is based on several principles. I mentioned the possibilities of reconciliation between Sharia law and international law. For instance, I explained Islam's *Zakat* and the International Right to Social Security. I showed that *Zakat*, which is part of the four pillars of Islam, matches succinctly with social security.<sup>1630</sup> I also mentioned the existence of duties and rights in Islam.<sup>1631</sup> I explained how Sharia law strikes a balance between duties and rights. I showed that we could not have rights if there are no duties. The primary international human rights treaties do not balance duties and rights. Instead, they focus mainly on rights. The Arab Charter followed the international human rights treaties in this way, yet, as it is inspired by Sharia law, the Arab Charter should also balance duties and rights. In the future, the Charter could be amended or additional protocols could be adopted in order to reflect and emphasize duties in the Charter. The Charter is inspired more by the international human rights treaties as there is no balance between rights and duties. As I explained in detail before, Sharia law strikes a balance between duties and rights. Without duties, rights will not be fulfilled. In

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1628 See pages 52-61.

1629 See Chapter 3.

1630 See pages 89-95.

1631 See pages 95-99.

addition, for Muslims, the Quran is the Word of God, therefore Muslims are supposed to happily implement and fulfill the obligations stated in the Quran. I also mentioned the principle of gradualism in Sharia law and international human rights law.<sup>1632</sup> I showed that the Arab Charter can be promoted through applying the principle of gradualism. I gave different examples regarding the principle of gradualism. I stated that the European Convention on Human Rights, which is currently the most effective regional human rights instrument, applied the principle of gradualism. I mentioned that it took many years until the European Convention made the jurisdiction of the European Court compulsory on all states parties to the Convention. I concluded that the Arab Charter cannot achieve full success immediately. Rather, it will take time until the Arab Charter is promoted smoothly. I referred to my interview with Dr. Nabil Al-Araby, the Secretary General of the Arab League, who said that it will take time until the Arab League can succeed in establishing an Arab Court.

In addition, I mentioned the relationship between individual and *'umma* (nation) in Sharia law.<sup>1633</sup> I explained that Sharia law balances between *'umma* and the individual. I stated that, recently, international human rights become more similar to Sharia law in recognizing group rights or *'umma* rights. I also explained the relationship between *fitrah* and natural law.<sup>1634</sup> I explained that Sharia law as a legal system is based on *fitrah* or natural law. I tried to clearly show that the roots of Sharia law come from *fitrah*. In other words, Sharia law is aligned with natural law. I showed that Sharia law is in compliance with the order of nature. I gave examples of Western law articles that criminalized some acts because they are against the "order of nature."

In addition, I explained the principle of equality to show the Sharia law point of view on this issue.<sup>1635</sup> I mentioned that Sharia law is compatible with international law. However, I added that, according to Sharia law, in the relationship between a husband and wife, the husband has lot of responsibilities towards his wife. The husband is financially responsible for his wife even if she is working. I concluded that Sharia law approaches the relationship between a man and woman differently than is done from by the Western perspective. I conducted a comparison between the human dignity as perceived in Islam and in international law.<sup>1636</sup> I stated that Sharia law respects the dignity of the human being very much. I men-

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1632 See pages 99-105.

1633 See pages 105-111.

1634 See pages 111-113.

1635 See pages 113-120.

1636 See pages 121-126.

tioned that human rights of people exist because of the human dignity. I provided several Quranic verses and *hadith* that show the respect of Sharia law for human dignity. I briefly mentioned the successful efforts of the Arab states in establishing an Arab League and then an Arab Charter of Human Rights. I also explained the ongoing efforts to establish an Arab Court.<sup>1637</sup>

I stated the rights that are mentioned in the Charter and showed that the rights in the Arab Charter are aligned, and consistent, with Sharia law. I gave examples of rights protected by the Charter, such as the right to life, right to private life, prohibition of torture, right to education, and freedom of movement. I evaluated the Charter from the Sharia law point of view. I showed the Sharia law opinion with respect to each of the rights that I explained. I stated the different opinions of Islamic scholars. I concluded that the Charter is compatible with both Sharia law and international law.<sup>1638</sup>

I evaluated the supervisory mechanism of the Arab Charter through comparing it with the African and European Charters. I explained and suggested what can be done to improve the work of the Committee to make it more effective and efficient. I evaluated the procedural human rights protections in the Arab Charter through an Arab Court on Human Rights.<sup>1639</sup> The main reason for this comparison was not to determine which regional system is the best. I concluded that the Arab Charter does not yet efficiently promote human rights and I provided details to suggest how it can promote human rights. I noted that the majority of the Arab countries, if not all of them, have very nice sounding articles in their domestic laws related to human rights. I also said that the majority of the Arab countries ratified the main international human rights treaties. In my opinion, the major deficiency and weakness of the Charter is not in the rights themselves, but in the implementation of the rights. There should be effective and efficient supervisory mechanisms for the Arab Human Rights Charter.

I proposed two optional protocols to the Arab Charter on Human Rights. The first protocol suggests establishing an effective Arab Committee and the second protocol proposes establishing an effective Arab Court. I agree entirely with the opinion of Professor Mohammed Mattar, the Executive Director of the Protection Project at Johns Hopkins University, who said that the Arab Charter imposes obligations on Arab countries regarding human rights.<sup>1640</sup> In addition, the Charter is aligned, and consistent, with Sharia law. He said that the most important thing

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1637 See chapter 4.

1638 See chapter 5.

1639 See chapters 6, 7, and 8.

1640 See chapter 4.

is the implementation and application of the articles of the Charter and added that this implementation and application is more important than the wording of the phrases of the articles of the Charter.<sup>1641</sup> Instead of focusing on mere criticism of the Arab Charter, we should emphasize constructive criticism. In other words, it is better not to focus on whether the rights should be criticized or welcomed. Instead, we should focus on the implementation of the rights.

Regional human rights systems are probably more effective with respect to regional human rights, as countries in the same region share the same cultures and traditions and are fewer in number than the countries in universal systems. This illustrates some of the advantages that enable regional systems to have a greater capacity to apply pressure and ensure the protection of human rights more successfully than the international legal systems. The Arab Charter is well suited to the Arab region. If it is promoted by an effective supervisory mechanism, it can play an important role in improving human rights in the Middle East. The Arab Charter reflects the religion, culture, and traditions of the Arab countries because it is issued, adopted, and implemented by the region. No one from the Arab region will fear it because it has been issued by them. In addition, the members of the supervisory mechanism (the Committee and the Court) are nationals of Arab countries nominated by Arab states parties to the Convention.

#### B. Redefining Human Rights in the Arab Charter

The human rights principles stated in the Arab Charter should balance rights and duties. This can be redefined to reflect Islamic principles. Individual's and state duties should be added to the Arab Charter on Human Rights. This can happen either by amending the existing Charter or adopting additional protocols to the Arab Charter on Human Rights in order to strike a balance between duties and rights.

We should not only look to points of divergence, but we should also focus on points of convergence. There is a common ground of shared values and principles between international human rights and Sharia law. Even the Quran explains that the reason why people are from different cultures and countries is in order to know each other. The Quran states, "O mankind! We have created you from a male and a female, and made you into nations and tribes, that you may know one another..."<sup>1642</sup> Prophet Mohammed called for peace and signed international treaties with others. It has been noted, "The beginning of the first Islamic state

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1641 See chapter 4.

1642 QURAN 49:13.

resulted from the Medina Constitution, in which Mohammed entered into agreements with other tribes in order to provide for collective security and form a united front against invaders from Mecca."<sup>1643</sup>

C. The Door of *Ijtihad* is Open<sup>1644</sup>

The door of *ijtihad* is still open and was never closed. The real question is not whether the door of *ijtihad* is still open or closed; the question that needs to be answered is who can make this *ijtihad*. When we read the jurisprudence of the four Islamic schools and the reasons for each opinion, we will find that they offer very profound reflection. They analyzed every issue very deeply. These days, it is not easy to find a scholar who possesses this great knowledge and very deep analysis. However, during the current century we have more privileges than were experienced in previous centuries. We have technology with which we can access data in a single click. For instance, we can get access to books and libraries, including the Islamic jurisprudence of the four popular Islamic schools, very easily.

As I mentioned, we need a qualified trusted academic institution that can apply *ijtihad*. I suggested Al-Azhar, which is one of the moderate institutions, which does not support any particular Islamic school and teaches all of the different schools from a position of neutrality.

D. The Arab Committee

Concerning the Arab Committee, the state reporting mechanism in the Arab Charter is the only monitoring supervisory system in the Arab Charter. It should be noted that the reporting system of the Arab Committee, which is even weaker than the African Commission, cannot effectively promote Arab human rights. From the experience of some Arab countries in the African Commission, we can easily recognize that state reports are not an effective mechanism and are not submitted on time. In my book, I suggested a first Optional Protocol to the Arab Charter on Human Rights to amend the structure and function of the present Arab Committee on Human Rights. There should be opportunities for individual and state complaints. The Arab Committee, as it is, does not receive any communications from individuals. The efficiency of the reporting system will be affected by the *will* and *motivation* of the states parties to the Charter. These countries should have a strong will and motivation to cooperate with the Arab Committee

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1643 Jordan, *supra* note 141, at 70 (citing Jorgen S. Nielsen, *Contemporary Discussions on Religious Minorities in Islam*, 2002 BYU L. Rev. 353, 362 (2002) (discussing the origins of the first Islamic state and the Medina Constitution)).

1644 See pages 62-73.

by submitting fully detailed reports to them. The countries should submit the reports on time without delays in order to help the Committee achieve its work efficiently. It will then be the turn of the Arab Committee to examine the reports without delay. The reporting system of the Arab Committee is currently very weak. The important aim behind the reports is not only to collect data but also to improve and protect human rights. In the future, the Charter should be amended or additional protocols should be added in order to promote the work of the Committee. After the Committee submits its recommendations on the state report, the Committee should at least have the right to follow up on the implementation of its recommendations. Regarding the state reporting system, each State party should submit the annual report every two years, instead of every three years. This will definitely help the Committee in its preventive role.

In addition, the members of the Committee should be independent. It cannot be expected to have an independent and efficient Arab Committee if its members are holding positions that are incompatible with the function of the Committee. At least half of the members of the Committee should be judges. The former Secretary of the European Committee criticized the role of the Committee. He said,

"[The] Ministers' Deputies [who are members of the Committee] are generally career diplomats. They act, in human rights cases as in other matters, on instructions from their capitals. They usually have no special training or competence to deal with human rights issues. They are trained to defend State interests or what their central authority regards as the interests of their state."<sup>1645</sup>

I agree entirely with the opinion of the former Secretary of the Committee, not only because the Deputy Ministers are lacking experience and do not have background knowledge of human rights issues, but also, as he explained, because they defend the interests of their states.

On the other hand, the members of the Committee should be given flexibility to travel and visit Arab countries either that have or have not yet ratified the Arab Charter. Currently, the members of the Arab Committee are doing a good promotion of the Charter. They travel to different countries in the Arab world to introduce the Charter to the people and the governments. However, their travels should not only focus on the ratifying countries to the Charter but also on the

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1645 MOWBRA Y, *supra* note 1489, at 13-14; see also Peter Leuprecht, *The Protection of Human Rights by Political Bodies-The Example of the Committee of Ministers of the Council of Europe*, 98, 106-107 in *PROGRESS IN SPIRIT OF HUMAN RIGHTS* (M Nowak & D Steurer eds., 1998).



non-ratifying countries in order to increase public awareness and encourage non-ratifying states to ratify the Charter. For instance, the Arab Charter does not give them the right to travel and organize promotional visits to ratifying or non-ratifying countries. The promotional role of the Committee is very important to improving the efficiency of the Charter. It will definitely increase human rights awareness, if not encourage the hosting state to ratify the Charter. In addition, if there are no guarantees for the independence and experience of the members of the Committee, it is impossible to expect that the Arab Charter can promote human rights. The Arab Committee should give the state parties to the Arab Charter the right to complain about the conduct of any other state Party, regardless of the nationality of the victims of the violation. In addition, it is very important for the Arab Committee to receive shadow reports from NGOs and potential victims. Currently, the Committee is cooperating with different NGOs. Before examining each state report, the Committee gives a long period of time for the NGOs to submit their shadow reports. All of the previous recommendation should promote the work of the Arab Committee.

The Arab Committee should be creative and effective. The Committee should not wait for the three years periodic report. Instead, it should be given the right to request additional information anytime. For instance, if the Committee found that a certain country adopted a law that is in violation of human rights, it should immediately request further information from the country concerned and give recommendations. The Committee should then follow up on the measures taken by the state party concerned regarding the Committee's recommendations. The Arab Committee should welcome receiving shadow reports from international and regional organizations, whether governmental or nongovernmental bodies. In addition, it should also welcome receiving shadow reports from individuals and even potential victims. In addition, the Committee should analyze the judgments of the Arab Court regarding any human rights violations in the laws of Arab countries. It can determine the domestic laws and regulations that violate the human rights. The Arab Committee can then request further information from the country concerned and submit recommendations to that country regarding amending these laws and measures. In addition, similar to the African Charter, the Arab Committee should draw inspiration from other human rights instruments in order to be promoted. However, this inspiration should not contradict the objectives and purposes of the Arab Charter.

All of the previous ideas will make the work of the Committee more effective and efficient. This will improve the preventive role of the Arab Committee in improving human rights protection in the Arab Charter. In addition, the Arab Committee should submit a yearly report on the work that it accomplished during the year. This report should include an analysis of the judgments of the Arab Court.

In another words, if the Court found that a certain law violates human rights, the Committee should include this note in the report. Furthermore, the Committee should be given the right to request an interpretation of the of the Court's decisions in order to facilitate to the Committee to follow up the implementation of the Court's decisions.

One of the very positive things in the Arab Charter is that it emphasizes the publication of the reports. The Charter provides, "The Committee's reports, concluding observations and recommendations shall be public documents which the Committee shall disseminate widely."<sup>1646</sup> Publishing the reports will definitely improve the protection of human rights in the Arab region. Currently, both the states reports and the conclusions and observations of the Committee are published on the website of the Arab League.

At the end of the book I attached an optional additional protocol to the Arab Charter on Human Rights (first Optional Protocol). This protocol suggests how to make the Arab Committee more effective and efficient.

#### E. An Arab Court

The Arab Charter on Human Rights did not mention the possibility of establishing an Arab Court on Human Rights. I propose a second Optional Protocol to the Arab Charter establishing an Arab Court on Human Rights. Regarding the potential Arab Court on Human Rights, the jurisdiction of the Court should be limited to all Arab human rights treaties that are issued by the League of Arab States. The mechanism of the Court must be completely independent. Even the way of choosing judges should be independent. There should be strict competitive regulations for choosing judges. They should have high degree of experience in judging cases related to human rights violations. In addition, priority should be given to judges who have completed graduate studies on different regional human rights systems or have previous experience in this field. Furthermore, at least a few members of the judges of the Court should have a competent knowledge of English and/or French in order to be able to expand his or her knowledge by reading the decisions of other regional and international courts. If these criteria for choosing highly qualified judges are followed we can have judges who are academically and practically efficient. Furthermore, to guarantee independence, the vote of the judge who holds the nationality of a state party to a case should not be counted when rendering a decision in that case. The lawyers that

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1646 ACHR, *supra* note 126, at art. 48 (6).

represent victims before the Court should be very qualified. There should be special exams for them or special qualifications for choosing the lawyers.

The structure of the Arab Court should be left to the drafters of the additional protocol of the Court. However, there should be flexibility in amending the structure to be prepared for the large number of anticipated cases submitted to the Court. In addition, there should be a flexibility to be able to increase the number of judges depending on the number of cases. The potential Arab Court must be effective, not only by having independent judges but also by having an outstanding staff in its registry. The role of the registry is very important in improving the quality of the Court decision.

The most important thing is that the jurisdiction of the Court should exist only after the exhaustion of all domestic remedies. In other words, the Arab Court must be subsidiary, just as is the case for other regional courts. Furthermore, the right to submit a case before the Arab Court after the exhaustion of domestic remedies should not be open forever. Rather, it should be possible only for a period of four months from the date of the exhaustion of domestic remedies. The burden of proof of the existence of effective remedies, in theory and practice, is on the government. Once the government has demonstrated the burden of proof, the applicant must prove that all other remedies have been exhausted. On the other hand, there is no need to exhaust the domestic remedies if they are not accessible, or effective or adequate.

The right to appeal the decision of the Arab Court should be limited; it should not be given automatically to the parties of the cases. The judgment of the Chamber can be subject to appeal to the Grand Chamber. In addition, the judgment of the Grand Chamber can be subject to appeal to the plenary. A panel of five judges of the Grand Chamber of the Court may review the Chamber's and the Grand Chamber's decisions, upon the request of the parties or by unilateral decision of the Court, in the light of new evidence under conditions to be set out in the Rules of Procedure and/or if the decision of the Court was violating the human rights principles protected by the Arab Charter and its protocols and/or if the case raises a serious question affecting the interpretation or application of the Convention or the Protocols thereto, or a serious issue of general importance.

There should be no separate judgment than that of the Arab Court in cases where the judges did not reach a unanimous decision. This will be better for the independence of the Arab Court. The decision should be by the majority of votes without any dissenting opinion. Also, regarding the Court's judgment, it should be noted that the purpose of establishing the Arab Court is not for the purposes of a criminal investigation; it is established to ensure that the minimum human rights standards established are respected and protected. The Arab Court should

examine whether or not the domestic court or other governmental bodies protected and respected the rights stated in the Charter.

The proceedings before the Court should generally be public in character. This will give more confidence in the Court. In addition, this will increase the popularity of the Court. In exceptional cases, the public nature of the proceeding may be restricted. States should have the right to lodge applications against each other, regardless of the nationality of the victim or the relationship between the alleged violation and the applicant country. The Arab Court should apply the friendly settlement on the basis of respect for human rights. The aim of the Court is not to name and shame, but to promote human rights. Therefore, if a friendly settlement is reached with respect to human rights, the file of the case should be closed. In order to hasten the speed of cases, the Court should be given the right to make the decision on the merits and admissibility jointly. This will certainly help reduce the number of pending cases in the Court. Therefore, it will promote the efficiency of the Arab Charter.

The Arab Court should put conditions in order to prevent people from playing with the regional courts and international courts. For instance, some Arab countries are member to the ICCPR and its protocols and also are members to both the Arab and the African Charter. People can use different regional and international human rights instrument to submit the same case. The Arab Charter should regulate this issue.

In order to promote the Arab system of the protection of human rights the Arab Court should be given the right to receive requests for advisory opinions. In other words, the League of Arab States, in addition to the Arab states should be able to request an advisory opinion from the Court. It is important to encourage countries to get in contact with the Court by giving these countries the right to request advisory opinions from the Court. The goal of the Arab system is to spread, promote, and protect human rights in the region.

At the end of this book, I attach a second additional optional protocol to the Arab Charter on Human Rights. This protocol will suggest the structure, functions, and duties of the Arab Court on Human Rights.

#### F. Summary

The supervisory mechanism of the Arab Charter should be effective and creative; it can be constituted by both a Court and a Committee. However, complaints should be submitted to the Committee, first. After a period of time, the Court should replace the Committee, with respect to the countries that join the second protocol establishing the Court. In addition, another supervisory mechanism can

be Special Rapporteurs. Rapporteurs can be appointed for specific duties or for specific countries. The Arab Committee cannot do the job of the rapporteur at the same level of efficiency. The rapporteur should be an expert in his or her field.

The Court and the Committee should work together. Both of them should receive individual and state complaints. As I explained, many Arab countries will be unwilling to ratify the protocol establishing the Arab Court. Therefore, the Arab Committee should first receive individual and state complaints, in accordance with the first additional protocol. After that, with time, Arab countries will gain confidence in the Court and they will begin to ratify its second protocol. After the Court enters into force, the Committee should stop receiving state and individual complaints as to the countries that ratify the second protocol. I gave the example of Egypt, which is party to the African Commission on Human and Peoples' Rights. The African Commission accepts individual complaints. Although Egypt is member to the African Commission, it is not a member to the African Court on Human and Peoples' Rights. In short, we should accept having an Arab Court and Committee at the same time. States should be given the right to ratify the protocol establishing the reformed Committee and the protocol establishing the Court. With time, the states that did not ratify the protocol establishing the Court initially will ratify this protocol in the future.

The supervisory mechanism (whether committee, court, or rapporteurs) should be established gradually. For instance, the Arab Court can be established by an additional protocol. The states parties that wish to be members of the Court can ratify the additional protocol. It took the European Convention around forty years to make the optional jurisdiction of the European Court compulsory. In addition, the European Court did not start as a full time court. Rather, it started as a part time body that held sessions each month. Furthermore, it took approximately thirty years until countries were prohibited to join the Council of Europe unless they agreed to ratify the Convention. In short, states parties to the Charter cannot be forced to comply with a specific supervisory mechanism. However, after the Arab Charter and the Arab Court gain in popularity and after the Arab countries gain more confidence in the Court's decisions, the number of ratifying countries to the court jurisdiction will increase gradually. It took many years until we saw a significant increase in the member states of the European Convention. As of January 1, 1990, twenty-two countries were parties to the Convention. As of April 1, 2012, forty-seven countries were parties to the Convention. This is evidence that gradualism is important to achieving success.

It will take a few years for the Arab Court to gain popularity and a good reputation, as is currently experienced by the European Court. At its beginning, the European Court was very slow and did not receive a large number of cases. In the

first seventeen years of its existence (1959 to 1975), on average one case per year was brought before the Court. Between March 1962 and June 1965, there were no pending cases. However, with time, the number of cases gradually began to increase. Nowadays, the large number of cases is a threat to the efficiency of the Court. Therefore, in order to promote the efficiency of the Arab Court we need to be patient and, with time, the Court will achieve success.

The success of both the Court and the Committee will depend on the will and motivation of the states parties to the Charter. The member states should not wait for a problem to happen and then find the solution. Instead, they should learn from the experience of others, expect problems and find solutions before they happen. In addition, the people who work in the Court and the Committee must be highly qualified. We cannot expect success from people who are not qualified for their positions. In addition, we cannot expect success in the Court and the Committee if their members are not fully independent.

Many steps can be taken to promote the Arab Court and the Arab Committee. For example, the Arab Committee and the Arab Court should give the right to any State party to lodge an application against another State party with regard to any violation of any of the articles of the Convention. The purpose of the Arab Charter is not only to criminalize, but also to prevent bad conduct. Therefore, it is important to accept cases from states against other states. The Arab Committee should be given the right to accept complaints that are against a law, not only concrete cases involving a person. On the other hand, the Arab Court should give individuals the right to submit an application before the Court only if they are victims of an alleged violation.

One of the important challenges of the Arab human rights system is the implementation of the decisions of the Arab Court and the implementation of the Arab Committee's recommendations. As Dr. Nabil Al-Araby, the Secretary General of the Arab League, said in the interview that I conducted with him, there is a weakness and deficiency in the international judicial system. He mentioned that there is no effective judicial way to force a country to implement international or regional court decisions.<sup>1647</sup> The Arab system should apply a new creative judicial mechanism in order to enforce the decisions of the Arab Court. For instance, the subject of human rights should be fixed in the agenda of the yearly Arab League Summit, which is the primary yearly summit of the Arab League. On a yearly basis, presidents, kings, and ministers should discuss the success and challenges of the human rights issue in the countries members of the Arab Charter. For example,

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<sup>1647</sup> See chapter 4.

in these summits the Arab Committee should be able to mention the countries that did not submit its reports or submitted a minimal insufficient report. Therefore, this summit can be a golden opportunity for the Committee to achieve its goals.

One of the best practices for achieving success is planting the culture of human rights in the states parties to the Arab Charter. In other words, after the Arab Court and the Committee achieve great success and the majority of the member states to the Arab League gain confidence in it, the situation should change. No Arab countries should be allowed to join the Arab League unless they agree to ratify the Charter. Then, after a while, the situation should change again. In other words, no Arab countries should be allowed to join the Arab League unless they agree to ratify the Arab Charter and all its protocols. This is the principle of gradualism that I mentioned in my theory. With time, everything can change smoothly. For instance, the European Convention applied the principle of gradualism. Not all rights, including the right to property, were initially mentioned in the main convention. However, many of the rights were subsequently added via additional protocols. Furthermore, it took approximately thirty years until countries were prohibited to join the Council of Europe unless they agreed to ratify the Convention. Before 1980, it was optional for the European Countries to ratify the European Convention. Therefore, by applying the principle of gradualism the Arab Charter will be better in protecting the human rights in the Arab countries.

The culture of human rights cannot be improved in one day. Building the culture of respect for human rights can be achieved gradually through different means. For instance, increasing the awareness of people regarding their rights can be done in different ways. For example, there is a direct link between education and human rights. Eradication of illiteracy is important in the improvement of human rights; illiteracy should be reduced in the Arab countries. We cannot expect a revolutionary improvement in human rights if there are millions of people in each Arab country who still cannot read or write. In addition, improvement of human rights should be a basic subject for students in schools and universities. Passing human rights courses should be a precondition for the promotion of people working in law enforcement. In addition, after human rights begin to develop in the community, passing human rights exams should be a precondition for people working in both the private and public sector. Furthermore, one of the major ways to achieve respect of human rights is the role being played by the media. The media has to improve public awareness of human rights issues and remedies. All of these suggestions will definitely improve and promote the awareness and culture of human rights, and will do gradually.

It is impossible to list all the creative ways of achieving success in the Arab Court. By practice, after the Court starts working, we will get to know how we can make it better. The members of the Committee and the Court, in addition to the League of Arab States will face challenges and will try to find solutions for them. They are the best people to devise solutions because they will be working in the field. If they proposed a solution and it is not successful, they should try another approach and not expect to succeed always and immediately. Professor Dr. Herbert Petzold who is a Professor of Law and the former long-time Registrar of the European Court of Human Rights, informed me that the European Convention on Human Rights, after it entered into force, stated that the Court sit in Chamber only. Article 43 of the European Court states, "For the consideration of each case brought before it the Court shall consist of a Chamber composed of seven judges ..."<sup>1648</sup> He added that the judges of the European Court found it difficult to decide as seven judges, so the Court drafted its own rules of procedure which were technically violating Article 43 of the European Convention in that they added that the European Court sit as Grand Chamber as well, which was a healthy development.<sup>1649</sup>

The most important thing is not to start off by saying that the Arab Charter does promote human rights effectively from the first day. In fact, the important thing is not the immediate achievement of success, but its long-term acceptance and enforcement. Furthermore, it is not important to push all the twenty-two members states to the Arab League to ratify the potential Protocol that will establish the Arab Court. The most important thing is that the States parties to the Protocol should be willing to respect and implement the decisions of the Court. If the judgments of the Arab Court are not binding, the decisions will be useless and the court itself will be useless. I did not suggest an outstanding and efficient Court from the beginning because states may refrain from ratifying the protocol establishing the Court. I am applying the principle of gradualism. The goal is to encourage countries to ratify smoothly and fully respect and safeguard human rights. With time, the culture of human rights will be promoted. In addition, governments will gain confidence in regional human rights protection. Until we have collective will and the motivation to achieve human rights protection, gradualism should be applied very smoothly. The most important major thing is to say that states parties to the Charter should be highly motivated to achieve success in human rights. In addition, it is very vital that the State parties should appoint highly qualified members to the Court and the Committee. I suggested

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1648 ECHR, *supra* note 497, at art. 43.

1649 Telephone Interview with Professor Dr. Herbert Petzold, Professor of Public International Law, Saarbrücken University; former Registrar, European Court of Human Rights (Sep. 3, 2013).



two optional protocols to the Arab Charter on Human Rights in order to promote and protect human rights of the Arab Charter.

In this book, I succeeded in explaining the concepts of Western society and Western views on human rights in a way that would be understood by Arab countries. In addition, I highlighted the Arab view of human rights and explained the cultures, traditions, and religious beliefs that are related to human rights such that this could be understood by Western countries. I briefly mentioned the human rights violations in Arab states in order to clarify the importance of the Arab Charter on Human Rights in promoting the human rights situation. However, the Arab Charter as it is cannot promote or protect human rights; it needs to be amended to be more effective.

The book is intended to help states parties of the Arab Charter understand the rights protected by the Arab Charter in order to apply them on the national level as long as they are in alignment with Sharia law. In addition, I explained the different substantive matters and mechanisms that supervise the protection of human rights in detail in order to help legislators of the issue additional optional protocols for the improvement of the Arab Charter.

I hope I achieved one of my main goals, i.e. highlighting the main challenges that threaten the protection of human rights in the Arab world, such as illiteracy. I also gave a condensed explanation of human rights in order to help people in the Middle East expand their knowledge of human rights and understand their rights and duties. In addition, I succeeded in explaining the Arab Charter and its objectives and purposes to Western people. Finally, I am looking forward to this book being a positive contribution to both the literature on human rights and a guiding light for professionals seeking the improvement of the Arab Charter on Human Rights. I quote three verses from the Quran: "And mankind have not been given of knowledge except a little."<sup>1650</sup> "My Lord! Increase me in knowledge."<sup>1651</sup> "And We have enjoined on man to be dutiful and kind to his parents. His mother bears him with hardship. And she brings him forth with hardship, and the bearing of him, and the weaning of him is thirty months, till when he attains full strength and reaches forty years, he says: "My Lord! Grant me the power and ability that I may be grateful for Your Favour which You have bestowed upon me and upon my parents, and that I may do righteous good deeds, such as please You, and make my offspring good. Truly, I have turned to You in repentance, and truly, I am one of the Muslims (submitting to Your Will)."<sup>1652</sup>

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1650 QURAN 17:85.

1651 *Id.* at 20:114.

1652 *Id.* at 46:15.