THE LEAGUE OF ARAB STATES
AND THE
PROMOTION AND PROTECTION OF HUMAN RIGHTS

By
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We accept this thesis as conforming
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THE UNIVERSITY OF BRITISH COLUMBIA
April 1990
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ABSTRACT

This thesis is an analytical study of the League of Arab States regional human rights system. It involves an examination of the League's concept of human rights as represented in the League's two draft instruments - the draft Arab Declaration of Human Rights and the draft Arab Convention on Human Rights - as well as its machinery of implementation as represented in the Permanent Arab Commission on Human Rights. Our analysis of the League's human rights is conducted in the light of the political, cultural and ideological factors prevailing in the Arab world.

The League's failure to establish an effective regional human rights system is due largely to its inherent limitations and to the constant negative attitudes of Arab States toward human rights protection. Unless some drastic changes in these determinate factors take place, the situation is likely to remain the same in years to come.
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CHAPTER I: INTRODUCTION

The trend in international organizations working in the field of human rights has been to enumerate and define human rights in the form of declarations and conventions. There has also been an increasing shift towards creating mechanisms for the implementation of human rights. Thus, regional organizations have been principal participants in this international human rights movement. The Council of Europe, the Organization of American States and, more recently, the Organization of African Unity have all taken considerable steps towards creating effective human rights systems. The question arises as for the prospects of the League of Arab States.

The League of Arab States is the second oldest regional organization in the world after the Organization of American States. Its initiatives in the field of human rights date back to 1968, when the permanent Arab Commission on Human Rights was established with a mandate to promote respect for human rights in the Arab world. A draft Arab Declaration on Human Rights was concluded in 1971. At present, a draft Arab Convention on Human Rights is pending adoption by the Council of the League of Arab States.

According to Boutros Ghali, the extent of the success of a certain regional human rights system depends entirely on the willingness of the system to respond to the special characteristics and needs of such a region. Given the reality of the
Arab world, it has never been an easy task for the Arab League to create an effective regional human rights system.

Despite claims of belonging to one Arab nation and of sharing a common language and historical heritage, the Arab region does not provide us with a homogenous unity. Other cultural, ideological and social factors prevailing in the region must be considered. Diversity of political systems and the existence of ethnic and religious minorities are just some illustrations of this lack of homogeneity.

The existence of Islam has undoubtedly exerted the most influence on the development of the Arab conception of human rights. As one writer has rightly observed:

Any attempt to separate the idea of human rights in the contemporary Arab world from its Islamic origins would inevitably lead to a deplorable negligence of a most vital element in the whole subject.\(^2\)

The existence of these factors not only influences the Arab conception of human rights but it also affects the implementation machinery employed. This is not, however, to suggest that the existence of these factors necessarily works directly against the protection of human rights.

Thus, the League of Arab States in establishing its human rights system must adopt these regional characteristics and needs.

The purpose of this thesis is to provide an analytical study of the League of Arab States' human rights system in the light of the special characteristics of the
Arab world, and to determine the causes of the system's weakness. The study will cover both the League's conception of human rights as well as its machinery for implementation.

**FOOTNOTES**


CHAPTER II: THE LEAGUE OF ARAB STATES
AS A REGIONAL ORGANIZATION

A) Basic Characteristics of the Region

1 - Population structure

Although the popular image of the Arab world, especially in the West, envisages a region populated by homogenous Muslim Arabs, the Arab world is, in fact, peopled by numerous ethnic, religious and linguistic minorities. In addition to the majority community which is characterized with being both Arab and Sunni Muslim, there are groups whose communal identities lack either the Arab or the Islamic character, or both. (See Table 1) These groups may be divided into the following categories.

1 - People who are Arab, but not Sunni Muslim.
Falling into this category are Shia, Alawis and Ibadis. Shia are in turn divided into many sects, the most significant of which are the Twelvers and Zaydis.

2 - People who are Arab but not Muslim.
This category mainly consists of Christian and Jewish Arabs. As in the Shia case, Christian Arabs are divided into various groups. Among them are the Egyptian Copts, Maronites, Eastern Orthodox, Greek Orthodox and Protestants. Alawis and Druze can also be considered in this category, since most of the Muslim Arabs, Shia and Sunni alike, look upon them as non-Muslim, despite their claims to the contrary.
**TABLE I**

Population Structure of Arab States

<table>
<thead>
<tr>
<th>Country</th>
<th>Total Population (in millions)</th>
<th>Perc. of religious groups</th>
<th>Perc. of ethnic groups</th>
<th>Perc. of alien</th>
<th>Perc. of nomads</th>
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<tbody>
<tr>
<td>Algeria</td>
<td>22.42</td>
<td>Sunni 99.1</td>
<td>Arab 83.5</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Berber 16.1</td>
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<td></td>
</tr>
<tr>
<td>Bahrain</td>
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<td>Shia 47.9</td>
<td>Arab 87</td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Sunni 44.3</td>
<td>Christian 4.6</td>
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<tr>
<td>Democratic Yemen</td>
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<td>Sunni 99*</td>
<td>Arab 93</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>Djibouti</td>
<td>0.364</td>
<td>Sunni 94*</td>
<td>Issa and Somali</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Arab 6</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Christian 6</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Egypt</td>
<td>48.5</td>
<td>Sunni 94</td>
<td>Arab 99.7</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Christian 6</td>
<td></td>
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<td>Iraq</td>
<td>15.9</td>
<td>Shia 52.5</td>
<td>Arab 77</td>
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<td>Sunni 40.5</td>
<td>Kurd 19</td>
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<td>Jordan</td>
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<td></td>
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<td>Christian 5*</td>
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<tr>
<td>Lebanon</td>
<td>2.668*</td>
<td>Shia 33*</td>
<td>Arab 93</td>
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<td>Sunni 25*</td>
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<td>Maronis 25*</td>
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<td></td>
<td></td>
<td>Other Chris. 10*</td>
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<td>Druze 7*</td>
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<td>Libya</td>
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<td>Sunni 97</td>
<td>Arab 90</td>
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<td></td>
<td></td>
<td></td>
<td>Berber 5</td>
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<tr>
<td>Mauritania</td>
<td>1.89</td>
<td>Sunni 99*</td>
<td>Moor 80*</td>
<td>32**</td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Tukulor 12*</td>
<td></td>
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<tr>
<td></td>
<td></td>
<td></td>
<td>Fulani 5*</td>
<td></td>
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</table>

* Estimate
** Rough estimate
- Groups constituting less than 4% are not included.
### TABLE I (Contd.)

**Population Structure of Arab States**

<table>
<thead>
<tr>
<th>Country</th>
<th>Total Population (in million)</th>
<th>Perc. of religious groups</th>
<th>Perc. of ethnic groups</th>
<th>Perc. of alien</th>
<th>Perc. of nomads</th>
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<td>Sunni 98</td>
<td>Arab 59.6</td>
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<td>Oman</td>
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<td>Arab 87</td>
<td>Baluchi 4</td>
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<td>Sunni 70.3*</td>
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<td>Persian 14**</td>
<td>73.2*</td>
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<td>Saudi Arabia</td>
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<td>U. Arab Emirates</td>
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<td>Arab 42</td>
<td>South Asian 12*</td>
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<tr>
<td>Yemen</td>
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<td>Sunni 49.5</td>
<td>Arab 98</td>
<td></td>
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</tbody>
</table>

Sources:
2- The World in Figures (The Economist, 1987)
3- The Political Role of Minority groups in the Middle East
   R.D. Mclaurine, ed. (New York: Praeger, 1979)
3 - People who are Muslim but not Arabs.

There are two substantial groups in this category: Iraqi Kurds and the Berber of Maghrib. (Algeria, Libya, Morocco and Tunis).

4 - People who are neither Arab nor Muslim.

This category comprise non Muslim Africans in South Sudan, Somalia, Mauritania and Djibouti as well as Armenian communities in Syria and Lebanon.

In addition to the previous groups, there are some minorities which can not be grouped on ethnic or religious bases. These are the nomads and the alien communities. By alien we refer to all non-nationals within an Arab State. These groups are mainly manifested in the numbers of guest workers in the Gulf States. In fact, this group has increasingly become one of the largest minority groups in the region. In some states, they even moved from being a minority to a majority. Nonetheless, host states have shown a strictness in regulating the status of these groups. Such policies are motivated by the host countries' desire to preserve the social, political and religious beliefs of their citizens from being influenced by the presence of such large numbers of non-nationals. Therefore, immigration is not permitted in any of the Gulf States. Guest workers have to be on a contractual basis. In practice, Gulf States have shown surprising success in applying these policies strictly, although the effects of the guest workers could not have been prevented completely.

In their management of religious and ethnic pluralism, Arab governments have employed different methods depending on a variety of factors related to the groups concerned and to the state itself. Lebanon provides the single case where
the method of including component ethnic organizations within the structure of the state is applied. Another method has been the integration of the minority group into the main society to the point of full assimilation. This strategy has been employed by the Maghrib governments in their management of the Berber case. The grant of autonomy (whether territorial, religious or cultural) is another method of handling pluralism. This has been used by the Iraqi government in its management of the Kurdish problem. Finally, there is the principal process of communal conflict management, namely, the "coercive domination by the ethnic elites that control the apparatus of the territorial state". The dominant ethnic elites may represent a majority, such as the case of the domination of the Sunni Muslim elite over the Shias in Kuwait, or a minority, as in the domination of Syrian Alawis over the Sunni majority.

These methods, however, have not always been met with acceptance by the concerned minority groups. In Syria, Sunni resistance to the Alawit regime domination has led to many incidents of bloody clashes. Iraqi Kurds have been involved in a continuous rebellion against the Iraqi governments for the sake of acquiring Kurdistan's self-determination. Their cohesive national identity, national aspirations and strong tradition of leadership and rebellion distinguish them from other minority groups in the Arab world and help them to challenge all the Iraqi governments "Arabization" policies and manipulation of Kurdish issues by other States. They have even resisted the "semi-autonomy" granted to them by Iraqi authorities which has not been achieved by any other ethnic group in the region, not even the other Kurdish communities in the neighbouring states (Iran, Turkey).
However, one has to distinguish between the relation between minority groups and Arab regimes, on one hand, and their relation with the majority community on the other. While the former has sometimes been characterized as suspicious and violent, the latter has generally been harmonious. In the Kurdish case, war was not declared against everything Arab, but rather against a regime who, they believe, have deprived them of some of their political and cultural rights. Even in Lebanon, Muslims and Christians do not fight a "holy war", but rather a battle about social and foreign policy issues and the distribution of powers.\(^5\) In other words, cultural and religious dissimilarities are most unlikely to disturb the harmonious coexistence between the Sunni Arab majority and minority groups. Nevertheless, circumstances may arise in which "communal solidarities can be triggered for cultural or political conflicts",\(^6\) especially in the absence of any rules regulating the relationship between religious and ethnic groups, and herein lies the major cause of most communal conflicts in the Arab world.

2 - Political systems

Current political systems in the Arab world can be easily divided into two groups: monarchies and republics. However, this categorization is not the sole valid one, nor even the most precise. On the basis of other categorizations, Arab political systems can be divided into conservative versus radical; secular versus religious; rich versus poor; socialist versus non-socialistic \textit{et cetera}. Nevertheless, we shall take the monarchies-republics as the basis of our study of these systems.
a - Monarchies

From the twenty-one Arab political systems, eight of these are monarchies. Interestingly, all of these with the exception of Morocco, are located in the south eastern part of the Arab world; and all have a certain percentage of tribal population. Furthermore, all of the Arab monarchies, except Jordan and Morocco, are among the wealthiest Arab countries due to their oil revenues.\(^7\)

Authority in all of these systems descends within family linkages, although some slight differences do exist. However, their legitimizing bases are varied. Monarchies in Jordan and Morocco emphasize their "alleged" dynastic proximity to the line of the Prophet Mohammad as their primary source of legitimacy. Closer to this source is Oman's Sultan reliance on the Ibadi sect (a religious group that has existed since the seventh century and has now almost vanished except in Oman). In the case of the rest of the Gulf States, legitimizing values stem mostly from tribal sources. Royal families in these States are still holding political leadership in accordance with the "classical model of the tribal shaikdom".\(^8\) In Saudi Arabia the Saud family's reliance on a combination of Islamic and historical sources of legitimacy has given it the strongest possible claim to ruling legitimacy among Arab monarchies.\(^9\)

So far, these sources of legitimacy have provided the monarchs with a level of political stability exceeding, in some cases, the one held by their republican counterpart. However, changes going on in the region have started to shake these sources and it has become obvious that most of them are not capable of providing the level of legitimacy needed by these regimes to preserve their position. Socio-
political factors have changed the ruled people. Traditional sources by themselves are no longer accepted by the masses, and even if accepted, as in the case of Islamic values, they are not always interpreted in the way favouring the interest of the regimes. The interrelations of the people with the outside world have also brought some new thinking about how they should be ruled. These changes have forced the monarchies to react to preserve their position by either creating additional sources of legitimacy or by increasing their efficiency. Although in varying degrees, almost all of the monarchies have made some attempt to align their system with one form or another of a parliamentary system. At present, some of the monarchies have a functioning parliamentary system, another group have suspended their parliaments, and still a third group are preparing to introduce their models of parliaments. A common feature of all these parliamentary systems is the King’s exclusive power to suspend or dissolve the parliament at any time.

The second method by which Arab monarchies have tried to preserve their position is through increasing their efficiency. This strategy takes the form of increasing the service programs, creating new employment opportunities, and most importantly, managing a successful external policy, especially with regard to Arab and Islamic matters. Arab monarchies have always been eager to mediate in inter-Arab disputes, inviting Arab summits, and providing financial aid to poorer Arab countries. This method has proved to be effective to some extent. However, a problem exists in the fact that this strategy depends heavily on the availability of affluent financial sources. Current economic difficulties affecting even the richest oil countries give rise to some doubts about the ability of Arab monarchies to continue this strategy. Therefore, these monarchies have been left with no
alternative to increasing their legitimacy except by opening up their political processes and by accepting more participatory values.

b - Republics

There are thirteen republican systems in the Arab world, some of them originating as such after independence (Algeria, Democratic Yemen, Djibouti, Lebanon, Somalia, Sudan, Syria), while others abolished their previous monarchies years after independence, either through revolution or coup d’etat (Egypt, Iraq, Libya, Tunisia, Arab Yemen).¹¹

Although these countries fall under the category of republics regarding their political systems, differences existing among them are very wide. Such differences exist even among countries sharing the same ideology. The case of Syria and Iraq is a perfect example, Although both are Baathist in political ideology and geographic neighbours and as such might be expected to share many political characteristics, this is not so.¹² Worse still, these two countries have been at odds for about a decade and each has followed an extremely different external policy, sometimes even hostile towards the other as illustrated by the Syrian position in the Iran-Iraq conflict.

Unlike Arab monarchies, republics do not rely on traditional values for their legitimacy. To the contrary, their existence was primarily based on their rejection of most of these sources. They partly rely on their revolutions and revolutionary ideologies as sources of legitimacy. Furthermore, most of the constitutions of these republics, in one form or another, refer to the norm that
"people are the sole source of power" as the essential legitimacy source. They also explored new modern political thoughts favourable to their new generations such as democracy and popular participation. Parliamentary forms of government, democratic elections and political party systems are being adopted in most of these Arab republics. However, the reality is often one of dictatorship and absolute individual leadership where the leader (president) is guaranteed his position as long as he lives. It is indicative that, with the exception of Lebanon, no Arab president has lost a presidential election. Furthermore, in almost all of these republics, with the exception of Lebanon, the president has unlimited power to suspend or dissolve the parliament. The reality, therefore, remains that, to preserve their position, Arab republics have depended mostly on the personality of the leader (president), whether charismatic or tough handed.

At present, the principal problem faced by Arab revolutionary republics exists in their stand regarding the position of Islam in their systems. Almost all of these republics, except Lebanon, claim to be Muslim countries, and their constitutions include a few Islamic provisions requiring that the state religion be Islam, the head of the state be a Muslim and the Sharia (Islamic Law) be a source of law.\(^\text{13}\) Aware of the tremendous political power of Islam and "to neutralize a possible opponent"\(^\text{14}\) Arab republics continue to use Islam for the purpose of acquiring legitimacy. However, in practice, national ideology, state institutions, laws, and political elites and parties are "secularly oriented"\(^\text{15}\) and therein lies one of the great weaknesses of these regimes. For the masses in these countries, and all over the Arab world, Islam is not just a religion, it is an entire way of life and as such cannot be taken piece meal. The current Islamic resurgence in the Arab world has even worsened the position of the Arab republics. New Islamic
movements have begun to stress political aspects of Islam against "imported" governing systems.

This lack of religious base, false participatory norms, and failure to match words with effective deeds on their revolutionary ideologies and promises, have all participated to create problems of legitimacy to the Arab republics comparable to the problems of the monarchies.

3 - Pan-Arab Nationalism

Arab nationalism as an ideology and an influential factor in the Arab world's politics was the product of a variety of historical events which took place during and after World War I. Prior to that time, politics in Arab society was largely a matter of religion and dynasties. Increased weakness and the later fall of the Ottman Empire (Khilafah) had left the inhabitants of the Arab world in a political vacuum for the first time in centuries. Accompanying it was the increased influence of Western thought, especially through Western educated Arabs and through missionary activities in the Levant. Britain, for reasons of weakening its Ottman opponent, had also participated in encouraging the spread of Arab nationalism.

However, at that early stage of its history, Arab nationalism did not exceed the role of an intellectual ideology, resting on "the power and popularity of the pamphlet and the book". Even as such, it did not acquire consensus with regard to its meaning, scope, and goals. For instance, although Arab nationalists perceived that the objective of pan-Arabism was independence and unity of the Arab world,
there had never been a consensus as to what constituted the Arab world itself. Until the 1940's, Egypt and the Maghrib states were not considered by most of the Arab nationalists to be part of the Arab world. On the eve of the foundation of the League of Arab states, Nurial-Said (Iraqi Prime Minister), submitted a scheme for Arab unity to the British government excluding Egypt and the other North African States.  

Interestingly, it was in Egypt, with its "doubted" Arabism, that Arab nationalism lived its "glorious" era. The emergence of Nasser in the 1950's gave the nationalist movement what it had been waiting for: a "charismatic champion" to take the theories and the emotions to the masses and to transfer it from a mere ideology to an effective political movement. Parallel to this was the existence of some political parties and organizations which adopted the Arab nationalist cause as their principal goal. The most significant among them was the Baath Party which put the carriage of "the revolution and resurgence of Arabism into all Arab countries" as its primary duty. In 1958 the Arab nationalist movement reached its highest level when Nasserist Egypt and Baathist Syria came to unite in what was called "the United Arab Republic".

The glorious era of pan-Arabism, however, did not last long. The dissolution of the United Arab Republic in 1962 was the earliest of a chain of developments which exposed the bankruptcy of Arab nationalism and the weakness of its "heroic" regimes. The links of the chain include the 1967 Arab defeat, the 1970 civil war in Jordan (black September), Egypt's separate treaty with Israel in 1979, and the 1982 Israeli invasion of Lebanon. State nationalism has come to firmly grasp the loyalties of the Arab people, even in states ruled by Baathist
regimes, the current "guardians" of pan-Arab nationalism. The Islamic resurgence which has swept over the Arab world has also participated in the weakening of pan-Arabism by attracting away popular support. Such circumstances have led some writers to observe that pan-Arabism has become just "a myth" and "a thing of the past".22

All these events have participated in depriving pan-Arab nationalism of most of its political significance, pushing it back to the position it occupied at the beginning of this century; an intellectual ideology having little connection to reality. The Arab masses who used to fill the streets of Cairo, Damascus, Beirut and Baghdad in response to Nasser's nationalist appeals, have already lost their confidence in pan-Arab nationalism. A number of surveys conducted in the Arab world have affirmed such a conclusion.23 However, this does not necessarily lead to the belief that pan-Arab nationalism is "dead", "a myth" or "a thing of the past"; for to say so is to deny the facts that the Arabs share one language, common culture and similar historical experience. Nevertheless, pan-Arab nationalism is unlikely to gain any political significance, at least in the foreseeable future. In other words, what is already "a thing of the past" is pan-Arab nationalism, the political movement and not the ideology.

4 - Islamic Resurgence

In the course of the last two decades the Arab world has witnessed a mushrooming of Islamic movements and ideas which has been described as: Islamic revival, Islamic awakening, or Islamic resurgence. At no time has Islam rallied as "broad a following" as it seems to have done since the early 1970's.24
The 1979 Iranian "Islamic" revolution, the 1981 assassination of Sadat (Egyptian president 1970-1981) by an Islamic militant, the 1982 Syrian Hamma bloody clashes between the Baathist army and Sunnis, as well as other incidents in other parts of the Arab world, have opened the eyes of the world to the significance of such a movement. Various explanations and justifications have been suggested as causes of the current Islamic revival. Some see the movements as: a reaction to modernization; a result of the political and economic failure of Arab nationalist regimes, a rejection to the American involvement in the region and its support to Israel, disenchantment with previous ideologies (nationalism, socialism...) et cetera. However, despite the soundness of some of these interpretations, most of them have failed to appreciate the significance of the Islamic revival or have ignored one or more of its unusual characteristics. First and most importantly is that the current Islamic revival has encompassed not only the political sphere, but personal aspects as well. Political events which attracted the attention of outsiders were just the tip of the iceberg. Its personal aspects are reflected in increased emphasis upon religious observances (Ramadan fasting, mosque attendance... et cetera). The second characteristic is its geographic expanse. Virtually no country in the Arab world is immune from the implications of the current Islamic movement. The third characteristic of the Islamic revival is that it appears to be a mass movement. Its support is not restricted to any particular class, although some surveys have found young people to be a little more supportive.

The political significance of the movement did not allow the Arab regimes to remain indifferent. Two different responses have been adopted: either opposition and suppression or accommodation. Whereas the former has led to many
confrontations between Islamic groups and the governments adopting it, the latter has so far been the more popular and effective. In this regard, many Arab governments have moved to bring their constitutions and legal codes closer in harmony with Islamic law (Sharia). Nevertheless, Islamic revival does not seem to have reached its peak yet. The Arab world appears to be entering a period of considerable change in which Islam will be a major determinant. It does not seem likely that Arab regimes are willing to go all the way with Islamic movements' demands to the point of complete Islamization, nor do these movements appear to be satisfied with the partial Islamization that governments are willing to undertake.

How the relationship between Islamic groups and Arab governments will continue is a question that can not be answered at this time. The fact remains, however, that the current Islamic revival is not a passing phenomenon and that it will continue to have a strong impact on the politics of the Arab world.

B) Origin and Development of the Arab League

The idea of Arab unity and creating one Arab state can be traced back to the beginning of this century when the Arab nationalist movement began to spread throughout the Arab world. Prior to World War I, a number of proposals had been set forth to transfer the dreams of unity into reality, but all ended in complete failure.

The problem of Palestine which arose between the two wars gave a new impetus to the Arab nationalist movement and its search for unity. It was the first
time that Arabs took common action in regard to a specific case as reflected in the pan-Arab conferences on the Palestine issue. At one time it appeared that "if for no other reason, the Palestine question alone would unite all Arab countries into a solid bloc".31

However, it was not until the early 1940's that serious unity attempts were suggested by various Arab leaders. The British government's decision to lend its support to some form of integration in the Arab world worked as an encouraging factor for Arab countries to collectively discuss unity proposals and arrived lately in the form of a regional organization reflected in the League of Arab States. Britain's decision was, however, influenced by a number of political considerations having no relation with Arab unity. Such a supportive decision was reflected in a speech made by British Secretary of State for Foreign Affairs at the Mansion House in May 1941 in which he declared his country's support for an Arab union. He also reiterated British support for a scheme of Arab unity in February 1943 in the House of Commons.32

The second British government declaration was quickly acted upon by the Arabs and a number of unity plans were suggested. Nuri Al-Said, the Prime Minister of Iraq, came forward with his "Fertile Crescent Scheme" which called for the unification of Syria, Lebanon, Palestine and Transjordan into a Greater Syrian State, and for the establishment of an "Arab League" which would originally include the new Syrian State and Iraq and could be joined later by any other Arab state wishing to do so. Amir Abdullah of Jordan also announced his plan for a "Greater Syria" which would comprise Syria, Lebanon, Palestine and Transjordan under his rule. His plan also provided for the creation of an "Arab Union"
consisting of his new state and Iraq and other interested Arab states. Nevertheless, both plans failed, mainly because of their restricted geographical scope and the fear among most Arab governments of a potential domination by the Hashermite dynasties which were ruling both Iraq and Transjordan at that time.

In August 1943 Egypt announced that it had invited all Arab states to participate in a general Arab conference to work out the form of the future union of Arab States. This conference took place in Alexandria (Sept.-Oct. 1944). Mainly three forms of institution of cooperation were examined by the participating delegates:

a - A united Arab state with a central executive authority.

b - A federation with an assembly representing participating Arab states and with full power over federal issues.

c - A loose confederation with emphasis on cooperation and coordination and whose resolutions would only be binding on the states that accept them.

The first two types met with opposition from most of the Arab States as they would lead to the "alienation of their sovereignty and restrict their free will". Other obstacles included great differences among Arab States in the political, cultural and economic domains and the foreign influence in some of them. Therefore it was logical that the conferees could not agree except on the least controversial form of cooperation and coordination. The conference ended on October 7, 1944 by signing what came to be known as the Alexandria Protocol. It's first article declared that "A League will be formed of the independent Arab States which consent to join the league".
The preparatory committee met again on March 17, 1945 to finalize the
collection of the Arab League. The League's Pact was signed five days later on
March 22, 1945.\(^{38}\) Signatories were Egypt, Iraq, Lebanon, Saudi Arabia, Syria,
Transjordan and Yemen (the text of the Pact is found in Appendix A).

Article 2 of the Pact defines as the purposes of the League 1) strengthening
the relations between member States, 2) coordinating their policies in order to
further cooperation and safeguard their independence and sovereignty, 3) a general
concern for the affairs and interests of Arab people, 4) the realization of close
cooperation among member States in economic and financial affairs,
communications, cultural affairs, nationality questions, social affairs and health
problems.

Article 1 of the League's Pact restricts its membership to independent Arab
States. Any such State has "the right to become a member of the League".
Nevertheless, despite Palestine's failure to meet the independence condition, she
was admitted to the League as a full member "owing to her special status".\(^{39}\) It has
not settled, however, as to what was meant by the word "Arab" as a prerequisite
for a State's admission to the membership of the League. It has been suggested
that the determinate factor in this regard should be the Arabic language.\(^{40}\)
Application of this criterion is not, however, as simple as its advocates envisaged.
Does Arabic have to be the dominant language of the State's population or the
declared official language of the State? Or both? What about those League
members where Arabic is the official language of the State but scarcely spoken by
the people (e.g. Djibouti)? A reference should be made in this regard to the fact
that, as far as Article 1 of the Pact is concerned, the phrase "Arab States" is not
based on a racist concept. More than half of the current League members are "Arabized" nations. Pure Arabs can only apply to the habitations of the Arabian Peninsula. Arabization of other areas of what has now become known as the Arab world began only after the Islamic conquests of these areas in the seventh century. It also has to be pointed out that not all Arabs are Muslims and, likewise not all Muslims are Arabs. Subsequently, not all Muslim States are members of the Arab League. States such as Turkey, Iran and Pakistan cannot become members of the League because they are not Arab.

At the present time, the League's membership consists of twenty-States. After Egypt signed a separate peace treaty with Israel in 1979, its membership was suspended and the League's headquarters were moved from Cairo to Tunis. However, Egypt resumed its membership in accordance with a resolution taken by the last Arab Summit held in Casablanca in June 1989. It was also decided during a recent meeting of the Arab League foreign ministers to move the League's headquarters back to Cairo. The transfer is to take place in September 1990.

C) Evaluation of the League's Role in the Arab World

1 - Internal Activities of the League

Besides the clear cut objectives set forth by the League's Pact which determine the League's regional programs, there are also other regional objectives which the League has undertaken, although not specifically mentioned in the Pact. Our evaluation will encompass three primary objectives of the League's internal activities. These are: seeking independence for Arab states, settling inter Arab disputes and promoting collective security for its members.
a - Independence for Arab States

Despite the fact that the League was established in a time when almost all Arab States were under occupation (direct or indirect), promoting independence for Arab states was not cited in the Pact. Nevertheless, most Arab League commentators agree that this area has been one of the rare areas where the League has achieved significant success. Macdonald wrote:

Despite the League's failure in Palestine in 1948, one of the most successful programs carried out by the Arab League has been that of promoting independence for all Arab people.  

From the first days of its existence, the League allotted most of its efforts and resources for the independence of the various Arab States. The League regarded itself as a party to all conflicts relating to Arab independence. It exploited a variety of techniques for the achievement of such an objective, depending on the special circumstances and needs of each case. It provided Arab independence movements with financial, political and even military support (as in Algeria). The League worked in some instances as a coordinator between these movements (as in Morocco and South Yemen). In addition, it acted as a "spokesman to the world" by contacting international organizations and seeking support and recognition for the various Arab independence movements. Other techniques included resistance to attempts to divide some Arab states into "mini-States" (as in Libya).

The Arab failure in the Palestine case can not be said to detract from the League's success in the area of decolonization of Arab states. Such an issue is
better looked upon under collective security rather than the decolonization area. In addition, there is a great number of external and internal factors involved in that case which left the League with a very limited capacity for action.

b - Peaceful Settlement of Inter Arab Disputes

Article 5 of the League's Pact lays down the principles of voluntary arbitration and compulsory mediation as the only two methods by which the League can intervene to settle disputes arising between member States or between a member and a third party. In situations threatening to lead to war the League Council may intervene by means of mediation without pre-request being made by the parties. In other situations, however, the League can not take any action unless the parties require its arbitration and only in conflicts which do not affect, "independence, sovereignty and territorial integrity".

Apparently, this article deprives the Council, the sole body responsible for disputes' settlement, of any significant jurisdiction. Rarely could there be a dispute which meets all these conditions. In reality, however, the Council has exploited almost all means of dispute settlement including mediation, conciliation, good offices, and ad hoc and fact finding committees. Furthermore, the Council does not always wait to be invited to intervene in disputes which do not threaten to lead to war. Such efforts notwithstanding, the League's record in this regard reveals many more failures than successes. A check of this record discloses that the League's failures have followed a progressive line since the League's establishment in 1945. Since the beginning of this decade, the League has not had any success in settling, or even modifying any of the existing inter-Arab disputes.
A number of factors have caused the League's weakness in the area of settling inter-Arab disputes. Most obviously is the Pact itself. Contemporary international and national developments have made the Pact's provision for disputes settlement out of date and in urgent need of complete revision. Furthermore, the League's system, unlike many regional organizations of States, does not contain any judicial body, whether it be an inter-Arab court or an arbitration commission. The political nature of the Council has prevented some Arab States from referring their disputes to the League and choose other international or regional organizations instead. Other factors affecting the League's role in disputes settlement include the antagonistic nature of inter-Arab relations, Arab States high sensitivity to their sovereignty, their lack of confidence in the League's system as a whole, and finally the ever-increasing intervention by outside powers in inter-Arab disputes.

c - Arab Collective Security

The collective security system of the League was originally established by Article 6 of the Pact and subsequently "developed and institutionalized" by the Arab Collective Security Pact of 1950. In general, the system considers any armed aggression against any member State to be an aggression against all member States. In such a case, Arab States shall immediately lend their assistance to the aggressed State(s) and "take immediately, individually or collectively, all measures and utilize all means available, including the use of armed force" to repel the aggression.
Despite the repeated urgent needs for the collective security system, its actual use has so far been one of consistent failure. The existence of Israel and its wars with Arab countries since then have continuously proved the inadequacy of the Arab collective security abilities. The sole case in which such a system was effectively used was in the case of the Kuwait-Iraq conflict in 1961 when Iraq threatened to annex all of Kuwait.

Nevertheless, as Dr. Boutros Ghali pointed out, "it would be unfair to blame the Arab League for the [inadequacy] of the collective defence" system. Frequent inter-member disputes, continuous polarization, uneven foreign policy, various forms of governments and most importantly the lack of commitment to the collective security system, are all barriers to the existence of an effective Arab collective security system. Being convinced of the inadequacy of the pan-Arab system, member States have turned to replace it by sub-regional collective security systems (as in the example of the one concluded between members of the Gulf Cooperation Council). It is expected that these sub-regional systems will provide better results because of the absence of most of the above barriers which have weakened the pan-Arab system.

2 - External Activities of the League

Our evaluation of this part of the League's activities includes the Arab League's boycott of Israel, its role in Afro-Arab cooperation and the relationship between the League and the United Nations.
a - The Arab League and the Boycott of Israel

The economic boycott of Israel had existed before the existence of Israel itself. In a resolution issued in December 1945 the League's Council encouraged member States to boycott goods produced by Zionist firms in Palestine. However, to use Macdonald's words, the boycott in its original form was more of "a simple operation to prevent smuggling". But since the creation of Israel in 1948, the scope of the boycott has been expanding progressively. In 1951 a Central Boycott Office was established in Damascus. In addition, each member State was to establish its national boycott office. The function of the central office is to serve as secretariat for national boycott offices, arrange for the semi-annual regional conference, investigate foreign concern relations with Israel, and to recommend names of foreign business to be added or dropped from the blacklists.

The League boycott system assumes three basic forms or levels. The primary boycott which prohibits Arab states and nationals from dealing with Israel and its nationals. The secondary boycott refers to the blacklisting of non Israeli concerns that contribute to Israel's economic and military strength. The third form is the so called the "tertiary boycott" which prohibits the trade with those concerns that are blacklisted.

League members compliance with the boycott have varied significantly depending on various factors. Nevertheless, the boycott in its primary form has been applied strictly by almost all League members.
Despite the relative success of the League's boycott in its early years it did not evolve as an international issue and attract the attention of the world until the early 1970's. The 1973 Arab-Israel war, the oil embargo against countries supporting Israel in that war, and the subsequent dramatic increase in the oil prices created a turning point in the history of the boycott and in the Arab Israeli conflict "of which the boycott is an integral part". The new extraordinary economic significance of the Arab world after the oil crisis of the early 1970's altered the position of all foreign States and firms. More and more foreign concerns, seeking the fortunes of the expanding Arab markets, began to comply with the boycott requirements.

Despite the varying degrees by which League members enforce the boycott regulations, the boycott "has proved effective both economically and politically". It may be cited as the only political action where member States have shown such a high level of unity and commitment. According to Salman:

Except for Egypt after 1979, not one single country has broken away from the boycott or called for its abandonment. Even when there have been ruptures in the relationship between individual Arab states, the representatives of these nations continued to attend and to participate in the annual boycott meetings.

A large share of the credit for the League's success in this regard goes to the efforts of the Central Boycott Office, "the only part of the League's political apparatus which acted with increasing efficiency since its inception". The fact that the Office has worked almost separately from the League - located in Damascus, while the League has been stationed in Cairo and later in Tunis - has been to its advantage. This gives it immunity from being influenced by the
League's repeated failures, particularly in the field of political actions. Another cause of its success is the decentralization policy which the Central Office has followed in its relation with the League members. By leaving each State with a wide margin of appreciation in the application of the boycott regulation, the Central Office does not challenge the principle of state sovereignty from which the whole League system has suffered the most.

b - The Role of the League in the Afro-Arab Cooperation

In keeping with the various connections which linked Africans and Arabs for centuries, the League was concerned with strengthening such a connection from its first years. The first steps in that direction were reflected in a number of decisions by the League's Council in support of the African liberation movements and its call upon member States to strengthen their political, economic and cultural relations with the emerging African States. In particular, the Council, on many occasions, condemned the racist regimes in South Africa, Rhodesia and the Portuguese colonies. Arab States, with the coordination of the League, supported African issues at the UN. Cooperation between these two groups increased progressively as more and more African States gained independence.

In 1963 the Organization of African Unity was established, but this did not provide any impetus for Afro-Arab cooperation in its first years. In contrast, its repeated refusal to support the Arabs in their conflict with Israel, besides the establishment of the political and economic relationship between a number of African states and Israel, caused a degree of coolness in Afro-Arab cooperation.
Beginning in 1967, the African attitude toward the Arabs in their conflict with Israel began to change. The Israeli occupation of parts of Egypt, a leading African State, was a major cause of such a change. Bilateral relations between individual Arab and African States, closer Israeli alignment with South Africa and increased coordination between Arab and African attitudes in the UN, all participated in improving the Afro-Arab relationship. However, these did not have serious actual meaning until the 1973 Arab-Israeli confrontation. By such time, African attitudes "had evolved from neutrality to full support of the Arab position. In addition, the two regional organizations, the League and OAU had become more concerned with enhancing all aspects of Afro-Arab cooperations. A number of practical measures were taken by both organizations in this regard. On the Arab side, a large share of the 1973 Arab Summit was devoted to enhancing Afro-Arab cooperation. The League General Secretary was asked to take all steps necessary to strengthen cooperation with the OAU in political, financial and cultural areas. The Summit provided also for the establishment of an Arab Bank for Economic development in Africa.

Afro-Arab cooperation reached its highest point in 1977 when the first and last Afro-Arab Summit was held in Cairo to institutionalize the relationship between the League of Arab States and the OAU. Four documents emerged as a result of the Summit meetings providing for more cooperation and coordination in political, economic and financial areas. The Summit also provided for the creation of a permanent Ministerial Committee, a Coordination Committee and a special Afro-Arab Court or an arbitration Committee.
However, toward the end of that decade, Afro-Arab cooperation began to slow down again. The signing of Camp David Accords by Egypt, a country which had been a major link between Arabs and Africans, and Egypt's subsequent isolation from the Arab world, the decline in oil prices and its effects on Arab aid to the Africans and the relaxation of relations with Israel by a number of OAU member States were all causes of a new coolness in the Afro-Arab cooperation.

The League's role in cooperation has been impressive as far as providing aid to the African States is concerned. However, its concentration on this aspect of cooperation has severely affected other areas. Furthermore, the link between Arab financial aid and African attitudes to Israel has weakened the basis of Afro-Arab cooperation and made it unable to withstand the international political and economic changes. The League's role has also been affected by the increasing emphasis by both Arab and African States on bilateral relationship. Even in the area of financial aid, upon which the League has depended heavily for its contribution to Afro-Arab cooperation, more Arab States, particularly the rich Gulf states, are now directing more of their aid to African States directly through their national funding agencies, instead of the Arab Bank for Economic Development in Africa.

c - Relationship between the League and the UN

Although the League's Pact was drafted before the actual existence of the UN, the provisions of the Pact envisaged, albeit in general terms, the future relationship between the League and the yet-to-exist international organizations. Article 3 of the Pact stated that:
It ... shall be the Council's task to decide upon the means by which the League is to cooperate with the international bodies to be created in the future in order to guarantee security and peace and regulate economic and social relations.

In addition, Article 19 implicitly envisaged the amendment of the Pact to "regulate the relationship of the League with any international bodies to be created in the future to guarantee security and peace".

At the time of the San Francisco Conference in 1945, Arab League countries sought, unsuccessfully, a clear definition of regional arrangements and explicit recognition of their existing regional body.\textsuperscript{66} Nevertheless, the League's relationship with the UN has developed gradually since then. In 1950 the League's Secretary General was invited to attend the General Assembly session as an observer. Such an invitation has been extended annually. In another significant development, the UN Secretary General forwarded a memorandum to the League's Secretary General in 1960 anticipating cooperation in such matters as "mutual consultation, joint action in the economic and social field, exchange of information and documentation and representation and liaison".\textsuperscript{67} The League also signed mutual cooperation agreements with a number of UN specialized agencies: UNESCO, ILO, WHO, and FAO. It also maintains a permanent observer status in the UN and in some of those specialized agencies. In a more recent development in November 1982, the General Assembly endorsed by a consensus resolution Arab proposals expanding cooperation between UN and the League.\textsuperscript{68}

In practice, the League's relationship with the UN has not achieved a reasonable level of success in all its aspects with the possible exception of the area
of settlement of regional disputes. This is so despite the League's efforts to enhance such a relationship. Most UN contacts with the League have been on an ad hoc basis and concentrated on few specific areas. This attitude on the part of the UN may be explained in turn by the League's failure to impose itself in international politics as a strong regional organization.

The Arab-Israeli conflict has worked as both a positive and negative factor in the relationship between the League and the UN. On one hand, it has "intensified the League interest in UN activities related to the fighting". On the other hand, the Arab refusal to deal with Israel directly or indirectly, has led to the cancellation of some UN regional development programs in the region. Furthermore, the conflict has exhausted the League's efforts inside the UN in seeking the support of the international organization and other regional groupings.

3 - Major Causes of the League's Weakness

There has almost been a consensus among Arab League commentators that it has so far, proved to be a "weak organization". To be sure, it has failed to match the minimum aspirations of its founders.

Causes of such failure can be attributed to regional and international conditions as well as defects in the League's structure and organization. Among the regional conditions which have severely weakened the League is the continuous rivalries among member States. For almost the last three decades, the Arab world has kept moving from one crisis to another. Such conflicts have led to the absence of the solidarity necessary for a joint Arab action on the one hand and have
consumed the League's efforts and resources in seeking solutions for them on the other.

The increasing strategic importance of the region and the subsequent interventions by "Great Powers", to control the course of events in the region have denied the Arab States the "necessary luxury of exercising individual and collective sovereignties to control their regional destiny". Thus, the Arab world, more than any other part of the world, has become "a theater" for ideological competition between East and West.

There are also causes related to the League's structure and organization. Despite the significant changes in international and regional conditions, the Pact has not been amended since it was originally drafted in 1945. The necessity for amending the Pact was realized at very early stages of the League's history and proposals to reform its structure were advanced to the Council as early as 1951. However, no formal change has been introduced since then.

Related to the outdatedness of the Pact is the lack of balance between the League's capabilities, whether derived from the Pact itself or from member States respect and confidence, and the loads that have been put upon it. The League is called upon to solve the Palestine problem, set plans for economic reforms and find solutions to all the "unresolvable" inter-Arab conflicts. Yet, it has been denied even the basic authority necessary to discharge such loads.

Another cause of the League's weakness has been the reluctance by some member States to accept the League's role as a regional organization. The trend
among such states has been to regard the League as a first step toward Arab unity despite the decision made at the time of its establishment and frequently reaffirmed "by word and deed" that political unification was not a feasible objective of the League.\textsuperscript{75} Continuous emphasis on such idealized goals has only impeded the progress of the League as a regional organization, in economic, social and cultural fields and intensified inter-Arab conflicts. It is regrettable that such inclination is still alive in some of the current League’s reforming proposals.

In addition, there are some other causes which have participated, though to lesser extent, in the overall League weakness. Among these are: the Egyptian domination in the 1960’s and 1970’s, the transfer of the League’s headquarters from Cairo to Tunis in 1979, the ever increasing establishment of subregional organizations (the Gulf Cooperation Council, the Arab Cooperation Council, the Maghrib Union), and the continuous existence of the unsolved Palestinian question.

4 - Current Attempts to Reform the League

The issue of reforming the League and revising its Pact which was drafted more than forty years ago is not a new one. Concrete proposals to that effect were forwarded by member States at various stages of the League’s history. However, no serious actions had been taken in this regard until the League headquarters were moved to Tunisia when the Tenth Arab Summit held in November 1979 issued a resolution calling for:

The amendment of the League’s Pact so as to enhance joint Arab action and the work toward rebuilding its machineries on new bases that guarantee their efficiency and competence to develop Arab self ability and lead to the realization of Arab unity.\textsuperscript{76}
Accordingly, a draft amendment of the Pact was prepared and distributed to the League member states awaiting its ratification by the Arab summit.77

The need for the League's reform and the revision of its Pact derives its necessity from the many changes that have occurred since 1945 within the League's own system, as well as in the regional and international arenas. The revised Pact, if implemented, contain many promising amendments which are meant to cope with these new realities and to lead the Arab joint action to achieve its goals. In particular, it provides for the creation of an Assembly of Heads of States,78 an Arab Court of Justice, and for more expanded means of settling inter-Arab disputes. Of more concern to our study is Article 1(2) which recognizes the protection of human rights as one of the League's objectives.79 The article reads:

The League of Arab States purposes to:

2. To work toward ensuring that Arab States guarantee to man in the Arab world his security and all his rights and to enable him to practice his fundamental freedoms.

Another reference to human rights in the revised Pact is found in Article 9(5) which makes it one of the functions of the Council of the Arab Foreign Ministers "to protect human rights and freedoms and to support the Arab Commission on Human Rights". Suffice it to say that no mention of human rights exists in the current Pact. This express reference to the protection of human rights in the draft revised Pact should not, however, be seen as a major change in the thinking of Arab States toward the significance of human rights. At no time has the protection of human rights been a determinate factor in revising the Pact. Most Arab commentators who studied the revised Pact did not attribute any
significance to its explicit reference to human rights. It is not clear yet whether such a reference would affect member States decisions to accept the revised Pact. Introduction of further amendments to the revised Pact before its final adoption cannot, however, be ruled out.

The likely effects of the ratification of the revised Pact, even if it is ratified without any amendments, should be conceived realistically. If member States attitudes toward the League remain unchanged, neither the current Pact nor its amendments would take the League out of its crisis. The key problem as Macdonald has observed, is "less that of procedures than of increased confidence on the part of member States". However, this is not to deny the many advantages of implementing the revised Pact. Yet, if such amendments were to be accompanied by a change in the relationship between member States and the League, ground would be laid for the transformation of the League into an effective organization capable of dealing with the needs and fulfilling the aspirations of the Arab people.
FOOTNOTES


4 Ismet Vanly, 200.


6 Ibid., 79.

7 Saad Addin Ibrahim, "Legitimacy Sources in the Arab Political System," in Democracy Crisis in the Arab world (in Arabic), (Beirut: Centre for Arab Unity Studies, 1984), 418.

8 Etaibi, 105.

9 Hudson, 172-177

10 Ibrahim, 419-421.

11 Ibid, 422.

12 Politics and Change in the Middle East, 201.


Voices of Resurgent Islam, 7.


Hudson, 118.


The creation of the League in 1945 can also be regarded as an achievement of Arab nationalism at that time. Arab nationalists still look upon the League as merely a first step toward further Arab unity.

Ajami, 96.


Ibid., 115.
Hudson, 341.

Haddad, 151.


Hudson, 275.


Mohammed Ismail Ali, The Brief in International Organizations (in Arabic), (1982), 381.

Hassonna, 5.


Ibid., 7-8.

For the full texts of the Alexandria protocol, see Macdonald, 315-319.

Hassonna, 8.


The League's members are: Algeria, Bahrain, Djibouti, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, Palestine, Quatar, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, United Arab Emirates, Yemen and South Yemen.


Macdonald, 44.

Hasan Nafahh, "The Arab League's Political Role in the Independence of Some Arab Countries and in the Palestine Issue," in League of Arab States: Reality and Aspirations (in Arabic), (Beirut: Centre of of Arab Unity Studies, 1983), 133-134.


Ibid.

Ibid., 130-131.

Mohammed A. Saleem, "The Arab League's Role in Managing Disputes between Member States," (in Arabic) in League of Arab States: Reality and Aspirations, 183.

Hassona, 379.

Ghali, 90.

Macdonald, 118.


Turck, 472.

Hassonna, 383.

Salman, 154.


Salman, 172.

Abdul Ghaffar, 163.

For the texts of the documents and for more detail about the bodies created as a result of Afro-Arab Summit, see Revue Egyptienne De Droit International 33 (1977): 370-389.


Macdonald, 248.


Macdonald, 265.

For example, a project for the establishment of an Economic Commission for the Middle East, which was to be a channel for coordination between the UN and the League in regional economic programs, broke down after the outbreak of hostilities in Palestine in 1948 and the subsequent Arab States refusal to deal with Israel. Macdonald, 269.

Salman, 63.

Macdonald, 292.

Salman, 63.

Hassonna, 388.

Macdonald, 303.


In the last Arab Summit held in Casablanca (23-26 May 1989), the Pact amendments were on the agenda, but the Summit deferred its study to the next Summit Conference to be held in Riyadh, Saudi Arabia in 1990.

Despite the fact that the Arab Summit meetings have been held since 1964 and that they have adopted many resolutions affecting the League, the Summit has no formal authority as far as the provisions of the current Pact are concerned.

For the text of the League's revised Pact see Sh'oun Arabiyah (Arab Affairs) 25 (March, 1983): 255-265.

Sadiq Shaban, "The Draft Revision of the Pact of the League of Arab States: A Special Analysis," (in Arabic) Sh'oun Arabiyah (Arab Affairs) 13 (March, 1982); Al-Salehi.

Macdonald, 308.
CHAPTER III: THE LEAGUE'S LEGAL TECHNIQUES FOR PROMOTING AND PROTECTING HUMAN RIGHTS

A) The Draft Arab Declaration on Human Rights

When the Permanent Arab Commission on Human Rights was established in 1968, one of its functions, as defined by Article 12 of its rules of procedure, was to prepare draft agreements relating to human rights for the League's Council. This mandate was further affirmed in the plan of action or programme which the Commission prepared in its second session in April 1969. The part of the programme relating to action at the regional level includes the preparation of an Arab Charter of Human Rights. At its fourth session, the Commission advised the League's Secretariat General to work to put the finishing touches to the draft Arab Charter on Human Rights and suggested that recourse be had to the experience of the UN in this regard.

A Committee of Experts was set up in compliance with the League's Council resolution No. 2605 of 11 March 1970 and was entrusted with the task of preparing a draft Arab Declaration on Human Rights. The Committee held meetings from 25 April to 10 July 1971 at the League's Headquarters in Cairo and drafted the Declaration which was then forwarded to member states for consideration. However, only eight states took the opportunity to comment on the draft Declaration. These are Jordan, Saudi Arabia, Syria, Iraq, Libya, Kuwait, Lebanon and Egypt, in addition to the Palestinian Liberation Organization. Comments of these states varied from an acceptance without reserve to a complete rejection.
third group took a middle position by demanding some amendments to be introduced into the draft.\(^6\)

Despite the unavailability of the official responses of these states, the conclusions that can be drawn from the scarce literature available are ample to illustrate the disparity of Arab states' attitudes toward the human rights issue and the lack, among some of them, of appreciation of the significance of the international protection of human rights. For instance, one of the eight countries who commented on the Draft Declaration asked for many amendments to be introduced to the draft on the sole justification that the original provisions were contradictory to its constitution. In another case, the draft was rejected on the ground that such a declaration should have been directed toward the protection of the "Arab rights" against their "non-Arab" violators.\(^7\) Of course, Islam was also invoked by more than one country as a justification for rejecting the draft Declaration. However, none of those who did so pointed to the provisions of the draft which they deemed contrary to Islamic principles.

In 1990, nineteen years after the completion of the draft Declaration, no further progress has been achieved. Thus, one could easily conclude that the Arab Declaration is now a dead document. Our following study of the draft Declaration should be conducted in light of this conclusion.

1-Significance of Declarations

In United Nations practice, declarations are "an important element of the function of codification and progressive development of international law".\(^8\) The
United Nations' General Assembly has adopted a number of these on various questions. This practice has also been followed by some regional organizations. In the case of the League of Arab States, the draft Declaration on Human Rights was the only attempt to utilize this type of legal pronouncement.

Opinions have varied regarding the nature or function of declarations. However, it is common knowledge among international lawyers that terming a legal instrument a declaration is a statement that the provisions are not considered binding.  

Nevertheless, declarations have an indirect impact upon the development of international law through their influence upon state practice, leading to the creation of customary international law. Yet, the determination of the precise legal significance of a certain declaration requires a careful examination of the circumstances surrounding its adoption. The intention of the drafters, the number of countries voting for it, and the extent to which the declaration's provisions reflect existing international law, are all relevant to the legal weight to be given to a declaration.

Most often, declarations precede the adoption of conventions. This is particularly true in the field of human rights. As such, they are generally regarded as proclamations of principles or ideals, which are, though not yet binding, meant to become so by means of subsequent conventions.

In the law of human rights, declarations define concepts, establish clearer standards of governmental conduct, educate both officials and the general public
in these norms, and "stimulate ... enactment of internal legislation to implement applicable human rights standards". The Universal Declaration of Human Rights (1948) gives an impressive example of how beneficial a declaration can be for the development of international human rights law. Despite the long dispute over its legal character, international lawyers agree that the Declaration constituted a revolution in human rights law and that it far exceeded its drafters' expectations. The Declaration has deeply influenced the subsequent law of the world community and individual nations.

2-The Draft Arab Declaration of Human Rights v. The Universal Declaration of Human Rights

In pursuance of our previous conclusion that the draft Arab Declaration has become a dead document and that no further action can be expected to be taken for its adoption, our study of the draft Declaration should be brief and concentrating only on exploring the reasons behind its drafting and on its conception of human rights compared to those of the Universal Declaration.

The draft Declaration, as understood from its wordings and from the few League documents available, did not intend to bring forward any distinctive Arab concept of human rights. In contrast, its preamble stresses the Declaration's "affirmation of the principles of the Universal Declaration of Human Rights and commitment of the international society to them based on faith and belief".

Uncertain also are the objectives sought in drafting an Arab Declaration, especially at that early state of the history of the Permanent Arab Commission of
Human Rights. Nafaah accused the League of "automatic" transformation of the experiences of the UN without giving regard to the real needs of the Arab world, and "since the UN initiated its first steps in this field by a Universal Declaration of Human Rights which was subsequently translated into international pacts and conventions, the League desired to follow the same path and start with an Arab Declaration on Human Rights". Although we may agree with Nafaah's statement in its generality, he did not base his accusation on any convincing ground as far as the draft Declaration is concerned. In fact there were no indications, whether from the draft Declaration itself or from the circumstances surrounding its drafting that it would be followed by other binding treaties. The situation is different with regard to the Universal Declaration of Human Rights which was looked upon as the first part of a Bill of Rights which would include also a legally binding treaty and measures of implementation.

Another significant difference between the foundations of the two Declarations lies in the fact that the draft Arab Declaration has no roots whatsoever in the League's current Pact. Considerations of drafting human rights treaties by the League began only after the creation of the Permanent Commission on Human Rights, more than twenty years after the League came into existence. This is in contrast to the Universal Declaration which found its roots in the UN Charter, which established certain legal and conceptual foundations for the development of international human rights law. There were proposals at the San Francisco Conference that the Charter should guarantee the protection of specific rights, and even that a bill of rights be incorporated.
As to the place of the declaration in national law and the authority given to its provisions, the draft Arab Declaration seems to use sharper language than the Universal Declaration. Such language made the draft Declaration closer to being a binding treaty than a declaration. According to its preamble, the draft Arab Declaration was meant to "codify the rights and freedoms of the Arab citizen". In international law codification is used as meaning" the more precise formulation and systemization of the rules of international law in fields, where there already has been extensive state practice, precedent and doctrine. Furthermore, the rights included in the draft Declaration are "inviolable and should be given full care and attention as a basis for every policy, administrative act or legislation". The Universal Declaration, on the contrary, uses language which is more in line with its declaratory character. Apart from any subsequent legal authority it gained by means of creating customary law, the Universal Declaration's purpose, according to its preamble, is to serve "as a common standard of achievement for all peoples and all nations...".

As far as the rights included are concerned, a comparison of the draft Arab Declaration with the Universal Declaration reveals that the former is just a repetition of the rights and freedoms included in the latter, if not lesser. The Arab Declaration, which was drafted almost thirty years after the Universal Declaration did not attempt to benefit from the subsequent development in human rights law that occurred following the Universal Declaration and which were reflected in the subsequent international human rights treaties. For instance, no reference was made in the Arab Declaration to the rights of peoples to self determination, to freely determine their political status, to freely pursue their economic, social and cultural development and to freely dispose of their natural
wealth and resources. Such rights are of more importance in the Arab world than in any other region. Furthermore, despite the fact that the Arab Declaration contains a number of economic, cultural and social rights, as well as civil and political rights, its contents of the former group were less than in the Universal Declaration. Again, this is so despite the more significant position economic, cultural and social rights had acquired in international human rights law during the thirty year period separating the conclusion of the two Declarations.

The fact that the draft Arab Declaration is just a copy of the Universal Declaration is illustrated also by the former's conception of human rights. Against all reasonable expectations that any inter-Arab human rights treaty would be highly influenced by Islamic norms, the religion of more than 90% of the region's population, this is not the case in the draft Arab Declaration on Human Rights. The only effects of such norms on the Declaration have been, regrettably, in the negative. This is clearly illustrated by the Declaration's exclusion of the right to marriage. Regarding this right Islam, in contrast to Article 16 of the Universal Declaration which provides for freedom to enter into marriage without any limitations of race, nationality or religion, restricts the marriage of male Muslims to other Muslims and to other People of the Book (Jews and Christians), and marriage of female Muslims only to other Muslims. Instead of taking into account this special feature by qualifying the right to marry or developing some compromise formula, the right was completely excluded from the Declaration.

Some of the crucial provisions of the Declaration are couched in language which serves the purpose of concealing the determination of states to retain full freedom of action. Thus, Article 9 of the draft Declaration, relating to asylum,
speaks only of every citizen's right to seek asylum. Accordingly, there is a right to seek asylum, without any assurance that there shall be a right to receive asylum. Similar language is also used in Article 23 regarding the right to participate in government. Such an article provides that every citizen has "the right to apply for public service positions in his country". However, there is not any guarantee that his application will be considered on an equal basis with those of others. Certainly, such an article would be without any practical meaning if it does not provide the individual with the right to an equal access to public positions and not merely the right to apply for them.

One of distinctive features of the draft Arab Declaration is the very detailed language of most articles and the number of limitations introduced on some of its crucial articles. The Declaration, unique among its counterparts, provides for a state's right of derogation in a state of emergency. Such provisions are usually contained in binding conventions and not in declarations.

All these flaws notwithstanding, had the draft Declaration been adopted at that relatively early stage of the international human rights movement, it would have contributed considerably to the enhancement of the League's role in the promotion and protection of human rights in the region. It would have served as a basis for the discussion of any matter relating to human rights whether by the Permanent Commission on Human Rights, or by any other League organ. The adoption of the Declaration would also have given the Commission much credibility inside the League which, subsequently, would have forced member States to consider its work seriously.
B) The Draft Arab Convention on Human Rights

Following the failure it faced in its efforts to convince member States to adopt the Arab Declaration on Human Rights, the League did not take any significant action in the field of human rights until early 1980's. All the decisions taken by the League Council in the 1970's concerning human rights were those of appointing a new chairman to the Permanent Arab Commission on Human Rights or extending his term. However, immediately after the League moved its headquarters to Tunis after the expulsion of Egypt from the Arab League, and as a part of a general program taken by the new Secretary-General to reactivate the whole system of the League, the issue of drafting an inter-Arab human rights treaty came to the surface again. An ad hoc Expert Committee was assigned with the task of drafting an Arab human rights convention. After the Committee completed its task, the draft Convention was referred to the Permanent Arab Commission on Human Rights for its consideration. The draft was also forwarded to member States for their comments. A meeting for member States' representatives was held in the League's headquarters (1-11 November 1982) to study the draft treaty. Six states abstained from participating in the meeting.20 States comments were then forwarded to the Permenant Commission which continued its consideration of the draft Convention in its annual sessions. Finally, after a prolonged discussion of the draft Convention, the Commission managed to issue a recommendation to the League Council to adopt the draft Convention.22 However, on 28 March, 1985, the Council adopted a resolution (4458/83) deferring "its final decision regarding the draft Arab convention on human rights until the organization of Islamic Conference finishes its consideration of the draft human
rights in Islam". No further progress has been achieved regarding the draft Convention's adoption since then.22

In this chapter we are concerned with analyzing the League's concept of human rights as presented by the draft Convention. What are identified as human rights by the League's Convention? What are the indications of the definition employed? And what has been the impact of Islamic principles and the international human rights norms on determining the Convention's concept of human rights? For the purpose of our analysis, the draft of the Organization of Islamic Conference's Charter of Human Rights in Islam should be taken as the main determinate of the Islamic concept of human rights.

Before beginning our survey, however it is necessary to make some observations on the general obligations which member States would undertake upon their ratification of the Convention.

1 - General Obligations

a- Non-Discrimination

Article 1 of the draft Convention contains the crux of a State party's obligation. It provides:

Every state party to the present Convention undertakes to ensure to every individual within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms provided for herein without any discrimination on the basis of race, colour, sex, language, religion, political opinion, national or social origin, wealth, birth or any other status and without any discrimination between men and women.
This provision uses the terminology of Article 2(1) of the International Covenant on Civil and Political Rights by applying state party’s obligations only to every individual who is "within its territory and subject to its jurisdiction". Although a prima facie reading of the provision would indicate that the obligation applies only when an individual is both within a state's territory and subject to its jurisdiction, if the provision is to be given its fullest practical meaning, the phrase "within its territory and subject to its jurisdiction should be read as a "disjunctive conjunction".23 Thus, a state party would be obliged to ensure the rights affirmed by the Convention to every individual within its territory and/or subject to its jurisdiction. For to read the provision otherwise would produce results which are contradictory to the spirit of the treaty. For example, the right proclaimed by Article 15 of every citizen to return to his own country would be without any practical meaning since this right is aimed to protect the individual who is outside his country’s territory.

The discrimination clause of Article 1 follows that of Article 2(1) of the International Covenant on Civil and Political Rights prohibiting discrimination on various grounds in the case of the rights and freedoms recognized in the Convention. Remarkable here is the provision’s assertion of the prohibition of discrimination on the basis of sex. In the absence of the Convention’s travaux preparatoires, one has to assume that such assertion was largely motivated by the ever-increasing issue of the status of women in the Arab world. Nevertheless, it is unlikely that this assertion will survive the final adoption of the Convention. Suffice it to mention that some of the constitutions of the League Member States have excluded discrimination on the basis of sex from their provisions concerning discrimination. Others, though prohibiting discrimination on the basis of sex,
include in the same provision or in a general one a clause to the effect that such rules "be without prejudicing to the rules of Islamic Law (Sharia)". This allows the matter to be governed by Islamic norms.

The comparable article (Article 1) of the draft Charter of Human Rights in Islam also forbids discrimination on the basis of "race, colour, region, sex, religious belief, political opinion, social status, or any other considerations". However, for a clear understanding of women's status in Islam, this article should be read in combination with Article 4 of the Charter which provides:

Woman is the partner of man and equalling him in humanity. She has rights equivalent to her duties, and man has upon her the rank of the qawamah and the headship of the family. She has her civil personality separate financial capacity (capax negotti) as well as the right to keep her name and kinship (affinity).

b - Legal Effects of Accession to the Convention

The basic commitment of a state party to the Convention is found in Article 1 which requires each state party to "ensure to every individual within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms provided for [in the Convention]". This is what Oscar Schachter has called "an obligation of result". However, it is Article 42 which specifies how a state party could fulfill its obligation to "ensure" the protection of all the rights and freedoms to its people. According to this article:

Accession of a Member State to this Convention means its completion of all constitutional procedures to make this agreement a part of its domestic law.
This article is meant to clarify the effects of a state party's accession to the Convention. It attempts to give significant effect to the provisions of the Convention by assuming that the very act of accession by a state party is to be understood as meaning that a full and complete effect has already been given by the law of the state to the provisions of the Convention.

The strong language of Article 42 may partly explain the absence in the Convention of any provision equivalent to Article 2(3)(a) of the International Convenant on Civil and Political Rights which stipulates the availability of effective remedies at the national level for the violations of the rights and freedoms in the treaty.

In any event, from a practical standpoint, it is not a desirable policy to require that a state party takes measures making the Convention a part of its domestic law prior to the time of accession, since almost none of the Arab States would be in a position to take all the necessary measures for the implementation of all the Convention's provisions. Furthermore, such a requirement would discourage, or at least delay, the accession of some State Members that are finding difficulty in taking the necessary measures to make all the provisions of the Convention a part of their domestic laws. Suffice it to mention that due to the fact that the Convention covers a vast field of rights, no State Member could claim its domestic laws to be in harmony with all the Convention's provisions.

Notwithstanding the firm stipulation of Article 42 that a state's accession is to be taken as meaning its completion of all the procedures to make the Convention apart of its domestic law, the final word in this regard would be left
to the public law of each individual state. Furthermore, as a result of the absence of any supervisory organ in the League, the determination of conformity with the requirement of Article 42 is left solely to the state in question.

Another aspect of the legal effects of accession by a State Member to the Convention is found in Article 2 which contains what has been known as "the most-favourable-to-individual" clause. This article provides:

There shall be no restriction on the fundamental human rights recognized or existing in any state party to the present Convention pursuant to law, conventions, or custom, nor shall there be derogation from them, on the pretext that the Convention does not recognize such rights or that it recognizes them to a lesser extent.

The purpose of this article is to prevent any misinterpretation of Article 1 which binds each state party to "ensure to every individual within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms provided for "in the Convention". Thus Article 2 prevents any state party from invoking Article 1 to claim that it is not obligated to ensure to its people the enjoyments of the rights which are not specifically recognized in the Convention. The Convention, according to Article 2, establishes minimum standards and is not meant to detract from any rights which the individual may possess under other instruments or laws.

c - Restriction or Limitations Upon Guarantees

Article 7 is meant to excuse states, under certain circumstances, from acts that would otherwise be in breach of the provisions of the Convention. The article
provides for both a "clawback" clause, permitting, in normal circumstances the breach of an obligation for a specific number of reasons, and a derogation clause which permits suspension of certain guarantees in times of public emergency. By providing for the two sorts of limitations, the Arab Convention has introduced an innovation in the international law of human rights. For it has been the practice among the drafters of the international human rights treaties to include either of the two kinds of limitations. Moreover, formal international human rights treaties have abandoned the insertion of a single general "clawback" clause to the introduction of limitations only as qualifications to certain freedoms. Such a departure has been motivated by a desire to restrict limitations to the extent strictly necessary so as to assure more human rights protection.

Article 7 (b)&(c) of the Arab Convention concerning derogation in time of public emergency provides:

b. The State parties to the present Convention may, at times of public emergency which threaten the life of the nation, take the measures derogating from their obligations under the present Convention to the extent strictly required by the exigencies of the situation.

c. In any event, such restrictions and derogations may not touch the rights and warranties related to prohibition of torture and humiliation, return to one's own country, political asylum, trial and prohibition of re-trial for the same offence, and legitimacy of crimes and punishments.

If this clause is to be compared to its equivalent in other international human rights treaties, the following flaws will be evident.
1- The absence of the condition requiring the derogating state to officially proclaim the existence of public emergency;

2- The omission of a requirement of consistency of the measures taken by the state with its other international obligations;

3- The exclusion of the condition that the measure taken do not involve discrimination which is solely based on the ground of race, colour, sex, language, religion or social origin;

4- The absence of the so-called "fundamental" right to life as a non-derogable right;

5- The absence of the condition which requires the derogating state to inform the other state parties or a certain supervisory organ of the derogation measures taken.

The significance of these "absent" conditions lies in the fact that they all aim to create safeguards against any abuse by the State parties of their right to derogate. They further confirm the real justification behind the inclusion of a derogation clause in treaties whose very ultimate purpose is to protect the individual's rights against his state. That is "to extend the Rule of Law to [the state's acts in time of acute crisis] rather than create an exception to it".31

If any of the Convention's provisions is more significant to the reality of the Arab world than the others, surely it is the derogation clause. For it has been
through the "emergency" legislation justification that massive violations of human rights have been committed by some Arab governments. In some of the League Member States, emergency powers take on a permanent character and most often serve as legal cover for large-scale and systematic violations of human rights. Existing emergency situations are mostly of the kind Torsten Stein refers to as "extra-legal necessity". These are situations in which even non-derogable rights do not survive.

2 - Civil and Political Rights

a - The Right to Life

In a language almost identical to most existing international human rights treaties, Article 3 of the draft Arab Convention on Human Rights declares (in part) that "everyone has the right to life". It further proclaims that such a right "shall be protected by law", thus obliging each State Party to have within its domestic legal system a law protecting the right to life. Nevertheless, this right is not absolute.

Although the right to life is listed among those few which are labelled "fundamental rights", a State Party may still derogate from its obligation to ensure the right to life in times of public emergency. The draft Arab Convention, by allowing for such an easy infringement of this inalienable right, has deviated from an international consensus reached by the international human rights treaties which treat the right to life as an absolute right which cannot be violated or derogated from under any circumstances. The draft Convention also completely
contradicts the primary position which Islam accords to the right to life. Such primary finds its basis in the Quranic text which reads:

That if anyone slew a person - unless it be for murder or for spreading mischief in the land - it would be as if he had slain mankind altogether.\textsuperscript{34}

Further limitations upon the right to life in the draft Convention are found in Articles 35-37 concerning the death penalty. These articles provide:

Article 35. Death penalty may not be imposed except for the most serious crimes. Anyone sentenced to death has the right to seek pardon or commutation of the sentence.

Article 36. In no case shall capital punishment be inflicted for a political crime.

Article 37. Death penalty shall not be enforced on persons below eighteen years of age, a pregnant woman, until she gives birth or a feeding mother unless two years have elapsed from the date of birth.

These provisions testify that it is not the intention in the draft Convention to encourage a progressive reduction in the use of the death penalty as do the International Covenant on Civil and Political Rights and the American Convention on Human Rights. This, however, is consistent with the Islamic law which imposes death penalty for certain crimes. The International Covenant on Civil and Political Rights makes it clear that Article 6 concerning the death penalty is not to be invoked to delay or prevent the abolition of death penalty by a State Party. The American Convention goes even further by prohibiting the extension of the death penalty to cover new crimes (Article 4 (2)), or its re-establishment in states where it has already been abolished (Article 4 (3)). A Lebanese proposal to add the
phrase "in countries which have not abolished the death penalty" at the beginning of Article 35 of the draft Convention was rejected.35

The Convention's provisions concerning the death penalty make no reference to the clause common to most international human rights treaties stipulating that the death penalty be imposed pursuant to a final judgement rendered by a competent court. The absence of such a clause, taken together with Article 7(2)'s failure to list the right to life among the non-derogable rights, accords a legitimacy upon the special courts established in time of public emergency to impose the death penalty on people. Indeed such practice is common in some parts of the Arab world.36

The draft Convention has also left some issues related to the right to life untouched, including abortion and euthanasia. Almost all other international human rights treaties have avoided dealing with such controversial issues. Only the American Convention on Human Rights addresses itself to the subject of abortion by determining the beginning of a person's right to life "in general, from the moment of conception" (Article 4(11)) and thus, according the unborn child the right to life. Such is also the attitude of Islamic law which prohibits abortion except in cases where the continuation of pregnancy would harm the mother's health.

b - The Right to Liberty and Security of Person

What is most remarkable about the concept of this right in the draft Convention is the brief language in which the drafters of the Convention
formulated the provisions concerning the right to liberty and security of person. This is so despite the extreme significance of this right as the sine qua non of most other rights. Its significance is even recognized by the draft Convention itself when, following the precedent of the Universal Declaration (Article 3), it proclaims the right to liberty and security of person together with the right to life in the same article (Article 3).

The first aspect of man's right to liberty and security of person is the prohibition of slavery and servitude. Such basic liberties have been enunciated by almost all international human rights treaties. The draft Convention, however, has dismissed such basic liberties from its conception of the right to liberty and security of person. State Parties, however, are still obliged to respect these liberties by virtue of their status as norms of customary international law and by virtue of the states' obligations under a variety of treaties dealing specifically with these liberties.

The right to liberty and security of person is further elaborated (in part) in Article 5 of the draft Convention, the main thrust of which is to prevent the subjection of any individual to "arrest or detention except on such grounds as established by law", and to spell out the specific rights of the accused. In setting out these rights, the Convention seems, to a large extent, to be in line with Article 9 of the International Convenant on Civil and Political Rights, although it is much less detailed. Further protection to the right to liberty is provided by Article 34 which prohibits imprisonment "merely on the ground of inability to pay a debt or any civil obligation".
A further article of the draft Convention related to the right to liberty and personal security is Article 4 concerning humane treatment. Paragraph (a) of this article partly provides:

States Parties to the present Convention shall protect on their territories everyone from being physically or psychologically tortured or being subjected to inhumane, humiliating or degrading treatment...

Again, this article is influenced by Article 7 of the International Convenant on Civil and Political Rights, although a significant difference exists. Article 4(a) of the draft Convention protects everyone from "being subjected to inhumane, humiliating or degrading treatment", but not punishment. This exclusion is in keeping with Islamic law. To provide otherwise would be to outlaw some of the fundamental principles of Islamic criminal law which prescribes such punishments, as amputation of a hand for theft and stoning to death for certain types of adultery.

The difference between the Islamic position in prescribing these punishments and the position of other penal systems which look upon such punishments as "brutal" and "inhumane" is a direct result of their disagreement over what they envisage as the purpose of punishment. For Islam, the main purpose of enforcing severe penalties for the most dangerous crimes (Hudud crimes as known in Islamic law) is not rehabilitation as recognized, at least in theory, by most Western legal systems, but rather "specific and general deterrence". Thus, Islam envisages that by enforcing severe penalties for the most serious crimes, the severity of the penalties will prevent the recurrence of similar crimes. It may be by virtue of the Islamic law views of the purpose of punishment that the draft
Convention does not contain a comparable provision to that of Article 10(3) of the International Covenant on Civil and Political Rights and Article 5(6) of the American Convention which stipulate that "the reformation and social rehabilitation" of prisoners be "the essential aim" of any punishment "consisting of deprivation of liberty".

c - The Right to Privacy

Article 6 of the draft Convention establishes a right to privacy. This article, albeit different in wording, is inspired by Article 12 of the Universal Declaration on Human Rights and Article 17 of the International Convenant on Civil and Political Rights. It aims to protect from any interference by third parties the individual's private life which includes "the private affairs of the family, the inviolability of the home and the secrecy of correspondence and other means of communication". The fact that Article 6 does not explicitly list the individual's honour and reputation as aspects of private life as do the Universal Declaration and the International Covenant is of no practical significance. An attack on one's honour or reputation may relate either to his private or public life and to the extent that it concerns his private life, it constitutes a violation of the right safeguarded by Article 6.40 Furthermore, the phrase "such private life includes..." should not be understood as being exhaustive of all the aspects of private life protected by the Convention. In the absence of any indications to the contrary, preference should be given to the interpretation which would provide better protection to the individual.
What is remarkable about the draft Convention’s treatment of the right to privacy is that it is listed among the few rights which have been characterized as "fundamental". Such a position is consistent with, and might well have been influenced by the high regard in which Islamic law holds the right to privacy. Numerous Islamic texts affirm the inviolability of the right to privacy and prohibit any act which may lead to the denial of this right. The equivalent article in the draft Islamic Charter on Human Rights (Article 18(b)) reads:

Everyone has the right to the independence of his private life, matters of the home, family, property and communication. He shall not be subjected to espionage, censorship or to any offence on his reputation and the state must protect him from any arbitrary interference, in accordance with the principles of Islamic Sharia (Islamic law).

d - The Right to a Nationality

The draft Arab Convention does not in fact include a right to a nationality as such. The only provision relating to this issue (Article 9) is couched in negative language prohibiting the arbitrary deprivation of a citizen of his original nationality or denying him "the right to acquire another nationality". The International Convenant on Civil and Political Rights, the European Convention on Human Rights and the African Charter on Human and Peoples' Rights all refrain from affirming the right of a nationality.

e - The Right to Legal Personality

Article 10 of the draft Convention affirms the inherent right of every person to legal personality. It provides:
The legal personality is an innate quality of every person.

The cornerstone of this right is found in Article II of the draft Convention which, in part, guarantees for everyone "in the territory of the state, the right of resorting to the judiciary". More elaborate treatment of the right can be found in three separate articles of the Convention (Article 32, 33 and 39) which concern the right of the accused during trial proceedings. These articles read as follows:

Article 32. No crime or punishment except in accordance with a lawful provision. No punishment may be imposed on acts committed prior to issuance of such provisions. If subsequent to the commission of the offence, a provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby.

Article 33. The accused is innocent until he is proved guilty by a competent trial at which he has had all the guarantees necessary for his defence.

Article 39. No one may be tried twice for the same offence.

The requirements of a fair trial proclaimed by the above articles fall short of matching those recognized in their equivalents in other international human rights treaties. Those elements affirmed by the provisions of the draft Convention have been limited to the principles of legitimacy of crime and punishment, the non retroactivity of criminal laws, the presumption of innocence and the protection against double jeopardy. Thus, excluding from its definition of individual's rights during judicial proceedings some fundamental principles without which these rights could hardly be achieved. These neglected rights include the right of the
accused to appear before a competent, independent and impartial tribunal, the right to a public trial, the right to defend himself in person or through legal assistance, the right to examine witnesses against him and to obtain the attendance of and examination of witnesses on his behalf, the right not to be compelled to testify against himself and the right to have an interpreter if he does not understand or speak the language used in the court.\textsuperscript{43} It is noteworthy that the draft Arab Declaration on Human Rights which the Arab League had failed to bring into force defined the rights of the accused in full and more satisfactory terms.\textsuperscript{44}

The failure of the draft Convention to guarantee, even the most basic elements of a fair trial contradicts the norms of Islamic law which provide the accused with no less rights than those recognized by contemporary international human rights law.\textsuperscript{45} This fact has been affirmed by the First International Conference on the Protection of Human Rights in Islamic Criminal Justice Systems which was held in Italy in 1979. There, the participants declared that:

\ldots the letter and spirit of Islamic Law on the subject of the protection of the rights of the criminally accused are in complete harmony with the fundamental principles of human right under international law.\textsuperscript{46}

\textbf{g - The Right to Participate in Public Affairs}

Political freedoms of the individual as a citizen are dealt with in two separate articles of the draft Arab Convention. These are Articles 12 and 20. Article 12 provides:
The people are the source of authorities and political capacity is the right of every adult citizen to be exercised according to law.

The vague language of this article is seemingly the result of a compromising attempt by the Convention drafters to accommodate all the existing and widely varied systems of government in the region. By merely requiring that "people are the source of authorities", the drafters have avoided the sensitive issue of judging the legitimacy of the current political systems. They most likely intentionally overlooked a somewhat clearer wording of the draft Arab Declaration on Human Rights which stipulates that the citizens' participation in public life should be "either directly or through freely choosen representatives". (Article 23)

Article 12 of the draft Convention is an illustration of the threefold pressure which the drafters were subject to during their drafting of the Convention: the reality of Arab politics, international human rights principles and Islamic norms.

The article in its present vague language has left many issues unsolved. How can the will of the people as "the source of all authorities be implemented? What is the positon of the Convention regarding States with an absolute monarchy or with a one party system? What is meant by the right of "political capacity"? If this right is to be interpreted as meaning the right to vote and to be elected, is it applicable to all citizens without any distinctions or qualifications? According to which law should this right be exercised?
The other political right proclaimed by the draft Convention is "the right to apply to public service" (Article 20). As indicated earlier regarding the equivalent article in the draft Arab Declaration, this article is without any practical significance, since it only affirms the citizen's "right to apply to public service in his country", without guaranteeing that his application will be dealt with on an equal basis with those of others. The comparable article of the International Covenant on Civil and Political Rights (Article 25) ensures such equality when it provides that:

- Every citizen shall have the right and the opportunity, without any ... distinction:...

c- To have access, on general terms of equality, to public service in his country.

h - The Right to Freedom of Movement

Three articles of the draft Arab Convention pertain to the right to freedom of movement. Article 13 affirms the right of "everyone within the territory of a State to liberty of movement and freedom to choose his residence in any part of such territory within the limits of the law". Unlike Article 12(1) of the International Covenant on Civil and Political Rights which affords this right to everyone "lawfully within the territory of a State..." Article 13 of the Arab Convention guarantees the right to everyone, regardless of the legitimacy of his presence in a State's territory. However, it is dubious that such was the intention of the drafters, given the strict character of the domestic laws of most Arab States on the subject of the treatment of aliens.
Article 14 proclaims the right to leave any country. It protects every citizen from being "arbitrarily or illegally ... prevented from leaving any country, including his own." The rest of the article, however, contains an unnecessary repetition of the right to choose his residence freely in any part of his country, since such a right is already guaranteed by Article 13.

Finally, Article 15 provides:

No citizen may be expelled from his own country or prevented from returning to it.

Expulsion is therefore prohibited only insofar as it is directed against citizens. Expulsion of aliens, whether individually or collectively, is not addressed by the Convention. By comparison, Article 13 of the International Covenant on Civil and Political Rights, Article 22(6) of the American Convention on Human Rights and Article 12(5) of the African Charter on Human and Peoples' Rights, all restrict the expulsion of individual aliens, if lawfully within the territory of a State, to those cases determined in accordance with the law. Some of these treaties have gone even further by totally prohibiting collective expulsion of aliens.49

The right to movement of nationals of the League Member States within the Arab region has found other means of protection, other than the draft Convention. For a while, the right to freedom of movement had been one of the main unitary principles stressed by the Arab nationalists of the 1950's and 1960's. Due to the nationalist movement of that era, this principle was inserted in some of the inter-Arab treaties concluded during that time. Article 1 of the Inter-Arab Economic Unity Treaty of 1957 states:
It should be established among the Arab League States a complete economic unity guaranteeing, in particular, for these States and their nationals, on equality basis, the freedom of movement of people and capital ... and the freedom of residence ... and employment.\textsuperscript{50}

\textbf{i - The Right to Asylum}\textsuperscript{51}

This right is dealt with in Article 16 of the draft Convention which reads:

\begin{quote}
Every citizen has the right of seeking political asylum in other countries from persecution. This right may not be invoked by anyone who commits ordinary crime that touches on the public right. Political refugees may not be returned to the country from which they escaped.
\end{quote}

Thus, the draft Convention, in a wording not very different from that of the Universal Declaration on Human Rights (Article 14), affirms every citizen's right of seeking asylum. Article 14 of the Universal Declaration speaks also of a right to seek and enjoy asylum. Yet, neither of the two documents take the further step of recognizing the individual's right of being granted asylum. This attitude by the drafters of the Arab Convention is, however, in line with the prevailing view among international lawyers that the grant of asylum is the sovereign right of every state to be exercised at his discretion.\textsuperscript{52} It is also amply evidenced by the history of the relevant international conventions.\textsuperscript{53} In reality, the right to asylum is mostly granted on the basis of political rather than humanitarian considerations. Article 16, therefore, should be understood as establishing a citizen's right to asylum vis a vis his country of origin (the pursuing State), but not the receiving State.
The receiving State, nonetheless, is still bound, according to the article, to refrain from forcibly returning a political refugee to the country from which he escaped. This is what has been known as the principle of "non-refoulement". While the wording of Article 16 leaves no doubt about the applicability of this principle to refugees already admitted in the receiving state, it remains uncertain whether the article also binds the States not to refuse refugees at their frontiers.

j - The Right to Freedom of Property

Despite the fact that the right to property had been recognized by consecutive ancient legal systems and that its protection was one of the earliest functions of law,\textsuperscript{54} the status of the right in contemporary international law is still uncertain. Such uncertainty is reflected in Article 21 of the draft Arab Convention which falls short of providing a clear definition of the right to property. The article reads as follows:

\begin{quote}
The right of private property is guaranteed for every citizen. No citizen shall in any case be arbitrarily or illegally deprived of all or part of his properties.
\end{quote}

Thus, the draft Convention guarantees the right of private property only to nationals.\textsuperscript{55} The exclusion of non-nationals from the scope of this article seems to be influenced by the lack of consensus among the Arab League Member States in their regulation of aliens' right to own property.\textsuperscript{56} Furthermore, Article 21 does not expressly secure the right to compensation to everyone deprived of his property, but merely stipulates that such measures are not taken on an "arbitrary or illegal" basis.
On the international level, the ambiguity surrounding the right to property is clearly evident from the fact that the property right is one of the very few rights recognized in the Universal Declaration on Human Rights which could not make its way to any of the two Covenants. While Article 17 of the Universal Declaration recognizes the right to property in absolute terms, the right is not reaffirmed in the International Convenant on Civil and Political Rights nor in the International Covenant on Economic, Social and Cultural Rights. Other regional human rights documents contain references to the right to property, albeit in varying formulations and with wide qualifications.

In Islamic law, while the right to private property is recognized and highly protected by law, an equal emphasis is laid on the social purpose which the exercise of the right should serve. The very basic idea of property as a right is built on the principle that all property belong to Allah (God) and that its human holders are only trustees. Thus, they are obliged to comply with all limitations prescribed by Allah (revealed in the Quaran and Prophetic texts) which are meant to fulfill the right's social purposes. This concept of the right to property is evident in Article 17 of the draft Islamic Charter on Human Rights which, although it affirms the right of every human to ownership, stipulates that the enjoyment of this right must not harm the individual, his fellowmen, or the society. Confiscation of property is permitted, according to the article, only "in the public interest" and "upon the payment of just compensation".
k-The Right to Freedom of Religion, Thought and Conscience

Articles 22 and 23 of the draft Arab Convention entitled "Freedom of Religion, Thought and Conscience" provide:

Article 22. Freedom of religion, thought and conscience is guaranteed for everyone.

Article 23. Persons of every religion have the right to practise their religious rites. They also have the right to express their thoughts through writing, practising or teaching without prejudice to the rights of others. No restrictions may be imposed on the freedom of religion, thought and conscience unless as stated by law.

Despite the title, these provisions seem to be concerned more with freedom of religion than with freedom of thought and conscience. Article 23, in particular, is exclusively concerned with spelling out particulars of religious freedoms. Before proceeding to analyze the draft Convention's concept of religious freedoms, it is worthwhile to first point out that despite the international acceptance of these freedoms, the details are still uncertain. This is evident from the fact that the articles concerning religious freedom in both the Universal Declaration on Human Rights and the International Covenant on Civil and Political Rights were among the most hotly debated during their drafting time. It is further illustrated by the great difficulty the United Nations has experienced in formulating a declaration and a convention concerning the elimination of all forms of intolerance and discrimination based on religion or belief.

Article 22 extends to everyone the right to freedom of religion, thought and conscience. The drafters, however, refrained from further elaborating on the
construction of these freedoms. The vagueness of this article was probably an attempt to avoid some sensitive issues connected to freedom of religion such as whether it includes the right to change one's religion and whether such freedom can also be invoked by those holding non-theistic and atheistic beliefs. During the drafting of the Universal Declaration on Human Rights, and later the International Convenant on Civil and Political Rights, the inclusion of clauses recognizing the right to freedom to change one's religion met strong opposition from some Arab and Muslim delegations. Their stand was due to an Islamic principle which prohibits a Muslim from changing his religion.

The second issue which the draft Convention has left open is whether its concept of freedom of religion would include the right to have non-theistic and atheistic beliefs or not to hold any belief at all. The fact, however, that the Convention, in both articles, uses the expression "religion", and not "belief" may indicate the drafters' intention to exclude persons with atheistic and non-theistic beliefs or without any belief from the protection of the Convention. Another significant, but more sensitive issue is the status of the so called "deviant groups" which though they claim to be Islamic or have connections with Islam, are not recognized as such by the majority of Muslims (e.g. some of the Shia groups, the Ahmadia (Quadiania), Druze and the Bahai).

It may be relevant to point out that the present practice in most Arab States is to recognize religious freedoms, including those mentioned in Article 23, only in relation to persons of divine religions (Islam, Christianity and Judaism). This attitude is in accordance with Islamic law which gives a wide degree of religious freedom to the "People of the Book (Christians and Jews) living in an Islamic
State. In Islamic terminology, the word "religion" applies only to the three divine religions.

The last sentence of Article 23 grants State Parties a wide discretion in restricting the freedoms of religion, thought and conscience. Such restrictions, as the positive language indicates, could apply to all aspects of these freedoms. This is in contrast to the position taken by some other international human rights treaties which exclusively limit the state's competence to introducing restrictions to the freedom to manifest one's religion or belief.

1 - Rights of Minorities

Although this is one of the few rights which had already been subjected to international treaties before the existence of the United Nations in 1945, most international human rights treaties concluded since then, whether by the UN or by regional organizations, have shown a general reluctance to explicitly affirm the rights of minorities. Only the International Covenant on Civil and Political Rights contains a specific provision (Art.27) concerning the protection of minority rights. It is in light of such circumstances that the mere inclusion of a similar provision in the draft Convention should be praised. It should also be born in mind that the Arab world is the home of many religious, ethnic, linguistic and national minorities. The draft Convention's article concerning minorities (Article 29) provides:

Minorities may not be deprived of their right to enjoy their culture or follow the prescriptions of their religions.
Unlike its equivalent in the International Covenant on Civil and Political Rights which attaches the rights to "persons belonging to ... minorities...". Article 29 refers to "minorities" as groups. Thus emphasizing the collective nature of the right. The individual's right to participate in cultural life and to express and practice his religion are, however, separately protected in Articles 28 and 23 respectively. The use of the expression "minorities" as the beneficiaries of minority rights, has led some Arab thinkers to criticize this article on the ground that such expression may be confused with the expression "peoples" as the beneficiaries of the right to self-determination recognized in Art 8(a) and, thus, encouraging secessionist movements, already existing in some parts of the Arab world. Expansion of secessionist movements, could as well occur as a result of negligence of minority rights. Such negligence may lead to the existence of extremist groups which do not necessarily limit their demands to their rights as minorities. Furthermore, the right to enjoy culture or follow the prescription of a certain religion can only be effectively realized if collective rights are recognized.

As in the case of Article 27 of the International Convenant on Civil and Political Rights, Article 29 of the draft Arab Convention describes the duties of States Parties towards minorities in negative terms. This issue, however, has no practical significance since the substance of the article is that minorities have a "right to enjoy their culture and follow the prescriptions of their religions". The fact that in the Arab world most elements necessary to enjoy this right (educational institutions, courts, and, in some cases, even worship places) are state owned, or at least controlled, would deem any other interpretation of the article meaningless.
An essential aspect of minorities rights is their right to use their own language. Such aspect, however, is lacking from the draft Convention. In fact, it was specifically mentioned in the original draft, but was later omitted during the Permanent Commission's consideration of the Convention. It is, however, hardly conceivable how minorities right to "enjoy their culture or follow the prescriptions of their religions" could be separated from their right to use their own language.

The drafters of Convention did not clarify whether the scope of Article 29 includes groups of non-citizens present within the territory of a State party, permanently or temporarily. Such an issue is of an extreme significance, taking into account the high number of immigrant workers existing in some of the League's State Members. Article 29 speaks of "minorities", in general, without elaborating on providing a definition of what constitute these groups, as far as its scope is concerned. By comparison, during the drafting period of Article 27 of the International Covenant on Civil and Political Rights, emphasis was put on making clear that immigrants should not be treated as minorities. Given the reality of the high percentage of immigrant workers in some of the Arab States (more than 70% in some cases), interpreting Article 29 as including immigrants in its scope might impair unity and security of such states, particularly the smaller ones of the Gulf.

m - The Right to Freedoms of Association and Assembly

Following the precedent of the Universal Declaration on Human Rights (Article 20) and the European Convention on Human Rights (Article 11), the draft Arab Convention treats the two freedoms of association and assembly together in
the same provision (Article 24). Most international human rights treaties, however, deal with them separately. Article 24 of the draft Convention provides:

Citizens have the freedom of association and the freedom of peaceful assembly. No restrictions may be imposed on practicing any of these two freedoms except what is required by national security, public safety or protection of the rights and freedoms of others.

In contrast to almost all equivalent international human rights treaties which guarantee these two freedoms to "everyone", the draft Convention restricts the enjoyment of the right to these freedoms only to "citizens". Thus, foreigners are not guaranteed such freedoms, without regard to the nobleness of the interests which they seek to promote or protect through means of association or assembly.

As in the case of the International Covenant on Civil and Political Rights (Article 22(11)), Article 24 guarantees the right to freedom of association in general, without determining the aspects of such freedom. The American Convention (Article 6(1)), in contrast, specifies the purposes of the association as ideological, religious, political, economic, labor, social cultural, sports and "other" purposes. A controversial question which could be raised with regard to Article 24 is whether its concept of freedom of association includes the right to form and join political parties. The mere wording of the article implies the inclusion of such a right. Nevertheless, even if that was the intention of the drafters, the reality of the political systems existing in the Arab region would deem such interpretation inapplicable.
Special attention is given by Article 25 of the draft Convention to one particular type of association, the right to form trade unions. Article 25 provides:

The State guarantees the right to form trade unions as well as the right to strike within the limits described by law.

The linkage of this article to Article 24 gives the impression that foreigners do not enjoy the right to form trade unions and to strike, since Article 24 speaks only of "citizens" as the beneficiaries of those rights and freedoms recognized in Articles 24 and 25. This attitude is further supported by the contemporary practice of most Arab States.

The general wording of Article 25 suggests that all employees, including those of the government and even members of the armed forces and the police have the right to unionize. However, considering the unpopularity of trade union freedoms in the Arab world and taking into account that all the rights recognized in the draft Convention are restricted by the general limitation clause of Article 7(a), it could not have been the intention of the drafters to establish a right of the members of the armed force or the police to form labor unions or to strike. Article 22(2) of the International Covenant on Civil and Political Rights, Article 11(2) of the European Convention on Human Rights and Article 16(e) of the American Convention on Human Rights all allow for the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of freedoms of association and trade union. The drafters of the draft Arab Convention have further given State parties with a wide discretion to restrict trade union freedoms by stipulating that such freedoms are to be practiced "within the
limits described by law", thus deeming any restriction introduced by a State party lawful as long as it meets the mere condition to being issue in the form of a law.

Reference should be made here to the fact that the concern about trade union rights and freedom has been echoed inside the League since 1966 when the first Arab Convention concerning Labour Standards was concluded containing many of these rights and freedoms. The creation of the Arab Labor Organization (ALO) in 1971 was also a further step in the direction of protecting trade union rights and freedoms. Its constitution, as amended in 1975, made the protection of these freedoms one of the main goals of the ALO. After only 6 years of its creation, the ALO concluded a treaty totally devoted to spelling out in detail trade union rights and freedoms (ALO Convention No. 8). Such Convention was influenced to a large extent by the ILO's Convention on the Freedom of Association and the Protection of the Right to Organize (No. 87). A more practical step was taken by the ALO when the Committee on Trade Union Freedoms was created in 1973 as one of the working constitutional committees of the ALO. From its outset, the Committee was vested with a vast power to receive complaints, from governments and organizations of employees and employers and from regional labor organizations, look into the complaint, require more information from both sides of the case and then to decide upon the case stating the reasons of its decision. The Committee also has the competence to use its good offices to mediate between the parties to settle the issue.

Despite the early concern with trade union activities by the ALO, as a specialized agency of the League, the right to freedom of trade union has not acquired the position of an established right as is the case in most other
international organizations. It has not even been the consensus of the Arab States that such right exists at all. It should be noted here that the draft Islamic Charter on Human Right contains no reference to the right to trade union rights and freedoms, nor does it recognize the more general rights of assembly and association.

3 - Economic, Social and Cultural Rights

a - The Right to Work

Rights and freedoms relating to work are proclaimed in three consecutive articles of the draft Arab Convention on Human Rights (Articles 17, 18, 19). Article 17 obliges every State Party to guarantee for every citizen "the right to work that ensures for him living standards that meet basic requirements of life". It further affirms the citizen's right in an "overall social insurance".

The obligation which States parties undertake by virtue of this article, however, is not clear. In fact its language gives the impression that the drafters meant to give the right to work a false interpretation as obliging States to "look after jobs for everyone and in deference to each individual's wishes". Thus, it was out of this understanding that the Lebanese delegation to the Third Session of the Permanent Arab Commission on Human Rights objected to this article on the ground that it is "hardly possible to realize in reality".

By comparison, the International Covenant on Economic, Social and Cultural Rights and the European Social Charter have been much clearer in determining the obligations they impose upon States concerning the right to work. Article II,(1) of
the European Social Charter directs States parties to the steps to be taken to ensure
"the effective exercise of the right to work" as including:

1 - to accept as one of their primary aims and responsibilities
the achievement and maintenance of as high and stable a level
of employment as possible, with a view to the attainment of
full employment;

2 - to protect effectively the right of the worker to earn his
living in an occupation freely entered upon;

3 - to establish or maintain free employment services for all
workers;

4 - to provide or promote appropriate vocational guidance,
training and rehabilitation.

Article 18 asserts freedom in choosing one's work and prohibits compulsory
labour. The right to equality of opportunities in employment and fair wages as
well as the right to equal pay for equal work are proclaimed by Article 19. What
is remarkable about this article is its restriction of the proclaimed rights to
"citizens" only. While such restriction may be accepted in regard to the right to
equality of opportunities in employment, its application in the case of the right to
fair wages can not be justified under any circumstances. Such unreasonable
jealousy about citizens, evident in a number of articles in the draft Convention, is
most likely caused by the present practice of many of the Arab States. Despite the
repeated attempts by the Arab Labour Organization to ensure equality of treatment
to non-nationals workers, at least those from other Arab States, such efforts have
not been matched with great success. 87
b - The Right to Education

Every citizen's right to education is affirmed in Article 26 of the draft Convention which reads:

Elimination of illiteracy is a mandatory obligation and education is a right for every citizen. Elementary education should, as a minimum, be compulsory and should be free. Both secondary and higher education shall be made accessible to all.

The first clause concerning the elimination of illiteracy was not found in the original draft of the Convention, but was inserted later by the Permanent Commission during its revision of the draft.88 No similar clause exists in comparable articles concerning the right to education in the Universal Declaration (Article 26) and the International Convenant on Economic, Social and Cultural Rights (Article 13). The draft Convention's concern for the elimination of illiteracy is, however, understandable in light of the very high numbers of illiterates still present in many of the Arab League member States.89

The brief language in which Article 26 is couched, a characteristic shared by almost all the Convention's few articles concerning economic, social and cultural rights, has led to the neglect of some of the essential aspects of the right to education. For example, no reference is made in the article to technical and vocational education90, nor does the Convention give any regard to the parents' wishes in determining the kind of education that shall be given to their children. An indirect reference to the latter right could, however, be deduced from the affirmation by Article 23 of the rights of persons of every religion to "express
their thoughts through ... teaching...". The draft Islamic Charter on Human Rights has been more clear in asserting this right, albeit under some restrictions. Article 7(b) of the Charter provides that "Parents have the right to choose the kind of education they desire for their children, paying regard to the children's interests and future in light of moral values and Sharia (Islamic) canons."

c - Cultural and National Rights

Article 27, though put under the category of cultural and national rights, is identical, to a large extent, to Article 6(a) of the Universal Declaration on Human Rights and Article 13(1) of the International Covenant on Economic, Social and Cultural Rights which were devoted to point out the objectives of education. Article 27 of the draft Convention, however, speaks of these objectives, not as purposes of education, rather as elements of a cultural atmosphere in which citizens have the right to live. Article 27 reads:

Citizens have the right to live in a cultural atmosphere that takes pride in Arab nationalism, the sanctity of human rights, and rejects racial and religious discrimination as well as other types of discrimination and supports international cooperation and international peace.

The other provision relating to cultural rights is Article 28 which is largely influenced by Article 27(1) of the Universal Declaration of Human Rights. Article 28 proclaims every individual's right to "participate in the cultural life and to the enjoyment of literacy and artistic works". The article also obliges member States to provide the opportunities for everyone to "develop his artistic, cultural and creative abilities".
Only one article of the draft Convention pertains to the rights of the family, children and the aged. In a general language identical to most international human rights instruments, Article 30(a) states that "the family is the fundamental unit of society and is entitled to its protection". Paragraph(b) obliges State parties to guarantee "a distinguished care and special protection" to "the family, motherhood, childhood, and old age...".

Beside the lack of well defined obligations which States members would undertake by virtue of this article, Article 30 has also failed to pay tribute to the special position that family attains in the Arab society. Such a position which finds its roots in the tribal traditions of the ancient Arab societies was further affirmed by the Islamic principles which places a heavy emphasis on the rights of the family, especially rights of parents, children, relatives, the disabled and the elderly. Such a position is still evident even in the most "Westernized" Arab states. Three articles of the draft Islamic Charter on Human Rights are devoted to spell out, in some detail, the rights of some of the above mentioned groups. Islamic law, however, regulates most family rights in terms of duties upon the individual rather than rights. Yet, fulfillment of some of these duties are enforceable by the beneficiaries. Others are exclusively religious commitments establishing no enforceable rights for their beneficiaries.

The draft Convention's conception of the family rights has, intentionally, omitted a very fundamental aspect upon which the very existence of family is based, that is the right to marriage. A Lebanese proposal to introduce a provision
into the draft Convention affirming the freedom to choose one's spouse and the right of equality between spouses was rejected. As was stated earlier in explaining the absence of such right from the draft Arab Declaration on Human Rights, it was due to the existence of some difference between international standards of human rights and the Islamic law which introduces some restriction on Muslims marriage of non-Muslims. The distinctive Islamic conception of the right to marriage is illustrated by Article 5(a) of the draft Islamic Charter on Human Rights which provides:

The family is the basis of society, and marriage is the basis of its [the family's] creation. Men and women have the right to marriage. No restrictions shall prevent their enjoyment of this right, whether based on race, colour or nationality.

The omission of "religion" in the last sentence reflects Islamic principles that restrict marriage on religious grounds.

4 - Collective Rights

a - The Right to Self-Determination

Among the existing regional conventions protecting human rights, the African Charter on Human and Peoples' Rights is the only treaty which enshrines the peoples' right to self-determination. In the case of the draft Arab Convention, the right did not appear in the original draft prepared by the Experts Committee which was entrusted with preparing the preliminary draft, but was added at a later stage.
The right of all peoples' to self-determination and to freely dispose of their natural resources are combined in one paragraph in Article 8 of the draft Convention. In paragraph (a) of this article, the Convention provides:

All peoples' have the right to self determination and control over their natural wealth and resources. By virtue of this right, they freely determine their political status and freely pursue their economic, social and cultural development.

The reference to all peoples as the possessors of the right to self-determination raises the controversial issue of the holders of the right. Amongst the most pressing questions in this regard is whether the word "peoples" refers only to people under colonial and foreign domination or whether it extends to include even peoples within independent states? Although the wording of Article 8 is vague and open to broad interpretation applying the right to self-determination to all peoples whether colonized or within existing states, the practice of the Arab States, within and outside the League, reveals otherwise. The League, since its very early days has been an advocate of the right of peoples under colonial domain to self-determination. "Its activities in achieving independence for Arab States from European occupation has been cohesive and decisive..." "It never missed the chance to espoused the right of Palestinian to self-determination" before the UN and other world bodies..." Yet, the League has excluded from its jurisdiction the consideration of post independence self-determination claims. Though there has not been any recorded cases of such nature being brought before the league and subsequently rejected, the extraordinary sensitivity by which the League has viewed, in theory and in practice, the principle of sovereignty and territorial integrity of member States rules out the possibility of any consideration of post independence self-determination claims. The League's perspective of the right to
self-determination as applying only to colonial people or those under foreign domination is evident in the League's Secretary. General's note forwarded to the UN in reply to the questionnaire sent to the League in connection with the preparation of a study about the right to self determination in which he stated that:

... the League of Arab States has always recognized and supported the right to self-determination of all peoples under colonial and foreign domination and alien subjugation.\textsuperscript{103}

The economic dimension of the right to self-determination is represented by Article 8(a)'s assertion of all peoples' right to "control over their natural wealth and resources", corresponding to the international legal principle of permanent sovereignty over natural resources which as been repeatedly affirmed by the UN in many of its legal instruments as well as by other world bodies.\textsuperscript{104} The draft Arab Convention differs from some of these instruments, particularly the UN Covenants and the African Charter, by omitting the stipulation that the exercise of the right to economic self-determination be "without prejudice to any obligations arising out of international economic cooperation, based upon the principle of mutual benefit, and international law". The significance of the absence of this phrase is that it intensifies the uncertainty surrounding the issue of compensation for nationalization or expropriation of the properties of foreign investors. It may suffice here to mention that Article 21 concerning property right is also silent about the issue. Its definition of the right is restricted to citizens.

Paragraph (b) of Article 8 proclaims "[r]acism, Zionism, foreign occupation and control..." as "challenges to the human dignity and a major obstacle in the way
of the fundamental rights of peoples..." and requests States parties to condemn all their practices and to work to eliminate them. This paragraph is, however, of a declaratory nature and would have been better placed in the preamble as has rightly been done in a similar statement by the African Charter's.

b - The Right of Youth to Opportunities for Development

Article 31 of the draft Convention is devoted to assert a collective right of the youth "to be availed greatest opportunities for physical and mental development." No equivalent provision exists in any of the comparable international human rights instruments, apart from some negative obligations imposed by a few articles of the International Covenant on Economic, Social and Cultural Rights and the European Social Charter for protecting young persons from economic and social exploitation and physical and moral hazards.

5 - Evaluation of the League Concept of Human Rights

The later part of this chapter attempted to examine what are identified by the Arab League as human rights as presented in the latest League's draft instrument i.e. the draft Arab Convention on Human Rights. The task, however, has been impeded by the unavailability of documentation surrounding the drafting of the Convention. To overcome such obstacles, recourse was made to whatever documents were available. Additional illustration of the League concept has been sought through comparative analysis, whenever appropriate, of the League's concept with those of other international and regional human rights and with the principles of Islamic law.
One of the main objectives of a regional human rights treaty is that such an instrument would better respond to the region's needs and reflect its ideology and cultural values.\textsuperscript{109} It is by virtue of such characteristic of regional systems that some international law scholars have emphasized the significance of regional human rights systems.\textsuperscript{110} Against all this, the draft Arab Convention on Human Rights has completely neglected such a characteristic. It does not represent any distinct Arab concept of human rights which reflects Arab values.\textsuperscript{111} None of the draft Convention's principles can be looked upon as primarily Arab. In fact, it was not clear from the outset what was sought by drafting a special Arab human rights treaty. The African Charter on Human and Peoples' Rights which has been praised by many jurists as being reflective of a distinct African concept of human rights\textsuperscript{112} has successfully achieved such a goal largely due to the clarity of the objective sought by drafting such a treaty. In the words of its drafters, the Charter "was guided by the principle that ...[it] should reflect the African concept of human rights ... [It] should take as a pattern the African philosophy of law and meets the needs of Africa".\textsuperscript{113} A similar guiding principle has been absent from the minds of the drafters of the Arab Convention. The mere idea of distinctiveness of a human rights concept has been explicitly rejected by the Expert Committee which carried out the task of preparing the preliminary draft of the Convention. As for, one of those experts stated:

\begin{quote}
The purpose of drafting an Arab Convention on Human Rights is - or at least should be - less humble than emphasizing a distinct Arab features or concept of human rights ... That we make our point of departure in drafting an Arab Human Rights Convention an Arab specified and distinct view of human rights is a sheer mistake.\textsuperscript{114}
\end{quote}
Subsequently, the draft Arab Convention does not bring forward any conceptual innovations in the field of human rights. The provisions contained are largely similar to those of other international human rights documents, though less precise and determinate.

As a result of the rejection by the Convention's drafters of a distinctive Arab human rights concept, the impact of Islam, the most distinctive feature of the region's culture has been minimal. The linkage of the Arab concept of human rights to Islam has been correctly observed by one writer, who stated:

The concept of human rights in the contemporary Arab world is closely related to Islam ... [T]he rationale and spiritual foundations of life and thought in the Arab world are conditioned, to a large extent, by Islam.\[^{115}\]

Islam has profoundly shaped the cultural identity of Arab people including non-Muslim Arabs.\[^{116}\] Such impact has even been intensified by the prevailing phenomenon in the Arab world at present which has been known as "Islamic resurgence" or "Islamic awakening".\[^{117}\] Thus, to separate the Arab concept of human rights from its Islamic roots is to neglect "a most vital element in the whole subject".\[^{118}\]

The only impact which Islamic law has on the draft Convention has regrettably been, as was the case in the draft Arab Declaration on Human Right,\[^{119}\] in the negative. In the cases of rights upon which there is a sort of contradiction between Islamic norms and international human rights standards (presented by the U.N treaties), the drafters of the Convention has simply chosen to avoid the issue by merely deleting the controversial aspects of the rights or even the whole right
from the treaty. For example, the right to marriage, despite its significant position in Arab society, has no recognition in the draft Convention mainly due to the disagreement between Islam and international standards over the legitimacy of introducing some restrictions on the right of marriage based on religion.\textsuperscript{120}

The clear impression one gets from the draft Arab Convention is that the drafters were concerned so much about its acceptance by Arab governments that they had to compromise over some essential aspects of the rights contained therein. Such sensitivity towards the reality of Arab politics was in the mind of the drafters from the outset, and subsequently severely affected the outcome of the treaty. One of the members of the Expert Committee which prepared the preliminary draft wrote in reference to the restrictions imposed upon them by Arab politics. He said:

It was necessary to take into account the circumstances of the Arab world and the political systems therein (indeed they widely vary) ... and to direct all efforts - as possible - in an attempt to reach the minimum of what can be agreed upon as a common ground between different political, social and cultural trends.\textsuperscript{121}

The results of the pressure introduced by the realities of the Arab politics upon the drafters is evident in two aspects of the draft Convention, the ambiguity of the language used and the number of limitation clauses which the treaty contains.

The rights contained in the draft Convention are mostly couched in general and vague terms which do not delimit the exact scope of the rights concerned nor precisely define the obligations which States undertake by virtue of such rights.
This is particularly evident in cases where the rights could otherwise touch the legitimacy of the political systems or their methods of handling public affairs. For instance, the provision concerning political freedom (Article 12) speaks only of the people as the source of authority, without giving any detail as to how the will of the people shall be determined, leaving States parties with a wide margin of appreciation in interpreting the provision in a manner which would "legally" reserve the status quo of their systems. Another example of this characteristic of the draft Convention exists in Article 20 which asserts the right of every citizen only "to apply" to public service in his country, without, however, any guarantee that his application would be considered on an equal basis as those of others, thus leaving the provision without any practical significance.

The second influence of the reality of Arab politics is the many limitations which the treaty contains. The draft Convention, unlike most other international human rights instruments, contains a derogation provision (Article 7(b)(c)), a general clawback clause (Article 7(a)) as well as a number clawback clauses as qualifications to certain rights and freedoms. Such limitations affect even the most fundamental rights. For instance, according to Article 7(b)(c), the right to life could be derogated from at times of public emergency. The unnecessary inclusion of clawback clauses as qualifications to some rights and freedoms is worsened by their vague language. For example, Article 13 recognizes the right of State parties to impose whatever restrictions on the freedom of religion, thought and conscience on the mere stipulation that they are "stated by law". The ultimate result of the interpolation of all these sorts of limitations in the Convention, taken together with the absence of any supervisory body, would only lead to more assertion of States current position as the exclusive determinate
of how many and how much rights and freedoms they give to their people. The
Convention would only worsen the situation by providing a legal cover for such a
position.

The drafters of the Convention have also shown preference towards
States nationals by restricting many rights only to such a group. While such
attitude is justified and even required in some cases, its application in rights such
as the right to fair wages (Article 19) is without any reasonable justification.
FOOTNOTES

1. The draft Arab Declaration of Human Rights is found only in Arabic. Any citation of its text in any parts of the thesis is translated to English by the author. The full text of the Declaration is found in Appendix B.

2. The Permanent Arab Commission of Human Rights is one of those special committees created in accordance with Article 4 of the Pact of the Arab League whose purpose is to advise the Council of the League in their particular areas. For more information about the Permanent Arab Commission on Human Rights, see Chapter IV below at pp.111-118.


7. Ibid., 495-499.


11. For a good summary of the various opinions on this issue, see Calvin Lake, The Universal Declaration of Human Rights: A Discussion, (Canadian Human Rights Foundation,1978), 36-47.

Nafaah, 502.


See Article 15 of the Statute of the International Law Commission.

This contradiction between the Universal Declaration of Human Rights and the Islamic law in their regulation of the right to marriage, as well as few other rights, was the subject of some Arab States' objections to some of the provisions of the Universal Declaration during its drafting.

See Articles 21, 22, 25, 31 of the draft Arab Declaration on Human Rights.

See Article 31 of the draft Declaration.

The draft Arab Convention on Human Rights is found only in Arabic. Any citation of its provisions in any part of this thesis is translated to English by the author. The full text of the Convention is found in Appendix C.


According to a letter received by the author from the Organization of Islamic Conference, the draft Charter of Human Rights in Islam is now awaiting its consideration by the Islamic Justice Ministers in their next meeting and would be subsequently forwarded to the Ministers of Foreign Affairs for its final adoption.


In Arabic, one who is qawuam is one who stands firm in another's business, protects his interests and looks after his affairs. A. Yusuk Ali, The Holy Quaran: Translation and Commentary, (The Muslim Students' Association of the United States and Canada, 1977), 190.


Buergenthal, p. 89.


The African Charter of Human and People's Rights had made a departure from this common practice by not including any general limitation clause, whether a "clawback" or a derogation clause, although it has provided for some limitations as qualifications for specific rights.


Such situations exist either as a result of a de facto systematic extension or because the State's constitution does not provide for any time limit for the declared public emergency.

34 The Quaran (5:33).


38 See Article 4 of the Universal Declaration on Human Rights; Article 4 of the European Convention on Human Rights and Freedoms; Article 6 of the American Convention on Human Rights and Article 5 of the African Charter on Human and Peoples' Rights. These are also some Conventions specifically dealing with the freedom from slavery, servitude and forced labour such as the 1956 Convention on the Abolition of Slavery and the 1956 ILO Convention concerning the Abolition of Forced Labour.


41 For a survey of Islamic texts concerning the right to privacy, see Osman A. Al-Saleh, "The Right of the Individual to Personal Security in Islam," in The Islamic Criminal Justice System, 67-70.

42 The International Convenant on Civil and Political Rights, however, affirms the right to a nationality, but only to children. Article 24(3) provides that "Every child has the right to acquire a nationality."
During the Third Session of the Permanent Arab Commission on Human Rights it was proposed that the accused rights affirmed by Article 14 of the International Covenant on Civil and Political Rights be added to Article 32 of the draft Convention where they previously did not exist. The proposal, however, was defeated. See the Report on the Third Session of the Permanent Commission on Human Rights, the appendix p.2.

See Articles 17 and 19 of the draft Arab Convention on Human Rights.


Cited in Islamic Criminal Justice System, 249.

A proposal to restrict the freedom of movement to "citizens or at least to persons lawfully within the territory of a State" was rejected. See the Report on the Third Session of the Permanent Commission on Human Rights. Extending the scope of the right to freedom of movement to non-nationals, however, constitutes an unusual departure from the drafter's practice of restricting most rights to citizens, even some of those which have been internationally recognized as belonging to every individual, such as the right to property and to fair wages.


The need for a similar provision in the Arab Convention is urgent, given the fact that it has been the practice of certain Arab States to collectively expel all the nationals of another State in the event of any tension between the states. The repeated expulsion of all Egyptian immigrants from Libya by the Lybian authorities is a relevant example.


The rights of refugees have been given a special protection which is represented in the draft Arab Convention Related to the Status of Refugees
which is now under the consideration of the Permanent Legal Commission of the Arab League. The League of Arab States, Secretariat General, Report and Recommendations of the Permanent Legal Commission on its Meeting in Tunis, 7-9 August, 1989. (Doc. No. J01/92(9/89) IJ-1.) This Convention, if it ever comes into force, would constitute a remarkable departure in the status of refugees in the Arab world and in the League's role in the enhancement of human rights in general.


53 For a survey of the status of the right to be granted asylum in International conventions and other instruments, see Ibid., 101-114.


55 It is interesting to note that while the Arab draft Convention excludes non-nationals from its concept of the right to property, its European equivalent provides non nationals with more protection than nationals. In Lithgow v. UK, the European Court on Human Rights ruled that measures taken by a State with respect to the property of its own nationals are not subject to the general principles of international law. The Court referred to Article 1 of the First Protocol of the European Convention on Human Rights. Such principles applied only if such measures are taken with respect to the property of an alien. R. Anthony Salgado, "Protection of Nationals' Right to Property Under the European Convention on Human Rights; Lithgow v. UK," Virginia Journal of International Law 27 (Summer, 1989): 870-873.

56 For a survey of the different Arab States' attitudes toward the right to property, see Shaban, 106-109.


The draft Arab Convention differs from all other international human rights treaties by giving precedence to the freedom of religion in its listing of the three freedoms. This, however, is just a reflection of the high rank which religion has in the Arab world. It is noteworthy that in the original draft the three freedoms were listed as in most human rights treaties (though, conscience and religion), but was later amended. The League of Arab States-Legal Affairs Dept., Report on the Second Session of the Permanent Arab Commission on Human Rights, Tunis, 1-11 November, 1982, p. 5.


Though the drafting process commenced in 1964, it took the UN seventeen years to finally adopt the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief in 1981. A convention concerning the subject is, however, still under consideration. Ibid.; United Nations Action in the Field of Human Rights, UN Doc. ST/HR/2/Rev. 3, 92-94.


This conclusion may be asserted by the rejection during the Third Session of the Permanent Arab Commission on Human Rights of a proposal to replace the word "religion" with the word "belief" in Articles 22 and 23 of the draft Convention. See the Report on the Third Session of the Commission, 35.

Most of the Arab countries which outlawed some of these "deviant groups" justified their decisions on the ground that such groups are not divine religions. Such was the case in the Egyptian Supreme Court's decision in 1975 affirming a previous law which banned the Bahai movement, See Aisha Abdulrahanan, A Reading in the Bahai Documents (in Arabic), (Cairo: Ahram Publishers, 1986), 14-30.
For more information about the status of the People of the Book living in an Islamic state and their rights, see Islamic Jurisprudence, 85-87.

See Article 18(3) of the International Covenant on Civil and Political Rights, Article 9(2) of the European Convention on Human Rights, and Article 12(3) of the American Convention on Human Rights.


Reference should also be made to the fact that neither the League's draft Declaration nor Organization of Islamic Conference's draft Charter on Human Rights contain a similar provision.

See Chapter II above at pp 4-9.


The UN Human Rights Committee, in its consideration of countries' reports, has treated Article 27 of the Covenant as requiring States parties to take positive action to preserve their minorities rights. Ryszard Cholewinski, "States Duty Towards Ethnic Minorities: Positive or Negative?", Human Rights Quarterly 10 (August, 1988): 348.


This was the reason for inserting the opening clause of Article 27 of the Covenant "In those States in which ethnic, religious, or linguistic minorities exist,..."

See table 1 above at 5-6.

Such is the case for example in the International Covenant on Civil and Political Rights (Articles 21 & 22); the American Convention on Human Rights (Articles 15 & 16) and the African Charter for Human and People's Rights and Freedoms (Articles 10 & 11).
It is suffice to mention that almost one third of the League States Members have a monarchy system, and even those with republican systems, most of them have a one party system. See Chapter II pp. 9-14.


However, after 12 years since its conclusion, only 2 states have signed this treaty!

Among the rights and freedoms asserted by ALO's Convention No. 8 are: the right to establish and to join or not to join trade unions (Articles 1, 13), the right to immunity from interference of governmental authorities in the internal affairs of labor organizations (Articles 9, 10, 14), the right of such organizations to establish and join federations and confederations and to affiliate with international organizations of workers and employer (Art. 8), the right to collective bargaining (Art. 11), and the right to strike (Art. 12). See the text of the Convention in the Arab Labor office: Arab Labor Conventions and Recommendations, (in Arabic), (1984).


In the memorandum sent by the Saudi Government to the Arab League and other International organization, it stated that it is not willing to recognize such "exclusive and strange rights" as the freedom of trade union "including the right to strike". Such attitude was taken, according to the memorandum "to protect the rights of the workers themselves " and "to protect the national economy". See the text of the memorandum in Scientific Symposiums, 40.

The absence of the right to trade union rights and freedoms from the draft Islamic Charter, however can not be taken as necessarily meaning that Islam opposes such a right. Absence of consensus regarding these rights exists also among Muslim scholars. While some assert their recognition in Islamic law, others argue that they can be legalized only in the absence of the "real" Islamic State which is government by Islamic law in all its aspects. See Sarhan, 299; S. Banajeh, A Comparative Study Between the Universal


See Report of the Third Session of the Permanent Arab Commission on Human Rights, the appendix, p. 2.

For example, only 6 States have ratified Convention No. 4 concerning the Movement of Workers despite the fifteen years which have elapsed since its conclusion in 1975. Most of the articles of the convention were concerned with emphasizing the right to equality of treatment between nationals and non-national Arab workers. See Arab Labour Conventions and Recommendations, 85-99.


A Lybian suggestion to make specific reference to technical and vocational right in Article 26 was defeated during the Second Session of the Permanent Arab Commission on Human Rights. See Report on the Second Session, 6.

See the Universal Declaration on Human Rights, Article 16(3); the International Covenant on Civil and Political Rights, Article 23(1); in International Covenant in Economic, Social and Cultural Rights, Article 10(1); the European Social Charter - Article I, (16), the American Convention on Human Rights, Article 17(1); and the African Charter on Human and People's Rights, Article 18(1).


For example, the Egyptian Constitution affirms the status of family as "the basis of society and religion, morals and nationalism as its [the family's] sustaining elements" (Article 9). The article further entrusts the State with the responsibility of protecting "the intrinsic nature of the Egyptian family and what it reflects of values and traditions". Cited in Shaban, 105.
These are in Article 5, concerning the right to marriage, Article 6 concerning the rights and duties of spouses and Article 7 concerning the rights of children, parents and relatives.

This approach is also followed by the African Charter on Human and Peoples' Rights which lists in more than one article the duties which the individual undertakes towards his family (Articles 27(1) & 29(1)).

See Report on the Third Session of the Permanent Commission, the appendix, p. 2.

See Chapter II above at p ; See also the Saudi Memorandum to the Arab League and Other International Organizations, 36-38.

Mohammed Asfor, one of the Committee's two experts, explaining the absence of the right to self determination from their draft of the Convention, pointed out that such a right is among those rights which have an international character and as such falls within the jurisdiction of international rather than regional organizations. Mohammed Asfor, "The Arab Convention on Human Rights: A National and Absolute Necessity," in Democracy and Human Rights in the Arab Homeland, (In Arabic), (Cairo: Centre for Arab Unity Studies, 1984), 224.


Ibid., 140-141.

In Article 2 of the League's Pact, it is the purpose of the League to strengthen "the relations between the member States, coordinate their policies in order to achieve cooperation between them and to safeguard their independence and sovereignty...". Furthermore, Article 8 of the Pact obliges each member state "to respect the systems of government established in the other member States and regard them as exclusive concerns of these States".

Salman, 141.

Among these instruments are the UN Declaration on Permanent Sovereignty over Natural Resources adopted in General Assembly Resolution 1803, the Charter of Economic Rights and Duties of States adopted in General Assembly Resolution 3281, (Article 2) common Article 1 of the UN’s two Covenants and Article 21 of the African Charter on Human and Peoples’ Rights.

Paragraph 5 of the current preamble of the draft Convention refers to racism and Zionism as forming "an infringement of human rights and a threat to international peace".

In the preamble of the African Charter on Human and Peoples’ Rights, African States pledge themselves to eliminate colonialism, neo-colonialism, apartheid, Zionism, and to dismantle aggressive foreign military basis and all forms of discrimination...". Regrettably, while the Africans explicitly refer to Zionism, though it is not an African problem, no reference is being made in the draft Arab Convention to apartheid, despite the many UN resolutions condemning apartheid as a crime against humanity. Yusuf 96.

The International Covenant on Economic, Social and Cultural Rights, Article 10(3).

The European Social Charter, Article I, (7).

See, for example, paragraph 5 of the preamble of the African Charter on Human and Peoples’ Rights.

M. Akehurst has written that an agreement about human rights is "easier to reach at the regional level, where states are more likely to achieve common values and interests". Michael Akehurst, A Modern Introduction to International Law, 5th ed., (London: George Allen and Unwin, 1982), 77-78; see also Polys Modinos, "Conclusions and future prospects", in Human Rights in National and International Law, ed. A.H. Robertson, (Manchester: The University Press, 1968), 376.

It is out of the scope of this thesis to analyze the distinctive features of the Arab society which would determine its concept of human rights. It is my hope that this study will spark greater interest in conducting such works. However, for reasons of simplicity, one could refer to the three significant factors which distinguish the Arab society value system from most other systems:
- the special place of religion in society;
- its lesser emphasis on individualism;
- and the formulation of human rights in the form of duties in most cases.


114 Asfor, 223-4.


117 See Chapter II above at p. 16.

118 Zakaria, 236.

119 See p.51 above.

120 See p.52 above.

121 Asfor, 222.
CHAPTER IV: THE ARAB LEAGUE'S MACHINERY OF IMPLEMENTATION

A) The Permanent Arab Commission on Human Rights

1- The Commission's Origin and Organization

As the protection of human rights was not included in the Pact of the Arab League, it followed that the League's systems contained no constitutional structure for that purpose. However, after functioning for more than twenty years and as the League became increasingly involved in cooperation with United Nations organs, particularly with the Economic and Social Council, the pressure intensified upon the League to change its attitude toward human rights and to take some serious steps in this regard. All the subsequent steps taken by the League in the late 1960's which eventually led to the establishment of the Permanent Arab Commission on Human Rights (hereafter referred to as the Commission) were mostly in response to UN initiatives. The change in the League's position with regard to human rights, therefore, was based on political rather than on humanitarian considerations.

In August 1966, the UN Economic and Social Council invited the League, along with other regional organizations, to attend the sessions of the UN Human Rights Commission and to exchange information about their human rights activities. It was also invited to participate in the celebration of the International Human Rights year in 1968, and to attend the International Conference on Human Rights in Tehran. The League Council accepted the invitation of the UN and appointed, what it called, a "Special Committee" to prepare for the League's contribution to the International Human Rights Year. Another committee (a steering committee) was set up a few months later by the League Council to
"coordinate its work with the first committee in determining the means by which the League can participate in the celebration of the Human Rights Year".3

The second UN initiative which had the most compelling influence on the League's decision to create the Commission was the UN Human Rights Commission's decision to study the possibility of creating regional human rights commissions in regions where they did not already exist.4 The League was asked for its views on the proposal. League members' fear about the existence of such a commission which would be beyond their control and therefore a source of potential embarrassment, is evident from the League's response to the UN proposal, which included the following paragraph:

"As for the procedure of establishing regional commissions on human rights and specifying their functions, the League of Arab States believes that the proper foundations for setting up such regional commissions are the foundations on which a regional inter-governmental organization is based. Thus, the regional commissions should be established within the framework of international or regional inter-governmental organizations".5

Thus, by establishing such a commission within the framework of the League, member States would not only be able to determine the scope of its activities but, more importantly, would be able to block any UN plan to establish a regional commission which would be immune to the Arab States' influence.

The third factor which contributed to the League's decision to establish a human rights commission was the League members' growing awareness of the importance of human rights as a useful political weapon, particularly vis à vis Israeli human rights violations in the occupied territories. The Arab defeat in the 1967 war resulted in a general consensus between Arab governments that a military
solution to the conflict, was, for then at least, highly unlikely. The Arab States therefore, turned to the political arena as an alternative. The 1967 war also resulted in many more Palestinians coming within Israeli jurisdiction and hence, raising the potential for an increase in violations of Arab rights in the newly occupied territories. The Arab States’ realization of the importance of human rights as a weapon was further enhanced by their success in including on the agenda of the International Conference on Human Rights in Tehran in 1968 an item entitled, "respect for and implementation of human rights in occupied territories".⁶

These three factors finally led the League Council to issue a resolution in 1968 to establish a Permanent Arab Commission on Human Rights.⁷

According to its rules of procedures (the text of these rules is found in Appendix D), the Commission is composed of representatives from all member States who each have one vote, and whose resolutions are adopted by the majority of the attending representatives. Thus, the Commission members, as in the case of the UN Human Rights Commission, are governmental representatives and not independents serving in their personal capacity. The chairman is appointed by the League Council for a renewable term of two years. The functions of the Commission are of a preparatory nature. Draft agreements are submitted to the League Council which has an absolute power to adopt or reject such proposals. The Commission, however, may make its own initiatives in the forms of studies, recommendations and suggestions, but these are also to be submitted to the Council. The Commission has the power to set up sub-committees to deal with "technical affairs assigned to the Commission." It may also recommend the convening of a meeting of experts to advise it on matters under consideration. It
is not clear, however, whether those experts and members of the sub-committees are to be governmental representatives or independent persons. In practice, the Commission has set up experts committees whose members serve in their personal capacity.8

2- The Commission and the Promotion and Protection of Human Rights

a. The Commission's Competence

As in the case of all other permanent commissions within the League system, the Commission is intended to advise the League Council on its subject matter, in this case the protection of human rights. However, the work programme which the Commission established in its Second Session, held in Cairo in April 1969, expanded the Commission's competence beyond its original advisory role. According to this programme, the Commission has jurisdiction over all matters relating to human rights in the region.9 In particular, the work programme envisaged the following objectives:

1- Support and coordination of joint Arab action in the field of human rights;
2- Development of awareness of human rights among Arab peoples;
3- Exertion of all possible efforts for the protection of the rights of Arabs in the occupied territories;
4- Coordination of member States' participation in the various international human rights activities.10

During the first two or three years following its establishment, the Commission's members worked enthusiastically to achieve its goals. They even tried to go beyond the limits imposed by the Commission's rules of procedures and by the bureaucracy of the League system. As indicated above, in its Second session, the Commission members established a relatively advanced work programme, given the place of human rights in the Arab League system at that time. Months after its creation, the Commission effectively participated in the preparation for the Arab Regional Human Rights Conference (which has never since reconvened) which was held in Beirut in 1968 in celebration of International Human Rights Year. It also participated in the African Seminar held in Cairo in 1969 to examine the idea of creating an African Commission on Human Rights.

The Commission began creating channels of cooperation with UN bodies concerned with the issue of human rights. It successfully worked as a source of information for the UN committees which were set up to investigate the human rights situation of Palestinians in the Israeli-occupied territories. The Commission repeatedly encouraged the establishment of national commissions of human rights in member States, so as to make the joint Arab action in the field of human rights more effective and more accessible to the needs of the Arab peoples. The Commission's efforts at that time culminated in the draft Arab Declaration on Human Rights which it proposed to the League Council as a draft agreement. The draft Declaration, as explained in the previous chapter was killed by other League bodies and by the negative response of member States.
It is interesting to note that even though proposing the draft Arab Declaration on Human Rights was the biggest step which the Commission "dared" to take in Egypt, it also marked the end of the relatively "successful", yet short period of its Cairo era. No serious actions were attributed to the Commission between then and the moving of the Arab League’s headquarters to Tunis in 1979. A review of League Council resolutions concerning human rights during that time reveals that all such resolutions were either for the designation of a Commission's new chairman or the renewal of his term. While a general coolness affecting almost all activities of the League in the late 1970s may be viewed as a cause of the weakness which affected the Commission during its late years in Cairo, dissatisfaction, and even anger, on the part of some Member States with the Commission's early activities cannot be ruled out as another factor.

After the Arab League moved its headquarters to Tunis, and as part of the Secretary-General's program of reactivating the League's system, the Commission resumed its meetings in 1982. Just as it terminated its Cairo meetings with the proposal of a draft agreement (the Arab Declaration on Human Rights), so it commenced its Tunis meetings by proposing another agreement (the Arab Convention of Human Rights).

In its Tunis era, the Commission has, so far, shown more willingness to exploit all possible means available to achieve its goals. Although considerations of the rights of Arabs in the Israeli-occupied territories continue to dominate (as was the case during its Cairo era) the rights of people living within the jurisdiction of member States have more often been considered. In addition to the repeated condemnation of Israeli human rights violations in the West Bank and
Gaza and in Lebanon, the following issues have been considered by the Commission since moving to Tunis:

1- The attitudes of member States toward international human rights agreements;
2- The issue of refugees in the Arab world;
3- Racial discrimination and its effects on Arab immigrants;
4- The situation of Palestinians inside Arab States.16

The Commission has also tried to establish and develop channels of cooperation with other international, regional and even non-governmental organizations concerned with human rights.17 It has also devoted parts of its sessions to discussion of the means by which it can enhance its role in alleviating the human rights situation in the region.

All these positive developments in the Commission's activities notwithstanding, it is still a far cry from meeting the challenges it faces as the sole organ in the Arab League's structure with an exclusive human rights mandate. Its existence has had hardly any measurable effect on the human rights situation in the Arab world. In fact, its existence is barely noticeable outside the League itself. The complete subordination of the Commission to the League Council, which is the only channel through which the Commission can take any action to realise its objectives, has severely affected the credibility of the Commission and has also resulted in almost universal ignorance of its role or even of its existence. Since the Commission was created in 1968, only a few of its recommendations have managed to acquire the approval of the League Council. Very few Arab lawyers are aware of the Commission's existence. It is telling that during the preparation of the
League's revised Pact, some delegations proposed the creation of an Arab Commission on Human Rights. This proposal was only withdrawn after it was pointed out that such a commission already existed.  

The major contributing factor to the poor achievement of the Commission is undoubtedly the negative attitude of Member States toward the Commission's role, and toward the human rights cause in general, and not the dynamics of the Commission itself. The Arab States still view the Commission as a necessary creation designed purely to preclude the UN from taking more serious steps towards the establishment of a regional human rights commission. It should come of no surprise, therefore, that most of the Commission's sessions were attended by less than the quota required for the meetings' legitimacy. Some States have even boycotted these meetings completely.

The negative attitude of member States is not limited to a lack of support or lack of interest in the Commission's work. It goes as far as attempting to sabotage the Commission's work, and moreover, to preventing any expansion of its role. It is in keeping with this policy, therefore, that neither the draft Arab Declaration on Human rights nor the draft Arab Convention on Human Rights has paid any regard to the Commission.
B- Other Potential Measures of Implementation

1- The Proposed Arab Court of Justice

The idea of establishing an Arab Court of Justice annexed to the Arab League is as old as the League itself. When delegations from Arab States met in 1945 to draft the League Pact, the question of creating an Arab Court was one of the most hotly debated. Failing to reach an agreement on the issue, the drafters of the Pact inserted an article which would leave the possibility of creating such a court in the future. Article 19 of the League Pact provides:

This Pact may be amended with the consent of two-thirds of the League States, especially in order to ... create an Arab Court of Justice ....

Since then, many proposals have been submitted to the Council of the League to establish such a court. The most recent of these is included in the draft revised Pact of the League which explicitly states in Article 20 that an Arab Court of Justice will be established. The Statute of the court is annexed to the revised Pact and is considered an integral part of it. The draft Statute of the Court does not envisage an explicit jurisdiction for the court over human rights issues. The Court, if it ever becomes a reality, would only be concerned with inter-states disputes. Individuals would not be allowed to bring claims against their own State or against other Arab States in the Court. Reference should be made here to the fact that it has been the Arab States' constant position to deny individuals any international locus standi even before bodies with less authority than courts. It is worthwhile to refer here to the fact that, with the exception of Libya, no Arab State has ratified the Optional Protocol to the International
Covenant on Civil and Political Rights which would allow the UN Human Rights Committee to receive communications from individuals subject to the jurisdiction of the ratifying State.\(^{23}\) A number of Arab States did, however, ratify the International Covenant on Civil and Political Rights itself. (See Appendix E.)

Notwithstanding the exclusion of human rights questions from the proposed Court's jurisdiction, its establishment would still contribute, though minimally, to enhancing human rights in the Arab region. For example, the draft Statute of the Arab Court of Justice gives it jurisdiction over disputes relating to interpretation of Arab bilateral and multilateral treaties\(^{24}\) which would include those related to human rights. Another potential channel through which the proposed Court may contribute to the enhancement of the League's human rights system would be its competence to issue advisory opinions in "any legal matter", if requested by some specified League organs.\(^{25}\)

In any event, even if the proposed Arab Court of Justice is to be kept away from human rights issues, its establishment would assist in overcoming one of the obstacles which have severely weakened the League's human rights system, i.e. the rigid concept of sovereignty which still affects most Arab States' attitude toward human rights issues. Indeed, what is needed is not the mere existence of the Court, but rather a commitment and sensitivity on the part of member States toward its role.

\textbf{C- The Role of Arab Non-Governmental Organization}

It has been advocated that in regions where governmental human rights arrangements have not been initiated, or have been functioning poorly, non-
governmental organizations (NGO's) bear a major responsibility for filling the gap by taking action to promote and protect human rights in such regions.\textsuperscript{26} Accordingly, given the poor condition of the human rights arrangements established by the League of Arab States, the burden laid upon human rights NGO's in the Arab world is a heavy one.

In fact, the role of NGO's in the international human rights movement has proved significant even in regions where effective governmental arrangements exist. The private nature of NGO's and the absence of politics as a determinant in their actions, as well as their close connection with the public, all contribute to their ability to conduct human rights activities more objectively and independently than their governmental counterparts. The significance of their role is further evident from the increasing number of arrangements which some international organizations have been making to attribute more legitimacy to the work of NGO's.\textsuperscript{27}

In the Arab world, while NGO's concerned with human rights have remained subordinate to those of most other regions, the situation has changed considerably in the last few years. There has been a veritable mushrooming of organizations which have only recently become active in the field of human rights. Such a phenomenon of NGO's spreading, however, has not been uniform throughout the region. While some NGO's have existed for decades in some States, in others, the phenomenon is entirely new. In addition to this phenomenon of increasing numbers of Arab NGO's, the region has increasingly been attracting the attention of international NGO's focusing on human rights.
The relatively late emergence of most Arab NGO’s is, however, understandable in light of the many obstacles existing in almost all parts of the Arab world which severely affect their roles. Amongst these obstacles, and indeed the most obstructive, is the hostile attitude of Arab governments toward the activities and even the existence of human rights NGO’s in their territories. For example, Egypt, where the Arab Organization for Human Rights is headquartered still denies it official recognition.28 Another example is the campaigning which some Arab States undertook during the 1987 Meeting of the Economic and Social Council’s Committee on NGO’s to prevent the Arab Organization for Human Rights from acquiring consultative status in the Council.29 The attitude of the Arab League is not very different from that of its members. The work of NGO’s has been denied any recognition in the League system. A very recent promising departure from this attitude was the Permanent Arab Commission on Human Rights’ recommendation during its Seventh Session to “invite regional and national Arab NGO’s working in the field of human rights to attend ...[its] sessions as observers”.30

Another factor negatively affecting the activities of NGO’s in the Arab world has been the absence of adequate and accurate data about human rights situation in various Arab States. This has been the result not only of States’ negative attitude but also of the NGO’s limited resources, both in staffing and vocational training. It is no wonder, therefore, that the Arab world has been perceived as one of the world’s most under-reported regions.31

Other obstacles hindering an effective role by Arab human rights NGO’s include: lack of popular awareness and support, the presence of some
governmental controlled "NGO's", and the absence of NGO's with a specific human rights concern, apart from trade unions with respect to workers rights.

Given the relatively new experience of most of the existing Arab human rights NGO's, it is too soon to give a comprehensive evaluation of their activities in enhancing human rights situation in the region. Initial activities of most of these organizations have been principally concerned with alleviating existing human rights violations, particularly with regard to the rights of prisoners. Enhancement of human rights awareness among Arab people, which continues to be extremely low, has been of less concern for most Arab NGO's. Recent promising efforts have, however, been undertaken by some of these organizations to discharge this important task. The most serious step taken in this regard was the establishment of the Arab Human Rights Institute in Tunis, which was the result of a joint effort by three Arab NGO's, the Arab Organization for Human Rights, the Tunisian League of Human Rights, and the Union of Arab Lawyers.32
FOOTNOTES


3. Ibid.

4. Ibid.


8. This was the case, for example, in the Expert Committee which the Commission set up to prepare the preliminary draft of the Arab Convention of Human Rights.


11. Although most of the Conference's final resolutions circled around the rights of Palestinians inside the occupied territories, they also included a resolution calling for the protection of the rights of people within Arab States. The Conference's final communique called also for the support of the Arab joint action in the field of human rights presented by the Commission. Asfahani, 29-30.

12. Ghai, 578.

13. Although this recommendation was adopted by the League Council, no further practical action was taken for its implementation. Hussain Jameel, "Human Rights in the Arab Homeland: Obstacles and Practice," General Comment by Gameel Matar, in The Democracy Crisis in the Arab Homeland, Symposium, (In Arabic), (Beirut, Centre for Arab Unity Studies, 1987), 560.

For a summary of the subjects discussed during the Commission's sessions in Tunis, see The League of Arab States - The Secretariat General, Summary of the Sessions of the Permanent Arab Commission on Human Rights Held in Tunis 1982-1988, (in Arabic).

In the Commission's latest sessions, representatives from the UN Centre for Human Rights, the Organization of African Unity and the Union of Arab Lawyers attended as observers.

For early history of the proposed Arab Court of Justice, see Ezzeldin Foda, The Projected Arab Court of Justice, (The Hague: Martinus Nijhoff, 1957).

For a brief history of the draft revised Pact of the Arab League, see pp. above.


See Article 15 of the draft Statute of the Arab Court of Justice, Ibid., 270.

See Article 1 of the Optional Protocol to the International Covenant on Civil and Political Rights.

See Article 17(4) of the draft Statute of the Court of Arab Justice, cited in Shaban, 270.

See Article 35(1) of the draft Statute of the Arab Court of Justice, Ibid., 275.


For example, the Council of Europe, which has provided the most successful regional human rights system, has been considering means to facilitate the activities of NGO's at the international level. In this regard, a European Convention on the Recognition of the Legal Personality of International Non-Governmental Organizations has been opened for ratification. Andrew Drzemczweski, "The Role of NGO's in Human Rights Matters in the Council of Europe," Human Rights Law Journal 8 (1987): 274.


The Arab Human Rights Institute's principal goals, as determined by its founders, are "to promote human rights knowledge and awareness and to train governmental and non-governmental personnel to apply and protect these rights", Arab Organization for Human Rights Newsletter 27 (in Arabic), (September 1989): 8; see also Al-Jader, "The Universal Declaration and Human Rights," (in Arabic) Human Rights in the Arab World 23 (August, 1989): 20.
CHAPTER V: CONCLUSION

Whereas the current trend in international human rights organizations is to establish more and more rights, to stress collective rights as well as individual rights and to translate existing human rights into meaningful commitments, the corresponding trend in the League of Arab States has been a downward one.

The weakness of the League's human rights system, however, can not be divorced from the general failures which have plagued the League almost since its inception. The Arab League has proven ineffective and too weak to cope with the complexities of the region and the endless inter-Arab States rivalries. It has also been weakened by the presence of some seemingly intractable problems (e.g. Palestine question) as well as the increasing number of sub-regional organizations in the Arab world (the Gulf Cooperation Council, the Arab Cooperation Council and the Maghrib Union) These have gradually undermined the League's role as the principal inter-Arab organization and have shifted the loyalties of member States towards these sub-regional organizations.

It is against this background that a meaningful study of the League's human rights system can be conducted. An analysis of such a system must also take account of the prevailing social, cultural and ideological conditions in Arab countries.
When the League of Arab States was established in 1975, the protection of human rights was not perceived as one of the issues which the League would be concerned with. It took more than twenty years for human rights to finally gain explicit recognition in the League's system (i.e. when the Permanent Arab Commission on Human Rights was established in 1968).

The draft Arab Declaration on Human Rights (1971) and the draft Arab Convention on Human Rights (1982) are the League's only attempts to proclaim and define human rights. While the former is now a dead letter, the fate of the latter is in the hands of the members of the Council of the League. So far, they have been reluctant to push it any further. However, there are several reasons to be pessimistic about the practical effectiveness of the draft Arab Convention on Human Rights, even if it were to enter into force. One is the failure of the treaty to provide for the creation of any form of institutional framework to supervise its implementation. Another is its concept of human rights.

An extensive analysis of the provisions of the draft Arab Convention on Human Rights reveals that the treaty does not represent a distinct Arab concept of human rights, which reflects Arab values and meets actual needs of Arab societies. The provisions of the draft Convention have been influenced by those contained in other international human rights treaties, particularly the provisions of the International Covenant on Civil and Political Rights, albeit that the former are less precise and determinate.

In complete disregard to the influence of Islam in shaping the cultural identity of the Arab people and despite the recent so-called "Islamic resurgence", the impact of Islam on the League's concept of human rights has been minimal.
What influence there is limited to a few of the draft Convention's provisions and mostly in a negative manner.

Furthermore, most of the draft Conventions' provisions are couched in language which is designed to conceal States' determination to retain full freedom of action. They are mostly formulated in general terms which neither delimit the exact scope of the rights concerned nor precisely define the obligations which States undertake by virtue of such rights. This characteristic of the language, taken together with the many limitations which the draft Convention contains, would leave States with a wide discretion to interpret and apply the draft Convention's provisions.

It is hardly conceivable to speak of an implementation machinery in the League's current human rights system since the only organ created for that purpose - the permanent Arab Commission on Human Rights - has a very restricted role. Neither its structure nor its competence reveals any serious commitment to human rights implementation. A review of its activities during its twenty years experience reveals that the Commission has not been able to take any major steps in fulfilling its mandate as the only organ in the League system with an exclusive human rights jurisdiction. The poor record of the Commission, however, can be directly attributed to the negative attitudes of member States towards its role and towards human rights in general, and not to the dynamics of the Commission itself.

Any bid for an expanded role for the League of Arab States in the field of human rights should not ignore its inherent limitations. The League is an organization of States which does not have any authority over its members. Its human rights system can be enhanced only if its member States' reluctance toward
human rights issues can be overcome. Until some kind of evolution takes place in the negative attitudes of member States toward human rights, in general, and toward the inviolability of establishing an Arab regional human rights system, in particular, the League can not make any real progress in the promotion and protection of human rights.

Until such a change takes place, the burden of promoting and protecting human rights in the Arab world will fall to the Arab non-governmental organizations. While their current efforts in alleviating existing human rights violations by carrying out investigations and publicizing human rights abuses cannot be seen but as a promising development, further efforts should be directed toward enhancing human rights awareness among Arab people.

There is very little known about human rights in the Arab world or about the institutional attempts to promot and protect them. The sheer paucity of scholarly work on the subject is quite remarkable. More work in this area is certainly necessary. It is hoped that this study will spark greater interest in conducting further research on this important subject.
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THE PACT OF THE LEAGUE OF ARAB STATES

Desirous of strengthening the close relations and numerous ties which link the Arab States;

And anxious to support and stabilize these ties upon a basis of respect for the independence and sovereignty of these states, and to direct their efforts toward the common good of all the Arab countries, the improvement of their status, the security of their future, the realisation of their aspirations and hopes;

And responding to the wishes of Arab public opinion in all Arab lands;

Have agreed to conclude a Pact to that end and have appointed as their representatives the persons whose names are listed hereinafter, have agreed upon the following provisions:

Article 1
The League of Arab States is composed of the independent Arab states which have signed this Pact.

Any independent Arab state has the right to become a member of the League. If it desires to do so, it shall submit a request which will be deposited with the Permanent Secretariat General and submitted to the Council at the first meeting held after submission of the request.

Article 2

The League has as its purpose the strengthening of the relations between the member states; the coordination of their policies in order to achieve co-operation between them and to safeguard their independence and sovereignty; and a general concern with the affairs and interests of the Arab countries. It has also as its purpose the close co-operation of the member states, with due regard to the organization and circumstances of each state, on the following matters:

A. Economic and financial affairs, including commercial relations, customs, currency, and questions of agriculture and industry.
B. Communications, this includes railroads, roads, aviation, navigation, telegraphs and posts.
C. Cultural affairs.
D. Nationality, passports, visas, execution of judgments, and extradition of criminals.
E. Social affairs.
F. Health problems.

Article 3

The League shall possess a Council composed of the representatives of the member states of the League; each state shall have a single vote, irrespective of the number of its representatives.

It shall be the task of the Council to achieve the realisation of the objectives of the League and to supervise the execution of agreements which the member states have concluded on the questions enumerated in the preceding article, or on any other questions.
It likewise shall be the Council’s task to decide upon the means by which the League is to co-operate with the international bodies to be created in the future in order to guarantee security and peace and regulate economic and social relations.

**Article 4**

For each of the questions listed in Article 2 there shall be set up a special committee in which the member states of the League shall be represented. These committees shall be charged with the task of laying down the principles and extent of co-operation. Such principles shall be formulated as draft agreements, to be presented to the Council for examination preparatory to their submission to the aforesaid states.

Representatives of the other Arab countries may take part in the work of the aforesaid committees. The Council shall determine the conditions under which these representatives may be permitted to participate and the rules governing such representation.

**Article 5**

Any resort to force in order to resolve disputes arising between two or more member states of the League is prohibited. If there should arise among them a difference which does not concern a state’s independence, sovereignty, or territorial integrity, and if the parties to the dispute have recourse to the Council for the settlement of this difference, the decision of the Council shall then be enforceable and obligatory.

In such a case, the states between whom the difference has arisen shall not participate in the deliberations and decisions of the Council.

The Council shall mediate in all differences which threaten to lead to war between two member states, or a member state and a third state, with a view to bringing about their reconciliation.

Decisions of arbitration and mediation shall be taken by majority vote.
Article 6

In case of aggression or threat of aggression by one state against a member state, the state which has been attacked or threatened with aggression may demand the immediate convocation of the Council.

The Council shall by unanimous decision determine the measures necessary to repulse the aggression. If the aggressor is a member state, this vote shall not be counted in determining unanimity.

If, as a result of the attack, the government of the state attacked finds itself unable to communicate with the Council, that state's representative in the Council shall have the right to request the convocation of the Council for the purpose indicated in the foregoing paragraph. In the event that this representative is unable to communicate with the Council, any member state of the League shall have the right to request the convocation of the Council.

Article 7

Unanimous decisions of the Council shall be binding upon all member states of the League; majority decisions shall be binding only upon those states which have accepted them.

In either case the decisions of the Council shall be enforced in each member state according to its respective basic laws.

Article 8

Each member state shall respect the systems of government established in the other member states and regard them as exclusive concerns of those states. Each shall pledge to abstain from any action calculated to change established systems of government.

Article 9

States of the League which desire to establish closer co-operation and stronger bonds than are provided by this Pact may conclude agreements to that end.
Treaties and agreements already concluded or to be concluded in the future between a member state and another state shall not be binding or restrictive upon other members.

Article 10
The permanent seat of the League of Arab States is established in Cairo. The Council may, however, assemble at any other place it may designate.

Article 11
The Council of the League shall convene in ordinary session twice a year, in March and in September. It shall convene in extraordinary session upon the request of two member states of the League whenever the need arises.

Article 12
The League shall have a permanent Secretariat-General which shall consist of a Secretary-General, Assistant Secretaries, and an appropriate number of officials.

The Council of the League shall appoint the Secretary-General by a majority of two-thirds of the states of the League. The Secretary-General, with the approval of the Council shall appoint the Assistant Secretaries and the principal officials of the League.

The Council of the League shall establish an administrative regulation for the functions of the Secretariat-General and matters relating to the Staff.

The Secretary-General shall have the rank of Ambassador and the Assistant-Secretaries that of Ministers Plenipotentiary. The first Secretary-General of the League is named in an Annex to this Pact.

Article 13
The Secretary-General shall prepare the draft of the budget of the League and shall submit it to the Council for approval before the beginning of each fiscal year. The Council shall fix the share of the expenses to be borne by each state of the League. This share may be reconsidered if necessary.
Article 14
The members of the Council of the League as well as members of the committees and the officials who are to be designated in the administrative regulation shall enjoy diplomatic privileges and immunity when engaged in the exercise of their functions.

The buildings occupied by the organs of the League shall be inviolable.

Article 15
The first meeting of the Council shall be convened at the invitation of the Head of the Egyptian Government. Thereafter, it shall be convened at the invitation of the Secretary-General.

The representatives of the member states of the League shall alternately assume the presidency of the Council at each of its ordinary sessions.

Article 16
Except in cases specifically indicated in this Pact, a majority vote of the Council shall be sufficient to make enforceable decisions on the following matters:

A. Matters relating to personnel;
B. Adoption of the budget of the League;
C. Establishment of the administrative regulations for the Council, the committees, and the Secretariat-General;
D. Decisions to adjourn the sessions.

Article 17
Each member state of the League shall deposit with the Secretariat-General one copy of every treaty or agreement concluded or to be concluded in the future between itself and another member state of the League or a third state.

Article 18
If a member state contemplates withdrawal from the League, it shall inform the Council of its intention one year before such withdrawal is to go into effect.
The Council of the League may consider any state which fails to fulfil its obligations under this Pact as having become separated from the League, this to go into effect upon a unanimous decision of the states, not counting the state concerned.

**Article 19**

This Pact may be amended with the consent of two-thirds of the states belonging to the League, especially in order to make firmer and stronger the ties between the member states, to create an Arab Tribunal of Arbitration, and to regulate the relations of the League with any international bodies to be created in the future to guarantee security and peace.

Final action on an amendment cannot be taken prior to the session following the session in which the motion was initiated.

If a state does not accept such an amendment it may withdraw at such time as the amendment goes into effect, without being bound by the provisions of the preceding article.

**Article 20**

This Pact and its Annexes shall be ratified according to the basic laws in force among the High Contracting Parties.

The instruments of ratification shall be deposited with the Secretariat-General of the Council and the Pact shall become operative as regards each ratifying state fifteen days after the Secretary-General has received the instruments of ratification from four states.
APPENDIX B

DRAFT ARAB DECLARATION ON HUMAN RIGHTS*

Preamble

Arab States:
In pursuance with the Arab Nation's belief in man since God exalted the Arab World by making it the cradle of religions and land of civilizations which honoured man and affirmed his right in a dignified life based on human rights of freedom, dignity and fraternity;

Being proud of what the Arab society has affirmed through its long history of human values and principles which play a great role in advocating knowledge centres, east and west, which made it become a destination of searchers for knowledge and wisdom;

Whereas the Arab Nation is preserved in spite of the disasters brought about by coercive enemies after its prosperous ages;

Whereas the Arab World called to preservation of its faith, believing in its unity, struggling for its freedom and defending all factors of dispersion and sunderance;

In recognition of the fact that enjoyment by man of liberty, justice, sovereignty of law and equality of opportunities are the criterion of the originality of any society as there is no benefit of any false gains if such human fundamentals are lacking and as it is impossible for it to realize any progress or development unless through its movement based on the people's belief that it is acting in their welfare, rights and freedoms;

* Reprinted from The League of Arab States - Secretariat General, The Draft Arab Declaration on Human Rights (in Arabic). Translated by the author.
In affirmation of the principles of the Universal Declaration of Human Rights and commitment of the international society to them based on faith and belief;

In implementation of the above, and as the Arab States found it necessary to codify the rights and freedoms of the Arab citizen wherever he is which are inviolable and should be given full care and attention as a basis for every policy, administrative act or legislation;

They hereby issue the following Declaration:

**Article 1**
Every citizen has the right to enjoy all the rights and freedoms set forth in this Declaration without any discrimination based on race, colour, origin, religion, language, birth, wealth, political opinion or any other bases.

Both men and women have the right to enjoy such rights and freedoms on an equal basis.

**Article 2**
a. Every citizen has the right to life.
b. If the law of the state provides for death as a criminal punishment, the citizen may not be deprived from the right to life except for a highly serious crime. Such person must be eighteen years old as a minimum. The sentenced person has the right to appeal for pardon or commutation of the sentence.
c. In no event shall death sentence be imposed for a political offence.
d. Death sentence may not be enforced on a pregnant woman.

**Article 3**
All citizens are free. Any act purporting any form of slave trade shall be forbidden.

**Article 4**
Every citizen has the right to liberty of person and may not be detained or arrested without a legal basis. In such a case the law should give him prompt
right, to object to the lawfulness of his detention or frequent release before a judicial authority.

**Article 5**

a. Every citizen has the right to security of person.

b. No citizen shall be subjected to physically or psychologically torture or to cruel or degrading treatment.

c. Persons sentenced to a liberty depriving punishment shall be treated humanely.

**Article 6**

a. Compulsory labour is prohibited.

b. No citizen may be forced to carry out certain work even if it is paid unless such work is an implementation of a judicial sentence.

c. It is not considered compulsory labour if a citizen is assigned to military service or to contribute in salvage during general emergencies.

**Article 7**

No citizen may be expelled from his country or prevented from returning to it.

**Article 8**

No citizen may be arbitrarily prevented from leaving any Arab country including his own or to impose any restrictions on his residence at a certain place or force him to live at a certain place of his country.

**Article 9**

a. Every citizen has the right to seek asylum in other countries from persecution.

b. This right may not be invoked by anyone brought for trial for non-political crimes or for acts contrary to this Declaration and the international principles and statements related to human rights.

**Article 10**

Every citizen has the right to enjoy the nationality of his country. Depriving him of his nationality is prohibited.
Article 11
Every citizen has the right to enjoy a private life which includes the private affairs of the family, the home and correspondence, and other means of private communication. There shall be no interference with the private life of the citizen, nor an attack on his reputation except through judicial channel.

Article 12
The right to private ownership is guaranteed for every citizen. In no event shall a person be deprived of all or part of his possessions on arbitrary basis.

Article 13
The legal personality is an innate quality of every citizen.

Article 14
All citizens are equal before the law and are entitled without any discrimination to equal rights in the protection and guarantees of the law.

Article 15
No crime, punishment or precautionary measures shall be taken except on lawful grounds and no punishment but on the acts committed after the issuance of the relevant law.

If a later law is issued that reduces the punishment it shall be imperative to apply.

Article 16
No one may be tried or punished twice for the same crime if it has already acquired non-appealable judgment.

Article 17
Every citizen has the right to seek judication. The judicial body shall be given all guarantees that ensure independence, fairness and impartiality.

Article 18
Every citizen has the right to resort to judication to object to authority acts which affect his constitutional or legal rights and seek its abrogation. He has the right to
compensation for the incurred damage if the authority has surpassed its legitimate limits.

Article 19
The accused person is presumed innocent until proved guilty.

Until then, he has the following rights:-

a. The right to be informed promptly and specifically of the accusation against him.

b. The right not to be subjected to any physical, moral compulsion or any trick or promise that affects his will or degrades him to acquire self-confession or condemnation.

c. The right to be tried before a court having jurisdiction according to a law issued before the occurrence of the offence.

d. The right to have a legal counsel and to communicate with him at any time.

e. The right to have adequate time to prepare his defence and the right to be tried without undue delay.

f. The right to be tried in presence and to present negation evidences and witnesses in his favour and to examine evidences and witnesses against him.

g. The right to appeal before a higher court to review the judgment if the crime is punishable with a liberty depriving sentence or more severe punishment.

Article 20
Citizens of every religion have the right to practise their religious rites without prejudice to the rights and fundamental freedoms of others.

Article 21
Freedom of opinion is absolute. Citizens have the right to express their opinion through all forms of expression and propagation by all publication means.
Article 22
Citizens have the freedom to association and peaceful assembly. No restrictions may be imposed on practising this right except and for considerations of national security, public order or public morals.

Article 23
Every citizen has the right to take part in public life either directly or through freely chosen representatives. He also has the right to apply for public service positions in his country.

Article 24
Every citizen has the right to gain his living by work. This right includes:

a. Making work opportunities available for him on the basis of competence only as well as providing vocational training facilities.

b. Work conditions that preserve security and health.

c. Fair wages and equal pay for work of equal value.

d. The right to have rest breaks as well as periodic holidays with pay.

Article 25
Citizens have the right to form and join trade unions to safeguard the legitimate rights of their members.

No legal restriction may be imposed on this right other than those for considerations of national security, public order or for the protection of the legitimate rights of others.

Article 26
Every citizen has the right to have a standard of living that ensures basic requirements of life including food, clothing, housing and health. He also has the right to have an aid from the government or insurance in cases of old age, sickness, disability, unemployment and loss of the supporting person.
Article 27
Family, motherhood and childhood are given special care and protection in the Arab homeland. This entails:

a. Necessity to support and protect the family from dissolution and abuse of right in all possible means.

b. Care for motherhood both materially and morally especially for work conditions.

c. Protection of children and young persons against all types of negligence or exploitation and risks that affect their health and normal development.

Article 28
Every citizen has the right to liberate from illiteracy and the right to free education at all stages in accordance with his capabilities provided that elementary education, at least is obligatory.

Article 29
Citizens have the right to participate in the cultural life of their country and to enjoy literacy and artistic productions as well as the right to be availed opportunities to develop their artistic abilities.

They also have the right to live in a cultural atmosphere that sanctifies human rights, rejects racial and religious discrimination, take pride in Arab nationalism and supports international cooperation and international peace cause.

Article 30
Youth citizens have the right to be availed greatest opportunities for physical and mental development so as to qualify them to actively participate in the development of society and to leadership in the future.

Article 31
The rights and freedoms provided for in this Declaration are inviolable except in times of public emergencies which threaten the life of the nation and the existence
of which is officially proclaimed. Such exception shall apply only to the extent strictly required by the exigencies of the situation and to the shortest time possible.
APPENDIX C

DRAFT ARAB CONVENTION ON HUMAN RIGHTS

PREAMBLE

Arab States:
In pursuance with the Arab Nation's belief in man since God exalted the Arab World by making it the cradle of religious and land of civilizations which honoured man and affirmed his right in a dignified life based on freedom, justice and peace;

In realization of the immortal principles established by the Islamic Sharia and other spiritual religions in fraternity and equality among mankind;

Being proud of what she has affirmed along her history of human values and principles which play a great role in advocating knowledge centres, east and west, which made her become a destination of searchers for knowledge, education and wisdom;

Whereas the Arab World called to preservation of its faith, belief in its unity, struggle for its freedom, defend the right of nations in self-determination and preservation of their resources, belief in the sovereignty of Law and that man's enjoyment of liberty, justice and equality of opportunities is the standard of goodness of every society;

Reprinted from The League of Arab States - Secretariat General, The Draft Arab Convention on Human Rights (in Arabic). Translated by the author.
In rejection of racism and Zionism which form an infringement of human rights and a threat to international peace;

In recognition of the close relationship of human rights with international peace;


In implementation of the above;

The Arab States Parties to this Convention have pledged themselves to ensure for everyone on their lands his rights and fundamental freedoms. Such rights being inviolable and must be implemented and fully respected, pursuant to the following provisions:

**Fundamental Rights and Freedoms**

**Article 1**

Every state party to the present Convention undertakes to ensure to every individual within its territory and subject to its jurisdiction the right to enjoy all the rights and freedoms provided for herein without any discrimination on the basis of race, colour, sex, language, religion, political opinion, national or social origin, wealth, birth or any other status and without any discrimination between men and women.

**Article 2**

a. There shall be no restriction on the fundamental human rights recognized or existing in any State Party to the present Convention pursuant to law, conventions or custom nor shall there be derogation from them on the pretext that the Convention does not recognize such rights or that it recognizes them to a lesser extent.

b. Any State Party to the present Convention may not restrict or derogate from the fundamental freedoms stated herein that may be beneficial to citizens of other States that treat such freedoms at a lesser degree.
Article 3
Everyone has the right to life, liberty and security of person. These rights shall be protected by Law.

Article 4
a. States Parties to the present Convention shall protect on their territories everyone from physical or psychological torture or cruel, inhuman, humiliating or degrading treatment. Effective measures shall be taken to prevent such acts. Practising such acts or participation therein shall be a punishable crime.

b. No one shall be subjected, without his free consent, to medical or scientific experimentation.

Article 5
Everyone has the right to liberty and security of person. No one shall be subjected to arrest or detention except on such grounds established by law. In such cases, he shall be brought promptly before a judicial body.

Anyone subjected to such procedures has the right to object to their lawfulness and request release. Anyone who has been the victim of unlawful arrest or detention shall have the right to compensation.

Article 6
Private life has a sacred inviolability, and any infringement thereof is a crime. Such a private life includes the private affairs of the family, the inviolability of the home and the secrecy of correspondence and other means of private communication.

Article 7
a. No restriction shall be imposed on the rights and freedoms guaranteed by the present Convention except as stated by law and as considered necessary to protect national security and economy, public order, public health, morals or the rights and freedoms of others.
b. The State Parties to the present Convention may, at times of public exigencies which threaten the life of the nation, take measures derogating from their obligations under the present Convention to the extent strictly required by the exigencies of the situation.

c. In any event, such restrictions and derogations may not touch the rights and warranties related to prohibition of torture and humiliation, return to one's own country, political asylum, trial and prohibition of re-trial for the same offense, and legitimacy of crimes and punishments.

**Right to Self-Determination**

*Article 8*

a. All peoples have the right to self-determination and control over their natural wealth and resources. By virtue of this right, they freely determine their political status and freely pursue their economic, social and cultural development.

b. Racism, Zionism, foreign occupation and control are challenges to the human dignity and a major obstacle in the way of the fundamental rights of peoples and hence, it is imperative to condemn all their practices and to work to eliminate them.

*Article 9*

No citizen may be deprived of his original nationality arbitrarily, nor denied the right to acquire another nationality except on the basis of a legal reason.

**Personality**

*Article 10*

The legal personality is an innate quality of every person.

**Right to Trial**

*Article 11*

All people are equal before the courts and tribunals. The right of resorting to the judiciary is guaranteed for everyone in the territory of the State.

**Political Right**

*Article 12*
The people are the sources of authorities and political capacity is the right of every adult citizen to be exercised according to Law.

**Freedom of Movement**

**Article 13**
Everyone within the territory of a State has the right to liberty of movement and freedom to choose his residence at any part of such territory within the limits of the Law.

**Article 14**
No citizen may arbitrarily or illegally be prevented from leaving any Arab country including his own or to impose any restrictions on his residence at a certain place or force him to live at a certain place of his country.

**Article 15**
No citizen may be expelled from his own country or prevented from returning to it.

**Article 16**
Every citizen has the right of seeking political asylum in other countries from persecution. This right may not be invoked by anyone who commits ordinary crime that touches on the public right. Political refugees may not be returned to the country from which they escaped.

**Right and Freedom of Work**

**Article 17**
The State shall guarantee for every citizen the right in a work that ensures for him a living standard that meets basic requirements of life as well as the right in overall social insurance.

**Article 18**
Freedom to choose work is guaranteed. Compulsory labour is prohibited. It is not considered a compulsory labour if a person is forced to carry out certain labour in implementation of a judicial sentence.

**Article 19**
The State shall guarantee for all citizens equality of opportunities in employment and fair wages as well as the right for equal pay for equal work.

Article 20
Every citizen has the right to apply to public service in his country.

Freedom of Property

Article 21
The right of private property is guaranteed for every citizen. No citizen shall, in all cases, arbitrarily or illegally be deprived of all or part of his properties.

Freedom of Religion, Thought, Conscience

Article 22
Freedom of religion, thought and conscience is guaranteed for everyone.

Article 23
Persons of every religion have the right to practise their religious rites. They also have the right to express their thoughts through writing, practising or teaching without prejudice to the rights of others. No restrictions may be imposed on the freedom of religion, thought and conscience unless as stated by Law.

Collective Rights

Article 24
Citizens have the freedom of association and the freedom of peaceful assembly. No restrictions may be imposed on practising any of these two freedoms except what is required by national security, public safety or protection of the rights and freedoms of others.

Article 25
The State guarantees the right to form trade unions as well as the right to strike within the limits described by Law.

Right of Education

Article 26
Elimination of illiteracy is a mandatory obligation and education is a right for every citizen. Elementary education should, as a minimum be compulsory and
should be free. Both secondary and higher education shall be made accessible to all.

**Cultural and National Rights**

**Article 27**
Citizens have the right to live in a cultural atmosphere that takes pride in the Arab nationalism, sanctifies human rights, and rejects racial and religious discrimination as well as other types of discrimination and supports international cooperation and international peace.

**Article 28**
Everyone has the right to participate in the cultural life and to the enjoyment of literary and artistic works as well as the right to the opportunities to develop his artistic, cultural and creative abilities.

**Article 29**
Minorities may not be deprived of their right to enjoy their culture or follow the prescriptions of their religions.

**Protection of Family**

**Article 30**
a. The family is the fundamental unit of society and is entitled to its protection.

b. The State shall guarantee for the family, motherhood, childhood and old age a distinguished care and special protection.

**Youth Welfare**

**Article 31**
The youth have the right to be availed the greatest opportunities for physical and mental development.

**Penal Regulations**

**Article 32**
No crime or punishment except in accordance with a lawful provision. No punishment may be imposed on acts committed prior to issuance of such provisions.
If subsequent to the commission of the offence, a provision is made by law for the imposition of a slighter penalty, the offender shall benefit thereby.

Article 33
The accused is innocent until he is proved guilty by a competent tribunal at which he has had all the guarantees necessary for his defence.

Article 34
No one may be imprisoned merely on the ground of inability to pay a debt or any civil obligation.

Article 35
Death penalty may not be imposed except for the most serious crimes. Anyone sentenced to death has the right to seek pardon or commutation of the sentence.

Article 36
In no case shall capital punishment be inflicted for a political crime.

Article 37
Death penalty shall not be enforced on persons below eighteen years of age, a pregnant woman until she gives birth or a feeding mother unless two years elapsed from the date of birth.

Article 38
Persons sentenced to a liberty depriving punishment shall be humanely treated.

Article 39
No one may be tried twice for the same offence.

Concluding Provisions

Article 40
The Arab League Council shall present this Convention to the League's State Members to seek their accession.
This Convention shall be effective for every State as of the date of depositing its instrument of accession with the Secretariat General. The Secretary General shall inform State Members of the deposit of each instrument of accession.

Article 42
Accession of any State Member to this Convention means completion of all constitutional procedures to make this Agreement a part of its domestic law.
APPENDIX D

RULES OF PROCEDURE OF THE PERMANENT ARAB COMMISSION ON HUMAN RIGHTS*

Article 1
The Commission's procedures shall be laid down in accordance with the rules given hereunder.

Article 2
Each member State of the League shall be represented, each having a single vote irrespective of the number of its representatives. Member States shall advise the Secretary-General about their appointment.

Article 3
Representatives shall remain in their representative capacity in the Commission unless replaced by their States.

Article 4
The Secretariat General shall render assistance to the Commission in the discharges of its functions so as to enable the Commission's representatives to be acquainted with the subjects falling in its competence.

Article 5
The Council of the League of Arab States shall appoint a Chairman for the Commission for a two years term of office that may be renewed on its termination. When the Chairman is absent the Commission shall elect one of its members to sit in the chair in the absence of its Chairman. The Secretariat General shall send a representative or representatives to the sessions of the Commission.

Article 6
The Secretary-General shall designate an official of the Secretariat General, specialized in the field of human rights, to be the Secretary of the Commission.

Article 7
The permanent seat of the Commission is in Cairo; the Commission, however, may resolve to hold a session, subject to the endorsement of the Secretary-General, in any other member State of the League if the performance of the Commission’s duties so requires.

Article 8
The Secretariat General shall call the Commission to meet. The date of the meeting shall be fixed, taking into consideration that a reasonable period shall be provided for the receipt of invitations and the arrival of the delegates.

Article 9
A meeting shall be valid if attended by the majority of the member States. Resolutions are adopted by the majority of the representatives attending the meetings and meetings shall be closed.

Article 10
A certain matter may be considered by the Permanent Arab Commission on Human Rights and any other commission or commissions of the League. The Senior Chairman will preside over the meeting. This meeting will be valid if attended by the majority of the members in each commission. Resolutions in such meetings are adopted by the majority of the representatives attending the meeting.

Article 11
Summary records and the full text of the Resolutions adopted in each meeting shall be kept.

Article 12
The Commission’s duties as prescribed in the Pact of the League of Arab States are preparatory, being submitted as draft agreements to the League Council. The
Commission may submit its researches, recommendations and suggestions to the Council.

Article 13
The Commission may set up sub-committees, in which any number of its members may participate; each sub-committee shall deal with one of the technical affairs assigned to the Commission.

Article 14
The Commission may recommend calling for meetings of experts representing the League's member States and other countries, if the situation so requires.

These experts may advise the Commission as to the matters under consideration. The Secretary-General shall contact the League's member States to implement this recommendation.