

**Human Rights Protection in The Arab World:
A Neo-Relativist Model**

by

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A thesis submitted in partial fulfilment for the requirements for the degree of
Doctor of Philosophy at the University of Central Lancashire

November 2021

RESEARCH STUDENT DECLARATION FORM

Type of Award: PhD

School: School of Justice

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ABSTRACT

The concept of human rights is considered as one of the main factors that promote humanity and dignity of a person in this world. This has led the international community to adopt the required measures to protect human rights internationally, such as the United Nations human rights agreements and their treaty bodies. Regional organisations have also followed suit and adopted their own human rights systems, including the League of Arab States (LAS). This research investigates the failure of the LAS in protecting human rights, primarily with reference to the Arab Spring. Therefore, improving the Arab human rights protection mechanisms is a priority. The human rights violations in the Arab region during the last three decades make it important to examine the Arab human rights system. Although the LAS attempted to adopt its own system to protect human rights, it failed to fulfil this target. Much research on the protection of Arab human rights has criticised the Arab human rights instruments. Most of them suggested reforming these instruments to become compatible with international human rights standards. Others have strictly preferred to adopt human rights which derived from culture and religion.

A doctrinal analysis and socio-legal methods are used to determine the most appropriate mechanism to protect and promote human rights in the Arab World, through proposing the Neo-Relativist approach; that is, applying one of the existences attempts of reconciling universalism and cultural relativism on the Arab human rights instruments. The reverse moderate cultural relativism has been chosen to be utilised in the Neo-Relativist approach, which has been applied on some of the problematic provisions of the Arab human rights instruments. The main findings in this research are that Arab human rights instruments can be enhanced without major amendments and that adopting the Neo-Relativist approach indicates that cultures must be given more weight than international standards for a better protection of human rights in the Arab World. This research concludes by providing number of important recommendations to improve the statutes of human rights in the Arab region.

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ACKNOWLEDGEMENTS

Conducting this research has taken a long journey. First and foremost, I would like to thank Allah (SWT) for giving me the strength, knowledge, ability and patience to undertake this research study. Without the blessings of Allah (SWT), this achievement would not have been possible. I am sincerely grateful for having the chance to conduct a research related to Islam and Arabs. However, there were several people who have supported me in this work; these people truly deserve a sincere thanks from my heart.

I am highly indebted to H.E. Bahrain Interior Minister Gen. Shaikh Rashid bin Abdulla Al Khalifa for giving me the opportunity to be involved in such a challenging and rewarding program.

My deepest gratitude goes to my supervisor who I would like to thank for the continuous support of my studies. The guidance he gave me helped me throughout my research and writing of this thesis. Besides my supervisor, I would like to thank the UCLAN, in particular the Research Student Registry staff for the continuous support.

I have great pleasure in acknowledging my appreciation to Prof. M. Cherif Bassiouni, Dr. Mohamed Noman Galal and Mr. Mohamed Fuzaiia for their advice and support, especially on those occasions when I needed prompt responses.

I would like to thank my parents who are my ultimate role models, and whose love, guidance and advices are with me in whatever I pursue. Many thanks also go to my brothers and friends for their care, encouragement, support and most importantly for their continuous belief in me.

Finally, I owe a massive debt of gratitude to my beloved wife Dr. Amal, who was the ultimate inspiration and support behind this work. My daughters Aysha, Lulwa and Shaikha, who joined me on this journey and shared my dream of achieving a PhD. After Allah's grace and blessing, I would not have been able to accomplish this research without them being by my side, so I extend them my deepest love and thanks.

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ABBREVIATIONS AND ACRONYMS

CAT	Convention Against Torture/Committee Against Torture
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CPRMW	Convention on the Protection of the Rights of Migrant Workers and Members of their Families
CRC	Convention on the Rights of the Child/Committee on the Rights of the Child
CRHD	Cairo Declaration of Human Rights in Islam
GCC	Gulf Cooperation Council
HRC	Human Rights Committee
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural
ICJ	International Court of Justice
ICT	Information and Communications Technology
ILO	International Labour Organization
LAS	The League of Arab States
LAS Charter	The Charter of the Arab League
The Commission	The Arab Permanent Commission of Human Rights
The Charter	The Arab Charter on Human Rights

The Charter's Committee	The Arab Human Rights Committee
The Court's Statute	The Basic Statute of the Arab Court of Human Rights
The Department	The Arab Human Rights Department
NGO	Non-Governmental Organization
OAU	Organization for African Unity
OHCHR	Office of the High Commissioner for Human Rights
OIC	Organisation of Islamic Cooperation
UDHR	The Universal Declaration on Human Rights
UNDP	United Nations Development Programme
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNGA	United Nations General Assembly
UNHCR	United Nations High Commissioner for Refugees
WHO	World Health Organization

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Convention Against Torture and other Cruel, Inhuman and Degrading or Punishment (UNCAT), UNGA Res 39/46 10 December 1984, *entered into force* 26 June 1987.

Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) United Nations, Treaty Series, vol. 1249

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (1999) A/RES/53/144.

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CHAPTER 1: INTRODUCTION

1.1. Human Rights and the Arab Spring

Some called it the 'Year of Rebellion'¹, others named it the 'Arab Uprising'. The 'Arab Spring' is the most ubiquitous term². The Arab Spring is a term used to describe the revolutionary sweeping tide of protests, demonstrations, riots and protracted civil wars, and other forms of opposition to the authorities (violent and non-violent) that resulted in many citizens suffering human rights violations. It is important to note that many parts of the Arab World³ had witnessed its rulers dethroned from leadership within the Arab Spring⁴. These countries included Libya, Tunisia, Syria, Bahrain, Yemen, and Egypt (twice). While the Arab Spring is largely believed to have culminated from the way rulers in Arab countries ran their administrative affairs, numerous academics cite various reasons as the straw that finally broke the camel's back. The citizens of the Arab World had endured abuse to their human rights at the hands of their governments and rose up to dethrone them. The causes of the Arab Spring uprisings are often categorized into economic causes, social causes, and sudden causes.

The economic causes included the global crisis, rampant unemployment⁵, and the looming food crisis. It is worth noting that Arab countries are highly dependent on oil and gas exports. The reduction of oil prices during the 2008-2009 global financial crisis largely affected oil exporting countries. According to Joo et al., the global financial crisis increased the instability of the oil market since it caused a sharp drop in commercial crude oil trading⁶. Similarly, Northern African countries such as Egypt, Morocco, and Tunisia, heavily rely on tourism and manufacturing. A report by the African Development Bank and the African Development Fund in 2009 revealed the sectors that would be most affected by the 2008-2009 financial crisis were mining, manufacturing, textile, and

¹ Amnesty, 'Year of Rebellion: The State of Human Rights in the Middle East and North Africa' (*Amnesty International USA* 2012) available from <<https://bit.ly/3CX3NrE>> accessed 15th Oct 2022.

² M Lynch, 'Obama's 'Arab Spring'?' (*Foreign Policy* 2011) available from <<https://bit.ly/3q7THOB>> accessed 15th Oct 2022.

³ Also known as the Arab region.

⁴ E A Salam, 'The Arab Spring: Its Origins, Evolution and Consequences... Four Years On' (2015) 23 *Intellectual Discourse* 119.

⁵ D Blitz, 'The Arab Spring: A Parsimonious Explanation of Recent Contentious Politics' (MSc, Radboud University Nijmegen 2014).

⁶ K Joo and others, 'Impact of the Global Financial Crisis on the Crude Oil Market' (2020) 30 *Energy Strategy Reviews* 100516 <<https://bit.ly/3TnFOXT>> accessed 15th Oct 2022.

tourism⁷. In addition to that, there was a decrease in demand for manufactured goods in America and Europe hence fuelling the economic crisis in the Arab World. The economic crisis consequently led to a food crisis⁸. As an example, public protests were witnessed in multiple countries (Tunis, Morocco, Egypt, and Morocco) because of an increase in food grains' prices⁹.

The food crisis did not affect the oil producing countries as much as it did the North African countries. It is important to note that two years before the Arab Spring, inflation had increased by 5% (25% to 30%)¹⁰. As such, there had been public protests due to the high costs of grain and political unrest resulting from a food crisis is often experienced in poor countries. Therefore, the food crisis was partially responsible for the insurrections in the region. Another major economic cause of the Arab Spring was unemployment¹¹. The International Labour Organization (ILO) notes that the region experienced a high unemployment rate of 23.4% prior to the uprising¹². A decrease in demand for manufacturing goods in Morocco, Tunisia, and Egypt during the global financial crisis led to rampant unemployment in the region¹³. Data shows that one out of every four youth was out of employment. However, it is important to note that during this time, there was a demographic boom.

Between 1970 and 2010, the population of the Arab world almost tripled (128 million to 359 million)¹⁴ and it is noted that more than a third of the labour force in these countries was comprised of the youth as 30% of the population was aged between 25 and 30¹⁵.

⁷ African Development Fund and African Development Bank, 'Impact of the Global Financial and Economic Crisis on Africa' (*Office of the Chief Economist* 2009) available from <<https://bit.ly/3x72XEf>> accessed 15th Oct 2022.

⁸ A Mushtaq & M Afzal, 'Arab Spring: Its Causes and Consequences' (2017) 30 *Journal of the Punjab University History Society* 1.

⁹ A Ansani & V Daniele, 'About A Revolution: The Economic Motivations of the Arab Spring' (2012) 2 *International Journal of Development and Conflict* 1250013.

¹⁰ M G Müller & C Hübner, 'How Facebook Facilitated the Jasmine Revolution. Conceptualizing the Functions of Online Social Network Communication' (2014) 1 *Journal of Social Media Studies* 17.

¹¹ K Paasonen, 'Are the Unhappy Unemployed to Blame for Unrest? Scrutinising Participation in the Arab Spring Uprisings' (2019) 26 *Peace Economics, Peace Science and Public Policy* 1.

¹² International Labour Organization, 'Youth Unemployment in the Arab World Is a Major Cause for Rebellion' (*ilo.org* 2011) <<https://bit.ly/3CCMWXI>> accessed 15th Oct 2022.

¹³ V Tucker, 'Divergence and Decline: The Middle East and the World after the Arab Spring' (*freedomhouse.org* 2012) available from <<https://bit.ly/3HJmDTm>> accessed 15th Oct 2022.

¹⁴ B Mirkin, 'Population Levels, Trends and Policies in the Arab Region: Challenges and Opportunities' (*UN Development Programme* 2010) available at <<https://bit.ly/3FI093z>> accessed 15th Oct 2022.

¹⁵ M Beck and S Huser, 'Explanations for the Arab Spring' (*Centre for Mellemostudier* 2013) available from <<https://bit.ly/32p3kib>> accessed 15th Oct 2022.

Governments were unable to provide enough public sector jobs and data shows that in the 1980s, 70% of the country's workforce was employed in the Egyptian public sector. The informal private sector as well as the formal private sector absorbed 15.5% and 7.5% respectively. However, by the year 2000, the change was apparent. The public sector employed 23% while the informal private sector and the formal private sector employed 41.8% and 9.6% respectively¹⁶. Massive unemployment would consequently lead to fuelling of the economic crisis since citizens could not afford basic necessities that were already affected by inflation¹⁷.

The social causes of the Arab Spring included political freedom and economic inequality, media (social media, television, etc.), education & democracy, and discrimination against ethnic and religious minorities. History will mostly remember the Arab Spring as people's desire for additional political and civil rights. It is important to note that most Arab countries in North Africa had started privatizing public sectors, deregulation, and trade liberalisation. Such structural reforms were designed to improve the economic development of the region however, they excluded the middle class and the youth. In addition to that, the structural reforms did not support political reforms that would ensure people's civil rights but instead strengthened the countries' authoritarian governments, thus hindering democracy. Basic human rights, for example, the freedom of association and expression and people's voting rights, were heavily restricted. Wealth and power in Arab nations was concentrated in the hand of a few leaders and families who as a result enjoyed great advantages over the rest of the country¹⁸.

Arab Spring countries were characterized by authoritarian regimes that facilitated widespread corruption and systems that favoured a few people namely the ruling party, families affiliated to the rulers, and people loyal to the rulers¹⁹. Some of these leaders and families included the Ben Ali family (Tunisia), the Mubarak family (Egypt), and the Gaddafi family (Libya). Similarly, religious leaders and armies in these countries also

¹⁶ R Assaad, 'Making Sense of Arab Labor Markets: The Enduring Legacy of Dualism' (2014) 3 *IZA Journal of Labor & Development* 1

¹⁷ I Idris, 'Analysis of the Arab Spring' (GSDRC 2016) available from <<https://bit.ly/3ThDRwo>> accessed 15th Oct 2022.

¹⁸ I Idris, 'Analysis of the Arab Spring' (GSDRC 2016) available from <<https://bit.ly/3ThDRwo>> accessed 15th Oct 2022; D Govrin, 'The Journey to the Arab Spring: The Ideological Roots of the Middle East Upheaval in Arab Liberal Thought' (Valentine Mitchell, London, 2014) 254.

¹⁹ H Ghanem, 'The Arab Spring Five Years Later: Toward Greater Inclusiveness' (Brookings Institution Press 2016).

exercised vast authority without much accountability. Corruption and a lack of accountability is considered as a major driver of public anger. A drop-in people's living standards while the elite enjoyed luxurious lifestyles increased people's awareness on the effects of corruption and the lack of accountability of government officials²⁰.

Without factoring in record high unemployment rates, the mere presence of a high number of youths in the country were a major factor in the uprising. Historical data shows countries with high youth populations were more likely to experience uprisings, civil clashes, and political aggression²¹. During the 1990s, countries with high youth populations were three times more likely to experience civil clashes than countries with mature populations²². Similarly, having an educated youth was a factor in the uprising. It is worth noting that an increase in education levels boosts the democratic process. Apart from this, the educated youth wanted jobs that would match their expertise and did not want to accept low-skilled or low paying jobs, and this meant that most of the graduates preferred the security that came with public sector jobs. On the other hand, education systems in Arab countries were designed to prepare graduates for employment in the government. Most of the skills acquired were not designed to help the graduates thrive in the modern world²³.

Information and Communications Technology (ICT) was also instrumental in the success of the Arab Spring. The main forms of ICT that helped the uprising included cell phones, satellite television and the internet. More specifically, digital media helped make various forms of dissent (individualized, localized, and community) into a structured movement that shared problems and thus leading them to work together. Social media helped spread the news about the protests²⁴. Apart from that, it encouraged social mobilisation in various parts of the country. This would not have been possible with old media. It is

²⁰ O Winckler, 'The 'Arab Spring': Socioeconomic Aspects' (2013) 20 *Middle East Policy* 68.

²¹ L Brainard et al., *'Too Poor for Peace? : Global Poverty, Conflict, and Security in the 21st Century* (Brookings Institution Press 2007).

²² A Terrill, *'The Arab Spring and the Future of U.S. Interests and Cooperative Security in the Arab World'* (Strategic Studies Institute 2011) available from <<https://bit.ly/3yJtdXe>> accessed 15th Oct 2022.

²³ ESCWA, 'Arab Middle Class: Measurement and Role in Driving Change' (*archive.unescwa.org* 2014) available from <<https://bit.ly/3cAnDec>> accessed 15th Oct 2022.

²⁴ M G Müller and C Hübner, 'How Facebook Facilitated the Jasmine Revolution. Conceptualizing the Functions of Online Social Network Communication' (2014) 1 *Journal of Social Media Studies* 17.

important to note that deposition of authority is only possible when most of the people rebel.

Additionally, spreading information is vital in riots. This was important and as a result, governments hastily tried to shut down the internet to stop the spread of information. With the effectiveness of social media in the early stages of the uprising, governments started identifying protestors to arrest them, which goes against people's universal right to privacy. However, the use of satellite phones and software tools were used to ensure user anonymity and to transmit pictures and videos of the events to the outside world. Similarly, media stations such as *Al Jazeera* were under constant pressure by regime leaders to desist from covering the riots as media enhanced the demonstration effect. This is where citizens in one country saw that demonstrations had overthrown a foreign government and figured that they too could overthrow their own country's government²⁵. While all these were factors and causes that led to the Arab Spring, it is important to note that the self-immolation of Mohamed Bouazizi in Tunisia formed the basis of the uprising²⁶.

1.1.1. The Arab Spring Aftermath

It is equally important to focus on the aftermath of the Arab Spring, and not just the causes of the Arab Spring. The uprising caused the removal of authoritarian rulers, the advancement of political and social rights, and the development of public participation in politics. Most Arab countries were being ruled by authoritarian rulers and the uprising was responsible from the ousting of long-standing autocrats. This was seen in Egypt, Tunis, and Libya²⁷. The uprising also influenced the League of Arab States (LAS) and the Gulf Cooperation Council (GCC). By way of example, the LAS experienced internal clashes as some of its members supported the uprising while others were against it. The GCC also played a role by sending forces to save the President of Yemen. The response by states to the uprising also strengthened the citizens to push forward with their agenda. Most regimes used force to suppress the rioters and tactics such as beating, arresting, harassing, and killing were reported to have been used however, this

²⁵ The transfer of the Arab Spring revolutions from one country to another will be cover in more detail in chapter four.

²⁶ A Mushtaq & M Afzal, 'Arab Spring: Its Causes and Consequences' (2017) 30 *Journal of the Punjab university History Society* 1.

²⁷ E Kienle, 'Egypt without Mubarak, Tunisia after Bin Ali: Theory, History and the 'Arab Spring'' (2012) 41(4) *Economy and Society* 532.

galvanized people to join the uprising²⁸. Such actions greatly violated human rights despite the existence of the international laws and agreements that guaranteed citizens protection from such abuse. Since then, human rights protection in the Arab World has become a priority for Arabs.

1.1.2. The LAS Efforts in Tackling the Issue of Human Rights

Arab countries are in the first instance obliged to protect and promote human rights in their region in accordance with related international agreements that they have already signed²⁹. They also have a regional organization called the LAS, through which Arab member states can conclude regional treaties. The LAS approved the Arab Charter on Human Rights (the Charter)³⁰ including the Arab Human Rights Committee (the Committee), and the Basic Statute of the potential Arab Court of Human Rights (the Court's Statute)³¹.

The Charter has a long history from its first draft to its inception. It was adopted in 2004 thus marking a noteworthy achievement for human rights development in the Arab World. However, the Charter was not enforced immediately but instead, it was enforced in 2008³². This was a significant milestone for Arabs since they now had a comprehensive catalogue for human rights. Interestingly, despite the Charter's good intentions, it has a long drafting history. It was first formulated in 1960 in Damascus by the Union of Arab Lawyers³³. In 1968, the matter was again presented before the Arab Permanent Commission on Human Rights' (the Commission)³⁴ first meeting. In 1985, a draft of the Charter was made and sent to the LAS Council. However, in 1987, the draft was rejected.

²⁸ Human rights violations in the Arab Spring will be addressed in chapter four.

²⁹ This will be demonstrated in the second part of this thesis.

³⁰ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004); adopted 2004 and entered into force 2008.

³¹ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org* 2008) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 15th Oct 2022.

³² United Nations Office of Drug and Crime, 'Human Rights and Criminal Justice Responses to Terrorism' (*unodc.org* 2014) available from <<https://bit.ly/3DTrL5j>> accessed 15th Oct 2022, 20.

³³ M Al-Midani, 'The Enforcement Mechanisms of the Arab Charter on Human Rights and the Need for an Arab Court of Human Rights' (*acihl.org* 2008) available at <https://acihl.org/articles.htm?article_id=22> accessed 15th Oct 2022.

³⁴ The Council of the Arab League 'The Creation of an Arab Permanent Commission of Human Rights Report' (Res) 2443/50 (3 Sep 1968).

Despite this setback, in 1994 the LAS Council drafted another Charter however, the Charter was only signed by Iraq and received no ratifications³⁵.

The Charter was heavily criticised for failing to adequately protect fundamental rights as well as lacking any effective enforcement mechanisms. In 2002, two resolutions were adopted by the LAS Council to revise the 1994 Charter. This led to the formation of a committee of experts in 2003 to help align the Charter with international standards of human rights and the new Charter was taken up in 2004. The LAS Summit also accepted the revised version and was finally put into force in 2008³⁶. This was possible through the ratification of 16 of the 22 members of the LAS. These nations included United Arab Emirates, Algeria, Iraq, Yemen, Palestine, Jordan, Syria, Libya, and Bahrain³⁷. Although the LAS attempted to adopt these mechanisms to protect human rights, it failed to meet this target, especially during the Arab Spring.

To effectively review the human rights violations in the Arab World, it is important to accurately define who is considered an Arab as well as the countries that comprise the Arab World. It is important to note that being an Arab does not necessarily mean that one comes from a particular race, lineage or religion. Being Arab is not limited to the religion of Islam as Christians and Jews are also viewed as Arabs. It is more of a cultural trait rather than a racial trait. However, the Arab World is mostly made up of Islamic countries. Countries considered to be part of the Arab World include Comoros, Egypt, Kuwait, Somalia, Oman, Tunisia, Libya, Algeria, Sudan, Yemen, Iraq, Lebanon, United Arab Emirates, Saudi Arabia, Bahrain, Sudan, Jordan, Syria, Djibouti, Mauritania, Tunisia, Morocco, Qatar, and the West Bank³⁸. The main purpose of creating the Charter was to ensure human rights protection in the Arab World. Sadri notes that the promotion and protection of human rights is made possible through the existence of an effective

³⁵ A Almutawa & K Magliveras, 'Enforcing Women's Rights under the Arab Charter on Human Rights 2004' (2020) 25(8) *The International Journal of Human Rights* 1258.

³⁶ This will be explained in more details later in chapter six.

³⁷ M Mattar, 'Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards' (2013) 26 *Harvard Human Rights Journal* 91; also see The Arab League, 'State Parties to the Arab Charter on Human Rights' (*lasportal.org*) available from <<https://bit.ly/3FCkh6S>> accessed 15th Oct 2022; These are some of the countries, the rest will be mentioned and covered in more details in part two of this thesis.

³⁸ World Bank, 'Population, Total - Arab World | Data' (*data.worldbank.org* 2019) available from <<https://data.worldbank.org/indicator/SP.POP.TOTL?locations=1A>> accessed 15th Oct 2022.

regional human rights system³⁹. The Charter was designed as a component of a human right system to provide such protection. Similarly, Almutawa states that the Charter was vital in creating a regional human rights regime whose contents aligned with other regional human rights conventions⁴⁰. Article 44 of the Charter maintained that member states must include the Charter's provisions in their domestic legislation. Articles 45-48 concern the establishment of the Committee, which specialises in observing the implementation of the Charter's provisions and reviewing member states' reports. Despite these initiatives towards the protection of Arabs' human rights, many violations have since occurred.

Furthermore, in late 2014, the human rights violations during the Arab Spring led to the approval of the Court's Statute in Doha, Qatar⁴¹. Article 33 of the Court's Statute indicates that the Court would enter into force after seven-member states ratify and deposit the instrument of ratification. However, the Court remains inactive because to date, only one-member state has ratified it, namely the Kingdom of Saudi Arabia⁴². The Court Statute continues to face a number of criticisms mostly due to incompatibility with international standards. Although it was intended that the Charter, the Committee and the potential Court should prevent and protect human rights abuse in the region, violations still exist.

Much research on the protection of human rights in the Arab World have criticised the Charter and the adopted enforcement mechanisms. Most suggest revision to make them compatible with international human rights standards. Others strictly prefer to adopt human rights which are influenced by Arab culture. However, relatively few studies have focused on the possibility of reconciling these two theories in the Arab context. Western civilisation is often viewed as the main influence of human rights and can be seen in the alignment of human rights with Western civilization. It is also seen in

³⁹ A Sadri, 'The Arab Human Rights System: Achievements and Challenges' (2019) 23 *The International Journal of Human Rights* 1166.

⁴⁰ A Almutawa, 'The Arab Court of Human Rights and the Enforcement of the Arab Charter on Human Rights' (2021) 21(3) *Human Rights Law Review* 506.

⁴¹ K A Alfadhel, 'The GCC Human Rights Declaration: An Instrumentation of Cultural Relativism' (2017) 31 *Arab Law Quarterly* 89.

⁴² Decisions of the League of Arab States Council at the Ministerial Level, 150th Ordinary Session, Cairo, 11 September 2018, Resolution 8323; Decisions of the League of Arab States Council at the Ministerial Level, 155th Ordinary Session, Cairo, 1–3 March 2021.

Western civilization's rejection of cultural practices in other parts of the world that do not conform to its standards.

Hanafi found that several elements may influence Arabs' acceptance of the idea of human rights, such as the fact that the universal human rights represent Western civilisation, including the colonisers of Arab countries⁴³. Mohamed argues that the International Bill of Human Rights is not universal, because it was written at a time when many Arab countries were still colonies, and no one represented them when these instruments were approved⁴⁴. He added that they were written with reference to Christian traditions and should not be imposed on other cultures. O'Sullivan emphasises the fact that the international human rights instruments are often based on a democratic, liberal and western perspective. These rights are often associated with Western traditions on human rights philosophy⁴⁵.

On the other hand, popular belief notes that the universal standards of human rights are significant for the development of the human rights culture since the emergence of the Universal Declaration of Human Rights (UDHR)⁴⁶. Relativists tend to justify their cultural fundamentals with issues that others are obliged to respect. By way of illustration, there is no difference between torture and female genital mutilation in some cultures. Therefore, considering universal human rights as a dominant force that represents all the cultural characteristics in the world is wrong⁴⁷.

This research will attempt to find a middle ground between cultural relativism and universality in order to protect the human rights of citizens of the Arab World where human rights may be at risk, through reliable instruments and effective mechanisms. In general, it will seek to reform the Arab human rights instruments while considering not only the Arab cultural fundamentals, but also the international standards of human rights.

⁴³ A M Hanafi, 'The Problem of Human Rights in the Arab Region' (*The Washington Institute* 2016) available from <<https://bit.ly/3VxmE3G>> accessed 15th Oct 2022 (in Arabic, translated by Author).

⁴⁴ M Berween, 'International Bills of Human Rights: An Islamic Critique' (2003) 7 *The International Journal of Human Rights* 129.

⁴⁵ D O'sullivan, 'The History of Human Rights Across the Regions: Universalism vs Cultural Relativism' (1998) 2 *The International Journal of Human Rights* 22.

⁴⁶ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

⁴⁷ T Higgins, 'What Is a Human Right? Universal and the Challenge of Cultural Relativism' (1999) 11 *Pace International Law Review* 111.

The research will critically analyse the failure of the LAS to protect Arab human rights. In order to effectively analyse the LAS failures in protecting Arab human rights, it will be important to measure its actions, or lack thereof, with international human rights standards. Thus, it will begin with the LAS main human rights instrument, namely: The Charter. It will then move on to examine the Commission, the Charter's Committee and the Statute of the potential Court. This will likely provide a comprehensive understanding of the Arab human rights system. In addition, the base in which the main argument of this research relies will be determined; that is, the tension between universal human rights and the Arab cultural norms, values and morals. Accordingly, the existed attempt of reconciling the two theories will be examined and the suitable attempt will be utilised on the Arab human rights system. This will be known as the Neo-Relativist approach⁴⁸. Overall, this research will make an original contribution to existing knowledge by paying particular attention to enhance the Arab human rights system through the neo-relativist approach.

1.2. Research Statement and Questions

The main purpose of this research is to identify the human rights standards from which Arab human rights instruments are derived and to determine whether these standards are applicable in the Arab World. The research also argues that a better application of human rights in the Arab World will be by taking into consideration the Arab culture, particularly Islamic values, alongside international human rights standards. The research will analyse and define the Arab human rights system, in order to explore whether they are compatible not only with the universal standards, but also with Islamic norms and values. The research will also attempt to suggest a path that ensures the application of suitable standards for the Arab World.

The aim of the research is to determine the most appropriate system to protect and promote human rights in the Arab World, through the neo-relativist approach. As mentioned previously, the idea of the neo-relativist approach is based on applying one of the existed attempts of reconciling cultural relativism and universalism on the Arab human rights system⁴⁹, in order to produce a new human rights model or framework for

⁴⁸ The Neo-Relativist Approach will be discussed in more details in chapters 8 & 9.

⁴⁹ The scope of applying the neo-relativist approach will be limited on the Arab human rights instruments and not the enforcement mechanisms

the Arab regional system. This should fill the gaps in the component of the Arab human rights system, such as the Charter and the Court's Statute. This aim will be achieved by answering the following research questions:

General Research Question

- Do Arab human rights system needs to be reformed? How should it be reformed? And Will reforming it guarantees human rights protection in the region?

Specific Research Questions

- What is the Arab human rights system? and what are the challenges it faced since its conception?
- What is the most appropriate and effective conceptual human rights basis for the Arab human rights system?
- Is Arab persistence on protecting their human rights with reference to particularities prevent them from meeting international human rights standards?
- What are the fundamental particularities of the Arab human rights system?
- What is the position of Arab countries on the tension between universality and cultural relativism?

1.3. Research Significance

The Arab Spring showed that Arab human rights are being violated, despite guarantees in the constitutions of the Arab countries and their obligations under the human rights treaties. Hence, improving the Arab human rights system is a priority. The significance of this research lies in evaluating the effectiveness of the Arab human rights system, and determining whether they need to be amended. The research will also highlight the necessity of preventing further human rights violations in the Arab World.

As already explained, Arab countries have previously adopted a number of human rights protection agreements at the international and regional levels; the Charter and the Court Statute. Although both of these aforementioned instruments require contracted states to include them in their domestic legislations, human rights violations will likely continue. A good example of this would be the human rights violations that occurred in the Arab Spring scenario. The findings of this research will help to give a clear understanding of suitable human rights protection while paying attention to the culture

in the Arab region, while at the same time consider the international human rights standards.

1.4. Methodology

A doctrinal analysis for this research is suitable since it will provide a structured analysis of the guidelines that govern certain legal categories. In addition to that, it examines the connection between various rules, accurately explains difficult areas and predicts future developments⁵⁰. In other words, it will serve in providing a systematic exposition by analysing Arab Human Rights instruments to reform any problematic provisions. The doctrinal analysis will also help to purely interpret the Arab human rights protection instruments. Hutchinson notes that the doctrinal analysis is considered one of the dominant legal methods in research in the world of common law⁵¹ as it focuses on case law statutes as well as other legal sources. This approach to research looks at the law within itself. As such it does not attempt to examine the effect of the law or its application. Instead, the doctrinal methodology examines the law as a set of principles that should be examined through the lens of legal sources.

The doctrinal approach is often preferred since it forms the basis for a lot of legal research. Apart from that, it can incorporate any form of purely legal analysis. As such, it analyses what the law previously was, what it is now and whether there are any clues that indicate how the law may evolve or develop going forward. Close association is made between the doctrinal analysis approach and legal positivism, which recognizes written rules, regulations and principles that are adopted and recognized by a nation as the only legitimate sources of law⁵². This will be important in maintaining the culture of the Arab world while still pointing out gaps and inadequacies in the current law. It is important to note that a doctrinal analysis helps reveal inconsistencies and ambiguities in the law. Conducting a doctrinal analysis means that the legal rules under the Charter will be analysed as well as the legal connections or disjunctions through examination of

⁵⁰ T Hutchinson & N Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83.

⁵¹ T Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2016) 8 *Erasmus Law Review* 130.

⁵² M V Hoecke, 'Legal Doctrine: Which Method(s) for What Kind of Discipline?' in M V Hoecke (ed), *'Methodologies of Legal Research: Which Kind of Method for What Kind of Discipline?'* (Hart Publishing, 2011) 8; E H Tiller & F B Cross, 'What is Legal Doctrine?' (2006) 100(1) *Northwestern University Law Review* 517; T Hutchinson & N Duncan, 'Defining and Describing What We Do: Doctrinal Legal Research' (2012) 17(1) *Deakin Law Review* 83.

cases and wording and interpretation of these rules⁵³. The doctrinal analysis will help critically analyse the meaning and implication of the rules in the Charter and the principles that underpin them.

However, the doctrinal analysis does have its pitfalls. Firstly, its strict adherence to the law makes it devoid of support from social facts. As such, trying to project the evolution or development of law may be far from the social reality. This is because the social part of life highly influences the laws that are enacted. Similarly, the methodology neglects factors which may have a bearing on legal principle, theory, or doctrine yet are outside the brackets of law. For example, public outcry may play a huge role in the formulation of law. Additionally, doctrinal analysis fails to consider the actual attitudes or people who implement the law such as the administrative authorities, lawyers, judges, etc.

The doctrinal analysis will be complimented by a limited comparative analysis of relevant aspects of the law of different countries in the Arab World in a systematic order. According to Salter & Mason, a comparative method helps to explain conflicts as well as differences that may arise from legal concepts and particular provisions. Additionally, it helps identify possible 'common ground' solutions⁵⁴. To illustrate, this method has been chosen to clarify and provide evidence of the advantages and disadvantages of applying the existing procedures of other regional systems to the Arab human rights system. This will be followed by providing in-depth knowledge and understanding of the theoretical perspectives with concern to the obstacles preventing the creation of the potential Court. In addition to that, according to Weimer & Vining, it will attempt to develop "theories that contribute to a better understanding of society"⁵⁵.

The study will also utilize the socio-legal research method. This research method is useful for this study since it focuses on theoretical and empirical analyses of the nature of law as well as its relationship to society in the context of a volatile world. Similarly, it focuses on the historical and contemporary social, economic, and political factors that lead to the development of law. Moreover, this method will be useful in analysing the

⁵³ K Vibhute & F Aynale, *'Legal Research Methods: Teaching Material'* (Justice and Legal System Research Institute, 2009) 69-83.

⁵⁴ M Salter & J Mason, *'Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research'* (Longman 2011).

⁵⁵ D L Weimer & A R Vining, *'Policy Analysis: Concepts and Practice'* (Routledge, Taylor & Francis Group 2017).

experiences of people affected by the process of the law. Thus, it will be employed in chapter 4 which focuses on presenting the failure of the Arab human rights system through examining the Arab Spring scenarios. The socio-legal analysis will help in exploring the extent to which member states are committed to implement their contracted obligations of the human rights agreements, including the Charter; and whether they succeeded in managing the application of these agreements in practice or not. This will lead to discover the reason/s behind member states non-commitment to the aforementioned agreements; and will simultaneously highlight the ineffectiveness of the Arab human rights enforcement mechanisms. By accomplishing all the tasks aforementioned, this research can recommend an appropriate and applicable system to protect against human rights abuse in the LAS.

1.5. Research Structure

This thesis is consisted of 10 Chapters divided into three parts. Chapter One is a general introduction that included a background of the research problem, the purpose of creating this research and identifying the research questions. It also explains importance of the research and the used methodology.

Part One is consists of Chapters Two, Three and Four, and covers the relevant conceptual matters of the research. In Chapter Two, a demonstration of Arabs is provided. It includes a background about their origin, their region and its significance, the Arab demography and also a discussion concerning the Arab culture and religions. The Chapter has provided an understanding about the Arab culture and its main particularities. Chapter Three highlights the history of Arabs and their struggle towards unity, and the genesis of Arab nationalism. It clarifies their stance during colonialism and its consequences. Furthermore, it tackles the Arab regional organisation through which the Arab human rights system established. Chapter Four illustrates the failure of the LAS in protecting human rights in the Arab region with a particular emphasis on the Arab Spring. It investigates the human rights violations that led to the rise of the uprisings, abuses during the revolutions and identifying their emerging consequences.

Part Two, is comprising Chapters Five and Six, is an extensive analysis of the Arab human rights system. Chapter Five explain the Arab main human rights instruments, namely: The Charter. It began with a historical discussion about the challenges it faced while

attempting to create it. The Chapter included an in-depth analysis of the first and second versions of the Charter, and identify their deficiencies. It then examines Arab member states adherence to the Charter and the main international human rights agreements, and then it provided an analysis to their reservations. The Charter's advantages and disadvantages of the Charter are presented in this Chapter as well. Chapter Six analyses the Arab human rights enforcement mechanisms. It started with the examining the Commission, including the history of its creation, its tasks and duties. The Chapter then moves on to analyse the Committee, which has been created as per the Charter, and explains its scope and responsibilities. It finally analyses the latest mechanism of protecting human rights in the Arab World, namely: The Court.

Part Three consists of Chapters Seven, Eight and Nine. It is considered as the theoretical and philosophical base of this research main notion; the neo-relativist approach. Chapter Seven set out to clarify and analyse the theories of universalism and cultural relativism. It provides the definition and the historical roots of each theory, and then identifies the tension between them. In Chapter Eight the neo-relativist approach is developed. It examines the existed initiatives of reconciling universalism and cultural relativism. It then identifies the suitable attempt that is applicable for the Arab context. Chapter Nine is an application of the neo-relativist approach on a number of problematic provisions of the Charter and the Court's Statute.

Finally, re-summarising the thesis, illustrating the main findings and highlighting the recommendations of the research are presented in Chapter Ten as the concluding chapter of this research.

**PART 1: ASSIMILATING THE GENERAL AND HISTORICAL BACKGROUND OF THE ARAB
REGION, AND THE EMERGENCE OF THE HUMAN RIGHTS MOVEMENT**

It is important to illustrate the nature of the region by which this research is centred. This will facilitate the understanding of a number of prime focus points which will be involved in supporting the main argument of this research. It will help in comprehending Arabs' justifications of some actions that are taken on historical, cultural or religious grounds. This part of the thesis is no less important than the rest since it will be functioning to underpin and reinforce a number of arguments, justifications, discussions and opinions in this research. This part also aims to shed light on demonstrating whether the Arab human rights system is operating competently in protecting human rights in the region, as it should, or not. It consists of three chapters and has been dedicated to providing an insight account of:

1. The general overview of the Arab region;
2. A brief about Arab's economy, politics, culture and religions;
3. A historical background showing the struggle of Arabs towards unity, independence, dignity and humanity;
4. The birth of the Arab regional organisation;
5. The genesis of the Arab human rights system;
6. Arab human rights violations, the Arab Spring uprisings and their consequences.

CHAPTER 2: A REVIEW OF THE ARAB WORLD

2.1. Introduction

The Arab World is a geographical and political term that represents a region that extends from the Atlantic Ocean in the west to the Arabian Sea in the east. Precisely, it is located in the far west of Asia and North Africa. The total area of the Arab World is estimated at about 5 million square miles and is located in the middle of the world. Algeria is considered as the largest country in the Arab World with a total area of 919.595 square miles, while Bahrain is the smallest in the region by area at 293 square miles⁵⁶.



Figure 1: Map of the Arab World

The Arab World consists of 22 Arab countries⁵⁷, spanned over two continents (Asia and Africa), and shares many common factors including religion, history, culture and language. The Arab World can be divided into 3 sections:

1. 7 countries in North Africa; Algeria, Egypt, Libya, Mauritania, Morocco, Sudan and Tunisia;
2. 3 countries in East Africa; Comoros, Djibouti and Somalia;

⁵⁶ WPR, 'Arab Countries 2021' (*WorldPopulationReview.com* 2021) available at <<https://bit.ly/3iz89Lb>> accessed 15th Oct 2022.

⁵⁷ LAS, 'League of Arab States Member' (*Lasportal.org*) available from <<https://bit.ly/31pAihT>> accessed 3rd Sep 2021; A Briney, 'What are the Countries that Make up the Arab States?' (*ThoughtCo.* 2019) available from <<https://bit.ly/3iUn5nx>> accessed 22nd Nov 2020.

3. 7 countries in the Arabian Peninsula or the Arabian Gulf; Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates and Yemen;
4. 5 countries in the Levant Region; Iraq, Jordan, Lebanon, Palestine and Syria.

A simple way to identify the Arab countries is knowing the LAS⁵⁸ members, as it consists of the mentioned above 22 countries (see Figure 1)⁵⁹. The following pages will provide a general background about the Arab World⁶⁰ and the people who live therein; known as Arabs⁶¹. As there is too much to say about the region, this chapter will focus on areas that are relevant to this research. It will attempt to define Arabs in light of a discussion that will mainly addresses relevant problematic issues, such as the language, manners and values, the culture, the religions and the stereotypes. It will also seek to provide an overview about the Arab culture and its relation to the religion of Islam.

2.2. About the “Arab World”

The term Arab World is considered a loose term that raises controversy in terms of its meaning. It shares the same meaning in English for two Arabic words, meaning; the English- Arabic translation of the term ‘Arab World’ is ‘*Al’alam Al’arabi*’ which means the world of Arabs or the world in which Arab countries are located. The term ‘Arab World’ also can be translated in Arabic as ‘*Alwatan Al’arabi*’, which is a much deeper term that reflects Arab unity and implies that all Arab countries are considered as one nation⁶².

It is also irrational to prioritise the language and ignore other main factors such as religion and culture, in terms of naming the region. More specifically, the word Arab does not merely refer to the Arabic language, as countries whose first languages are English or Spanish are not being called countries of ‘the English World or the Spanish World’⁶³. From the Author’s perspective, the term Arab World may be imputed

⁵⁸ The next chapter has been allocated to address the League of Arab States (LAS).

⁵⁹ A Kaddan, [Photograph of the Arab World Map] ‘10 Things You Should Know About Arabs’ (*Medium* 2017) available from <<https://bit.ly/37p8dqL>> accessed 29th Feb 2021.

⁶⁰ Also known as the Arab Region.

⁶¹ Arabs (also known as Arab people and/or Arab citizens), is a term that will be employed in this research to refer to the citizens of the Arab countries and who have the Arabic identity.

⁶² N Al’lush, ‘The Arab World or the Arab Nation’ (*Kanaanonline.org* 2018) available from <<https://bit.ly/3fIDMAG>> accessed 20th June 2021.

⁶³ N Barakat, ‘Let’s Banish the Term ‘Arab World’. What does it Mean Anyway?’ (*the Guardian* 2018) available from <<https://bit.ly/3jGlosW>> accessed 18th Jun 2021; M Wingfield, ‘Fact about Arab’ (*Rethinkingschools.org* 2002) available from <<https://bit.ly/3jvh3Kf>> accessed 23rd Mar 2020.

linguistically to the areas whereby people speak Arabic. However, the term has a much deeper tenor, as it is more like a nation that gathered the Arab communities who are geographically contiguous and share not only the Arabic language, but also other common and dominant factors over the region, such as religion, history and culture. Whatever understanding has been ascribed to the term Arab World; these criteria must be considered.

By way of example, other terms are employed inaccurately to address the Arab World are (WANA) the acronym of the West Asia and North Africa, which includes non-Arab countries such as Pakistan, Iran and Turkey⁶⁴. Similarly, the Middle East and North Africa (MENA) also includes non-Arab countries such as Iran, Israel, Malta and Ethiopia⁶⁵. The list of the mentioned countries differs from one institution to the next, as it has been stated that “there are no definitive answers to populations, countries, sects and languages that accurately agree on what [MENA] constitutes”⁶⁶. The main focus of this research, however, will be on the 22 Arab countries that constitute the LAS.

2.3. The Significance of the Arab World

The Arab region connects the West with the East and has a role in controlling air, sea and land navigation, particularly by supervising straits and canals, in order to facilitate the utilisation of the surrounded seas and oceans⁶⁷. This might be the reason that the Arab region “has historically been perceived as a barrier to travel and trade with India and the east”⁶⁸. It possesses many great potentials and abilities to achieve economic integration. The variety of natural resources and wealth in the region as well as the moderate climate are the most important components of any economy in the world.

⁶⁴ Z Bishaw and S Kugbei, ‘Seed Supply in the WANA Region: Status and Constraints’ (*Alternative Strategies for Smallholder Seed Supply*, Zimbabwe, 10-14 March 1997, 19) available from <<https://bit.ly/2X2QVO4>> accessed 13th Mar 2021; R Telleria & A Aw-Hassan, ‘Agricultural Productivity in the WANA Region’ (2011) 10(1) *Journal of Comparative Asian Development* 157.

⁶⁵ J Chen, ‘Middle East and North Africa’ (*Investopedia* 2021) available at <<https://bit.ly/37tgwBF>> accessed 2nd Jan 2021; USTR, ‘Middle East/ North Africa (MENA)’ (*Office of the United States Trade Representative*) available at <<https://bit.ly/3s1Lcne>> accessed 2nd Jan 2021.

⁶⁶ N Barakat, ‘Let’s Banish the Term ‘Arab World’. What does it Mean Anyway?’ (*the Guardian* 2018) available from <<https://bit.ly/3jGlosW>> accessed 18th Jun 2021.

⁶⁷ Straits: Bab el-Mandeb Strait (Red Sea to the Gulf of Aden and the Indian Ocean), Strait of Hormuz (Arabian Gulf to the Gulf of Oman and the Arabian Sea), Strait of Gibraltar or (Jabal Tariq, *in Arabic*) (Atlantic Ocean to Mediterranean Sea) and the Suez Canal (connects the Mediterranean Sea to the Red Sea); see A H Goldstein and C Samaras, ‘Dire Straits: Strategically-Significant International Waterways in a Warming World’ in E W Caitlin and F Femia (ed), *Epicenters of Climate and Security: The New Geo-Strategic Landscape of the Anthropocene* (Centre for Climate and Security, 2017) 35.

⁶⁸ A M Findlay, *The Arab World* (Routledge, U.S, 1994) 9.

Despite these factors, the Arab World did not make the best use of it, not unlike Europe, but the region continued to make the required efforts for achieving economic integration⁶⁹. Apart from economic sources, including mineral riches and agricultural production, which constitute a high percentage of the Arab World income, petroleum production and its trade market is revolutionary therein⁷⁰.

In a study that was conducted to find a possible solution to enhance security of the maritime choke points (strait) located in the Arab World, Hassabou proclaimed that the Arab territory is very important because it has three of the world's most important straits that are used to transfer oil, which runs most of the global energy. He concluded by recommending an Arab maritime coalition that ensures a better protection in the Arab region in general, and of the straits in particular⁷¹. Another research also showed the impacts of not adopting the 1982 Convention on the Law of the Sea. By exemplifying the Arab region, it argued that the international agreements provide additional maritime rights besides those guaranteed by the International Customary Law. It had explained the importance of the Arab World in facilitating trade movement, especially oil, through their region⁷².

These are some of the factors which makes the Arab World a strategic region that plays an important role in supporting the world economy and indicates that it must be secured to keep the world economic wheel spinning. Nonetheless, most Arab countries have adopted the United Nations 2030 vision⁷³, through which states operational excellence

⁶⁹ A Bilal, 'Research on the Arab World Economy' (*Almarsal.com* 2021) available from <<https://bit.ly/37MkRju>> accessed 4th Feb 2021 (in Arabic, translated by Author).

⁷⁰ Regardless to the Corona Virus pandemic, in which most of the world has been affected, the average of the percentage of petroleum production in the Arab World is 19.7%, and it takes the fourth place in the world petroleum trade. While oil export was expected to be at 38% in 2020; see W M Sa'lan, 'The Ranking of Arab Countries in Terms of Agricultural Production' (*Tiaratuna.com* 2020) available from <<https://bit.ly/3jNoAD2>> accessed 4th Feb 2021; WB, 'Middle East and North Africa: Overview' (*WorldBank.org* 2021) available from <<https://bit.ly/3seTSqt>> accessed 1st Jul 2021; E Woertz, 'Agriculture and Development in the Wake of the Arab Spring' in G Luciani (ed.) *Combining Economic and Political Development: The Experience of MENA, International Development Policy* (vol. 7, Geneva: Graduate Institute Publications, Boston: Brill-Nijhoff, 2017) 144; OBG, 'Middle East: Economic Year in Review 2020' (*Oxford Business Group* 2020) available from <<https://bit.ly/2UgGUvl>> accessed 24th Feb 2021.

⁷¹ M Hassabou, 'The Impact of Arab Maritime Security on the Global Oil Trade' (2017) 35 *Journal of The Arab Institute of Navigation*, available from <<https://bit.ly/3jXVoJG>> accessed 21st Feb 2021.

⁷² R A Wainwright, 'Navigation through Three Straits in the Middle East: Effects on the United States of Being a Nonparty to the 1982 Convention on the Law of the Sea' (1986) 18(3) *Case Western Reserve Journal of International Law* 361.

⁷³ United Nation General Assembly 'Transforming our World: the 2030 Agenda for Sustainable Development' UNGD A/RES/70/L.1, 21 October 2015; UNDP, 'The SDGs in Action' (*UNDP.org*) available

will be achieved, economy will be enhanced and the living standard will be improved. Moreover, states all over the world tend to embrace an alternative to the oil as a source of power and this would likely be achieved through sustainable development. This will also raise the question of whether the Arab World will remain as important as it used to be in light of these variables or not.

2.4. Arabs Demography, Culture and Religions: A Discussion.

The Arab region has a population of roughly 444 million inhabitants; they are relatively young (25%+ of total population)⁷⁴ and known as Arabs. Their origin dates back to Semitic tribes located in the Arabian Peninsula since ancient times until they peaked during the Islamic conquest. Identifying the term Arabs has been misunderstood for characteristics. Stereotypes, rumours and allegations have constituted an effective mass to consolidate a global misleading image about Arabs, knowing that they were mostly being spread out through media which had played a pivotal role in exaggerating facts in this regard⁷⁵. The term has been confined in narrow capacity and underpinned by one fact which is that all Arabs are similar; naive, primitive, uneducated, Bedouin, aggressive, camel riders, barbaric and terrorists.

2.4.1 Education in the Arab Region

For example, many resources (academic, reports, newspapers...etc) have indicated that there is a decline in the level of education in the Arab World⁷⁶ although they have a historical great imprint in many fields, such as science, medicine, mathematics and chemistry. Moreover, they were proactive in laying the foundations on which a number of fields were built⁷⁷.

from <<https://bit.ly/3jU91e8>> accessed 4th Jun 2020; LAS, 'Arab Initiatives: Arab Countries' (*Lasportial.org*) available from <<https://bit.ly/3nhbAcs>> accessed 3rd Mar 2020.

⁷⁴ ADP, 'Demography' (*Arab Development Portal* 2021) available at <<https://bit.ly/3jVYqy9>> accessed 5th Mar 2021.

⁷⁵ W F Mahdi, 'Post-Oriental Otherness: Hollywood's Moral Geography of Arab Americans' (2016) 3(2) *Mashriq & Mahjar: Journal of Middle East and North African Migration Studies* 35.

⁷⁶ CARLAC, 'Education in the Arab World' (*Council on Arab World Relations with America and the Caribbean*) available from <<https://carlac.net/education-in-the-arab-world.html>> accessed 2nd Mar 2021; WBG, 'Expectations and Aspirations: A New Framework for Education in the Middle East and North Africa' (*World Bank Group* 2019) available from <<https://bit.ly/3y4sA7p>> accessed 3rd Mar 2021; A T E Isa & A G Siddiek, 'Higher Education in the Arab World & Challenges of Labor Market' (2012) 3(9) *International Journal of Business and Social Science* 146; S Kamel, 'Education in the Middle East: Challenges and Opportunities' in N Azoury (ed), *Business and Education in the Middle East* (Palgrave Macmillan, 2014) 99.

⁷⁷ K Beilby, 'Top 10 Ancient Arabic Scientists: the Arabic Golden Age of Science and Technology Advances' (*Cosmos* 2011) available from <<https://bit.ly/3z3lu4p>> accessed 7th Mar 2021; H Salloum, 'Arab

Education has also been enshrined in the basic sources of Islam. Qur'anic words have referred to the necessity of education and knowledge, emphasizing that Allah (SWT)⁷⁸ “will raise those who have believed among you and those who were given knowledge, by degrees”⁷⁹. The Prophet Mohamed, Peace be Upon Him (SAW)⁸⁰, also claimed in the Sunnah⁸¹ that “Seeking knowledge is a duty upon every Muslim”⁸². He (SAW) added that “he who treads the path in search of knowledge, Allah would make that path easy, leading to Paradise for him”⁸³. This means every Muslim will has to consider education and knowledge as a divine duty by which applying it is rewarded because it has been entrenched as a doctrine that Muslims should achieve. On top of this, Allah (SWT) will facilitate the path of its achievement.

In a study that has addressed the development of the educational curriculums pursuant to the Prophet Muhammad's (SAW) Sunnah, Sormin proclaimed that the “main foundation of Islamic education is the Qur'an. Whereas the Sunnah...is the most important part of the education process... [. Thus,] ...the values of education cannot be separated from the Islamic system”⁸⁴. This is probably because of the great appreciation it gains. However, what has been presented is a brief illustration about the value of education in Islam. Generalising non-education, illiteracy and naivety on all Arabs is rather trite, not only due to many of Arabs having learned and gained various amounts of knowledge, but also the fact that education is influence by Islam which considered as the dominant religion in the Arab region.

Contributions to Sciences' (*Arab America* 2016) available at <<https://bit.ly/3kiNUkP>> accessed 7th Mar 2021.

⁷⁸ Swt is the abbreviation of the Arabic phrase “Subhanahu wa ta'ala” which means “the most glorified, the most high”; TA can also be used instead, which is the abbreviation of “The Almighty” meaning having the power to do everything.

⁷⁹ The Holy Quran, 'Almujadila' (*Quran.com* 58:11) available from <<https://bit.ly/2XDgu8l>> accessed 10th Mar 2021.

⁸⁰ SAW is an abbreviation of the Arabic term 'Sall'a Allahu Alayhe wa Sall'am', which means peace be upon him.

⁸¹ the term Sunnah refers to the saying (also known as Hadith) and practices of the Prophet Mohamed (SAW).

⁸² Sunan Ibn Majah, 'The Book of the Sunnah- Chapter 17: The Virtue of the Scholars, and Encouragement to Seek Knowledge' (*Sunnah.com*, 224) available from <<https://sunnah.com/ibnmajah:224>> accessed 10 Mar 2021.

⁸³ Sahih Muslim, 'The Book Pertaining to the Remembrance of Allah, Supplication, Repentance and Seeking Forgiveness- Chapter 11: The Virtue of Gathering To Read Quran And To Remember Allah' (*Sunnah.com*, 2699a) available from <<https://sunnah.com/muslim:2699a>> accessed 10 Mar 2021.

⁸⁴ D Sormin, 'Hadith about Educational Curriculum' (2019) 2(2) *Budapest International Research and Critics Institute-Journal* 107.

2.4.2 Arabs and Hospitality

Arabs are also well known in honouring guests and provide a high level of hospitality. Guests have always been placed first in the Arab region and for Arabs, they must be treated with generosity (*karram*)⁸⁵. Further, this value is embedded in the Arab culture which is influenced by Islam⁸⁶, although this, like many other constants, has been faced with doubt after the emergence of Islamophobia, in particular⁸⁷. In fact, generosity has been stressed when Islam emerged in spite of the fact that it is one of the Arab cultural values that preceded Islam. Prophet Mohamed (SAW) says, “whoever believes in Allah and the Last Day, should serve his guest generously”⁸⁸. The author of this research believes that acting with virtue of the Islamic norms and values will likely reflect the adherence of its guidance and instructions.

2.4.3 Arabs and Terrorism

It has been also noticed that there is a connection between the terms Arab and terrorism. Since the vast majority of Arabs follow Islam⁸⁹, it is important to briefly demonstrate how they have been linked to terrorism. Although digging in this area is wide, complicated and limitedly linked to the main topic of this research, it is important to repeatedly address it albeit briefly, in order to clarify some of the required facts that facilitate understanding some areas in this research, such as the impact of Islam on Arabs ideological orientations. Islam and terrorism have been forcibly linked together until they mixed up, especially from the view of many Westerners though their aggregate difference in terms of their notions. No effort should be done in this context for the sake of clarifying these two terms; in short, Islam does not advocate terrorism. According to

⁸⁵ “Karram” is an Arabic word that means generosity, nobleness and/or benevolence. A person who acts with this value is usually called Kareem. Kareem is also an Arabic male’s name. However, there should not be confusion between Kareem and ‘Al-Kareem’, which is one of Allah’s names; ‘Karim, n’ (*Dictionary.co*) available at <<https://bit.ly/385K8pk>> accessed 7th Mar 2021; ‘Karim’ (*Definitions.net* Stands4 LLC 2021) available at <<https://bit.ly/3DhVzbQ>> accessed 22nd Aug 2021; A Dsouza, ‘Arabic Hospitality, Which is the Best in the World, the Guest Always Comes First!’ (*Mangalorean.com* 2020) available from <<https://bit.ly/3sAfWMj>> accessed 10th Aug 2021.

⁸⁶ R Sobh, R W Belk & J A J Wilson, ‘Islamic Arab hospitality and Multiculturalism’ (2013) 13(4) *Marketing Theory* 443; A J Almaney, ‘Cultural Traits of the Arabs: Growing Interest for International Management’ (1981) 21(3) *Management International Review* 12; H Rababah & Y Rababah, ‘Rules and Ethics of Hospitality in Islam’ (2016) 20 *Journal of Culture, Society and Development* 44.

⁸⁷ M L Stephenson & N Ali, ‘Deciphering ‘Arab hospitality’: Identifying Key Characteristics and Concerns’ in D J Timothy (ed) *Routledge Handbook on Tourism in the Middle East and North Africa* (Routledge, 2018) 71-82.

⁸⁸ Sahih Al-Bukhari, ‘Good Manners and Form (Al-Adab)- Chapter 85: To Honour Guest and to Serve Him’ (*Sunnah.com*, 6136) available from <<https://sunnah.com/bukhari:6136>> accessed 10th Mar 2021.

⁸⁹ J Park et al, ‘Implicit Attitudes Toward Arab-Muslims and the Moderating Effects of Social Information’ (2007) 29(1) *Basic and Applied Social Psychology* 38.

the Qur'an, "whoever takes a life unless as a punishment for murder or mischief in the land it will be as if they killed all of humanity; and whoever saves a life, it will be as if they saved all of humanity"⁹⁰. Moreover, whoever follows Islam is called a Muslim, yet not all Muslims literally apply Islamic norms, values and instructions.

2.4.3.1 The Five Pillars of Terrorism

Gabriel provides five cohesive and intertwined pillars that boosted embracing radical ideas by Muslims, and hence lead them to terrorism;

1. to obey only Islamic law;
2. unbelievers are existing and around;
3. ruling must be Islamic;
4. adopting jihad as a way of success, and
5. faith is the reason⁹¹.

The first is the most significance pillar, as it determines the terrorist's orientation i.e., religious and/or secular. Without it, non-Islamic governments will not be condemned for not following Islam and Islamic instructions in their ruling approaches, nor there will be need to fight them by extremists⁹².

The second pillar reinforces the concept of 'take it all or leave it' or 'black and white'. Bigoted Muslims do not appreciate the moderation granted by Islam, and sometimes they show sort of omission for the sake of advancing their creed. They believe that there is no middle ground or grey area in being a Muslim, as he/she must implement Islamic regulations as they view it (strictly), otherwise he will be counted as an unbeliever. They are "convinced that... [they are] ...surrounded by infidels who must be fought to preserve Islam"⁹³. In this context, radical Muslims often lean on the following Quranic verse, Allah (SWT) says "And those who do not judge by what Allah has revealed are

⁹⁰ The Holy Quran, 'Al-Ma'idah' (*Quran.com*, 5:32) available from <<https://bit.ly/3DbNIBX>> accessed 10 Mar 2021.

⁹¹ M A Gabriel, '*Islam and Terrorism: Revised and Updated Edition*' (Front Line, 2015) 11.

⁹² J Rehman, '*Islamic State Practices, International Law and the Threat from Terrorism: A Critique of the 'Clash of Civilisations' in the New World Order*' (Hart Publishing, UK, 2005) 15; M A Gabriel, '*Islam and Terrorism: Revised and Updated Edition*' (Front Line, 2015) 21;

⁹³ M A Gabriel, '*Islam and Terrorism: Revised and Updated Edition*' (Front Line, 2015) 14.

truly the disbelievers”⁹⁴. The verse is clear but not for radical Muslims, who even included other Muslims and consider them as unbelievers accordingly.

Radicals Muslims must understand that there should be distinction between non-Muslim and unbeliever, as they are not the same. Being a Muslim “is not always identical with being a believer, although ideally it’s supposed to be the case... [Unbeliever is] someone who rejects or is against God’s truth. He or she can be of any religion or belief”⁹⁵. A good example is a terrorist bombing in a mosque although awareness of Muslims praying therein exist. Radical Muslims believe that since the head of a state does not follow Islam (their version of Islam) in his ruling, he is counted as an unbeliever. And since his people agreed with his approach and became his allies, they then are also unbelievers and deserve death. This will lead to the third pillar, in which the Islamic Caliphate system must be applied. In short, this normative system can be identified as universal domination, no borders between countries, only one nation that is govern by a ruler, no nationalities but only one belief (Islam)⁹⁶. Radical Muslims believe that achieving this will require sufficient forces, so their creed will be applied blindly. This can be met by embracing the fourth pillar of radical Islam, namely: announcing jihad.

By exploiting the power of Islam and the fact that it is a divine religion ordered by Allah (SWT), radical Muslims strived till they had succeeded in visualising jihad as a part of the Islamic religion worshipping. Many scholars showed unanimous consensus on the fact that “Muslim understanding of jihad has consistently imposed a religious obligation to carry out armed struggle against non-Muslims”⁹⁷, and they will “effectively become suspects until proven otherwise”⁹⁸. With all due respect, Muslims and Arabs have

⁹⁴The Holy Quran, ‘Al-Ma’idah’ (Quran.com 5:44) available from <<https://bit.ly/2WolZYL>> accessed 10th Mar 2021; this has been applied on the case of Sadat, as radical Muslims justified their assassination of the former Egyptian President Muhammed Anwar Al-Sadat in 1981 by this verse; In order to understand the Qur’anic message in this context, it is important to read pre and post verses. By reading subordinate verses in the same chapter (verses n. 43-47), it is appeared that the speech was directed from Allah (TA) to people who did not obey in applying two holy scriptures, namely: Torah and Injil or Gospel, but not the Qur’an. The verses that followed have addressed the Qur’an and the call for Islam. As mentioned in the text, radical Muslims often use this verse to justify their strict behaviours.

⁹⁵ A Munjid, ‘For a Peaceful Society, Indonesians must Stop Using the Word Kafir (Infidels) to Describe Non-Muslims’ (*The Conversation*, 2019) available from <<https://bit.ly/3y8Jr9e>> accessed 10 Mar 2021.

⁹⁶ M A Gabriel, ‘*Islam and Terrorism: Revised and Updated Edition*’ (Front Line, 2015) 16.

⁹⁷ J Lyons, ‘*Islam Through Western Eyes: From the Crusades to the War on Terrorism*’ (Columbia University Press, New York, 2012) 110

⁹⁸ A S Sidahmed, ‘Jihadiology’ and the Problem of Reaching a Contemporary Understanding of Jihad’ in T Y Ismail & A Rippin (ed) *Islam in the Eyes of the West: Images and Realities in an Age of Terror* (Routledge, UK, 2010) 102.

noticeable initiatives that are tasked not only to combat terrorism, but also to prove that such acts do not represent Islam⁹⁹. Moreover, several titles related to the term jihad were presented by the media within the last two decades, particularly after the 9/11 attacks, such as “‘This is a religious war’, ‘Defusing the holy bomb’, ‘The force of Islam’, ‘Divine inspiration’, ‘The core of Muslim rage’, ‘Dreams of holy war’, ‘The deep intellectual roots of Islamic rage’, ‘The age of Muslim wars’”¹⁰⁰. This is expected since the prevailing understanding of jihad in a contemporary world is represented in “the legal, compulsory, communal effort to expand the territories ruled by Muslims at the expense of territories ruled by non-Muslims”¹⁰¹. In contrast to the author, this research believes that the term jihad has deeper, moral and sensible meaning, and based on a wider scope than the mentioned.

Jihad is an Arabic word which means spend effort, exerting energy or enduring hardship. The term is well known by its link with fighting in support of religion and defending the sanctity of a nation. It has evolved over time beginning with defending and spreading Islam, followed by the concept of nationalism against colonialism, until it reached the form of terrorist attacks. It is based on a number of principles, such as it is required to defend Islam and to overcome oppressive or corrupted regimes¹⁰². A general meaning of jihad would be the compliance with all Gods’ commands and the refrain from all the matters forbidden by God, either by self-control, or disobeying Iblis¹⁰³, or fighting wrongdoers and the unbelievers. Jihad in Islam is not always war and fighting, but rather it mainly focuses on defending what is right peacefully; Allah (SWT) says, “So do not obey

⁹⁹ Muslim scholars and religious (including Arabs), from all over the world, have gathered to write a letter to Baghdadi (leader of IS) strictly condemning on their acts and assures that such acts has no relation to Islam, see ‘Open Letter to Al-Baghdadi’ (2014) available from <<http://www.lettertobaghdadi.com/>> accessed 23 Apr 2021; in addition, in 2015 an Islamic-Arab alliance has been established and led by Saudi Arabia, consists of 41 countries, nearly 20 of them are Arab countries, their main objective is to cooperate in countering terrorism, this is known as The Islamic Military Counter Terrorism Coalition, see its official website: Islamic Military Counter Terrorism Coalition, (*IMCTC.org*, n.d.) available at <<https://imctc.org/en/Pages/default.aspx>>.

¹⁰⁰ E Abrahamian, ‘The US media, Huntington and September 11’ (2003) 24(3) *Third World Quarterly* 531; It is observed, however, that most of these titles have considered the generalization on all Muslims, and some of them have given an impression of offensiveness, which would likely work on motivating the readers and provide the seed of hatred against all Muslims.

¹⁰¹ D Pipe, ‘What is Jihad?’ (*DanialPipes.com* 2002) available at <<https://bit.ly/38gM6TI>> accessed 6th Mar 2021.

¹⁰² R Rabil, ‘Contextulising Jihad and Takfir in the Sunni Conceptual Framework’ (*Washingtoninstitute.org, Fikra Forum* 2018) available at <<https://bit.ly/3DsVqSM>> accessed 12th Mar 2021.

¹⁰³ Iblis, also known as Shayt’an, is the Arabic term for the Devil.

the disbelievers, and strive against them with it 'i.e., the Qur'an' a great striving"¹⁰⁴. The mentioned verse implies convincing non-Muslims by peaceful means (using the Qur'an) that does not include military measures, violence or wars. It can be said that jihad in Islam is not always fighting, and fighting is not always jihad. In essence, jihad can be considered as the Muslims spiritual straggle towards applying Allah's (SWT) commands and instructions in their day-to-day life. More so, it means avoiding acts or behaviours that are likely to lead to sin, such as greediness, anger, grudge and hatred, but on the contrary to adopt forgiveness, promote justice and peaceful coexistence. A good example would be being patience in hard times and this might be applied in times of war or violating oneself. Allah (SWT) says, "And whoever strives 'in Allah's cause', only does so for their own good. Surely Allah is not in need of 'any of' His creation"¹⁰⁵. This version of jihad known as the Greater Jihad¹⁰⁶.

The other type of jihad is known as the Lesser Jihad¹⁰⁷, which permits using of force in certain situations determined by the Qur'an and explained by the Prophet Mohamed (SAW); these situations are mostly cantered in defending Islam. This is also recognised by international law and is permitted in cases of preserving peace and security, executing sanctions, self-defence, protect civilians, humanitarian purposes and intervening in internal conflicts¹⁰⁸. Sardar and Rehman found that "modern Islamic states accept the position advanced by the United Nations Charter on the prohibition of the use of force – a position which is regarded as consistent with as-siyar and the jihad ideology"¹⁰⁹.

¹⁰⁴ The Holy Quran, 'Al-Furqan' (*Quran.com*, 25:52) available from <<https://bit.ly/3BoeO1q>> accessed 10 Mar 2021.

¹⁰⁵ The Holy Quran, 'Al-'Ankabut' (*Quran.com*, 29:6) available from <<https://bit.ly/3YrRwFY>> accessed 10 Mar 2021.

¹⁰⁶ J L Esposito, '*Unholy war: Terror in the name of Islam*' (Oxford University Press, USA, 2003) 28; G Silverman & U Sommer, 'Prevalent Sentiments of the Concept of Jihad in the Public Commentsphere' (2019) *Studies in Conflict & Terrorism* 5.

¹⁰⁷ J L Esposito, '*Unholy war: Terror in the name of Islam*' (Oxford University Press, USA, 2003) 28; G Silverman & U Sommer, 'Prevalent Sentiments of the Concept of Jihad in the Public Commentsphere' (2019) *Studies in Conflict & Terrorism* 5.

¹⁰⁸ Charter of the United Nations, June 26, 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* Oct. 24, 1945, Chapter 7/ Arts 39, 41 and 42; M Goulding, *The Use of Force by the United Nations* 3(1) *International Peacekeeping* 1; F Alahmed, 'The Responsibility to Protect: Failure or Success?' (Master Dissertation, University of Manchester, 2011) 13.

¹⁰⁹ S Sardar & J Rehman, 'The Concept of Jihad in Islamic International Law' (2005) 10(3) *Journal of Conflict & Security* 343.

It is apparent from this that Islam has outweighed the peaceful jihad over the violent one, by addressing the former with the 'Greater Jihad' and the latter by the 'Lesser Jihad'. Judging Islam as a religion of war, aggression and violence is rather lacking in logic, because the force that is represented by jihad was employed for defensive purposes, otherwise other religions will be seen as if they are following suit¹¹⁰. It is important here to know the full story of the scriptures in order to understand the hidden messages behind them. Küng emphasises that "the militant sayings and events in each individual tradition should be interpreted in their own historical context of that time, but without any glossing over. This applies to all three religions"¹¹¹. This can be attained by being "mindful of the group's extreme position when considering theological and ritual dimensions"¹¹².

In a study that was conducted to limit terrorist crimes and harms through exploring the influence of the narratives delivered by extremists in Muslim communities, Sandberg and Colvin found that jihadi narratives are rejected due to the fact that they would probably influence Muslim behaviours towards radicalism¹¹³. This is unsurprising because extremists usually mutate the Islamic facts and stories professionally in a manner that supports their goals. This view is also supported by Saleh and Ali¹¹⁴, who emphasised that a misinterpretation of the Qur'anic verses that are related to jihad, would probably lead to misunderstanding of jihad. They found that the term jihad has been mentioned in the Qur'an many times and in different occasions, some of them were general and the others conditional. Therefore, they proposed the adoption of intra-text and contextual method to clarify controversy concerning the concept of jihad by employing a conceptual compatibility approach that aims to extract the meanings

¹¹⁰ see for example scriptures from *Holy Torah*, 'Bamidbar - Chapter 31: 4, 9, 10, 17 and 18' available from <<https://bit.ly/3jmnRd7>> accessed 10 Mar 2021; *Holy Bible*, 'Matthew 10:34' available from <<https://bit.ly/3mFMnrF>> accessed 10 Mar 2021; the following are some of the examples of the calling for wars, aggression, terror and violence mentioned within the Bible and the Torah, nevertheless it is hard to consider any of these examples as a religious fundamentals that indicate calling for war or permitting violence, without knowing the full story.

¹¹¹ H Küng, "Religion, Violence and "Holy Wars"" 87(858) *International Review of the Red Cross* 264.

¹¹² S Wibisono, W R Louis & J Jetten, 'A Multidimensional Analysis of Religious Extremism' (2019) 10(2560) *Frontiers in Psychology* 9, also can be found at <<https://bit.ly/3gK3Viu>>.

¹¹³ S Sandberg & S Colvin, S, 'ISIS is not Islam': Epistemic Injustice, Everyday Religion, and Young Muslims' Narrative Resistance' (2020) 60(6) *The British Journal of Criminology* 1585.

¹¹⁴ S Hasanzadeh & A A Renani, 'A Peaceful Interpretation of Jihad in the Qur'an' (2021) *Studies in Conflicts & Terrorism* 1

not merely from the verse in question, but also the entire text. Their research outcome indicates that Muslim confrontations were on grounds of peace and not violence or war.

The last pillar, however, is faith which stands for Muslims submitting to what Allah (SWT) revealed. Allah (SWT) created all people and ordered them to believe, worship and obey the divine commandments. As a main factor to do so, people must acquiesce Allah (SWT) and submit to the divine judgment, as per the Qur'an and the Sunnah. Gabriel¹¹⁵ has been able to simplify the understanding of this concept. He argued that faith would likely lead to embracing radicalism. As the person who believes in Allah's (SWT) and the divine judgment must obey, including martyrdom in the name of Islam yet this is not possible without faith. The Prophet (SAW) said:

The person who participates in (Holy battles) in Allah's cause and nothing compels him to do so except belief in Allah and His Apostles, will be recompensed by Allah either with a reward, or booty (if he survives) or will be admitted to Paradise (if he is killed in the battle as a martyr)¹¹⁶.

It seems that extremists have neglected the main purpose of jihad and misunderstood the purpose of its existence. This is because they believe that being a martyr (their version of a martyr) does not mean losing one's life solely, but rather it means the path for paradise. Moreover, it has been noticed that the term Holy battle or war is widely employed for such context¹¹⁷. These terms have never been mentioned in the Qur'an, because their translations in Arabic differs¹¹⁸. This research sees that it is possible to describe the objective whereby jihad or wars occurred as Holy, but not to name the action, as commonly utilised.

However, what stands out from the aforementioned is the fact that the religion of Islam is not a religion of sword, violence, war, aggression and terrorism as some believe¹¹⁹,

¹¹⁵ M A Gabriel, '*Islam and Terrorism: Revised and Updated Edition*' (Front Line, 2015) 17.

¹¹⁶ Sahih Al-Bukhari, 'Belief- Chapter 26: Al-Jihad is a Part of Faith' (*Sunnah.com*, 36) available from <<https://bit.ly/3mZRMdl>> accessed 4 Mar 2021.

¹¹⁷ for example, see J Albarrán, 'The Discourses of Holy War and the Memory of the First Battles of Islam. Al-Andalus, 10th–13th Centuries' (2020) 28 *Medievalista* 435; N Daniel, 'Holy War in Islam and Christendom' (1958) 39(462) *Blackfriars* 383; H Küng, "Religion, Violence and "Holy Wars"" 87(858) *International Review of the Red Cross* 253.

¹¹⁸ Z Naik, 'Jihaad means "Holy War" is a Misconception' (*Youtube.com*, 15 Dec 2020) available at <<https://bit.ly/2VamFjV>> accessed 1 Mar 2021.

¹¹⁹ D Pipe, 'What is Jihad?' (*DanialPipes.com*, 2002) available at <<https://bit.ly/38gM6TI>> accessed 6 Mar 2021; J A Lyons, '*Islam Through Western Eyes: From the Crusades to the War on Terrorism*' (Columbia

but rather it is a peaceful religion and will not be subjected to such wrongdoing¹²⁰. Allegations of Muslims as terrorists must be considered with caution, because the reactions may be surprising. An-Na'im maintained that the reactions on 9/11 through which all Muslims were found guilty hence treated cruelly, has led to the increase of Muslim extremists' groups¹²¹. The Author of this research supported An-Na'im's view, and believes that the pressure of the Western media on Muslims in this context has led to the incarnation of the term 'terrorist' on Muslims until it became a stereotype and argues that this will not only make them (the media) supportive to the extremist in distorting the image of Islam¹²², but also will create an evil ally who functions on facilitating the extremists' path towards attaining their goals. Therefore, there is a need to understand the full picture of any incident and not to judge a religion due to cliques' mistakes, hence separation between violent extremists Muslims from other Muslims¹²³ is inevitable.

Since most Arabs are Muslims, these allegations will probably include them. The stereotype of "Arabs are terrorists" was mostly developed by media, particularly post 9/11 attack¹²⁴. They have been misrepresented through many of the media tools, such

University Press, New York, 2012) 15 & 42; N Mezvinsky, "Islam and Muslims as Seen by the Christian Zionists" in T Y Ismail & A Rippin (ed) *Islam in the Eyes of the West: Images and Realities in an Age of Terror* (Routledge, UK, 2010) 45; J L Esposito, 'Unholy war: Terror in the name of Islam' (Oxford University Press, USA, 2003) 75; M A Gabriel, *'Islam and Terrorism: Revised and Updated Edition'* (Front Line, 2015).

¹²⁰ see N Mohammad, 'The Doctrine of Jihad: An Introduction'. (1985) 3(2) *Journal of Law and Religion* 387 citing Y Ali, The Holy Quran, note 2861 (1977); M Hasan, 'Islam Is A Peaceful Religion: Mehdi Hasan in an Oxford Union Debate Following the Murder of a British Soldier by an Islamist Fanatic in Woolwich' (*Newageislam.com* 2013) available from <<https://bit.ly/3gK6oK7>> accessed 11th Mar 2021; also see M Hasan, 'Mehdi Hasan: How Islamic is Islamic State?' (*Newstatesman.com* 2015) available from <<https://bit.ly/3mKdhid>> accessed 11th Mar 2021.

¹²¹ A A An-Na'im, 'Upholding International Legality Against Islamic and Amirecan Jihad' in K Booth & T Dunne (ed.) *World in Collision: Terror and the Future of Global Order* (Palgrave, New York, 2002) 162.

¹²² S Sandberg & S Colvin, S, 'ISIS is not Islam': Epistemic Injustice, Everyday Religion, and Young Muslims' Narrative Resistance' (2020) 60(6) *The British Journal of Criminology* 1601; J Matthes et al, 'Who Differentiates between Muslims and Islamist Terrorists in Terrorism News Coverage? An Actor-based Approach' (2020) 21(15) *Journalism Studies* 2135; C V Sikorski et al, 'Do Journalists Differentiate Between Muslims and Islamist Terrorists? A Content Analysis of Terrorism News Coverage' (2021) *Journalism* 1, doi: DOI: 10.1177/1464884921990223.

¹²³ S Sandberg & S Colvin, S, 'ISIS is not Islam': Epistemic Injustice, Everyday Religion, and Young Muslims' Narrative Resistance' (2020) 60(6) *The British Journal of Criminology* 1585.

¹²⁴ L A Cainkar, 'Homeland insecurity: The Arab American and Muslim American Experience After 9/11' (Russell Sage Foundation, New York, 2009), as cited in S Wibisono, W R Louis & J Jetten, 'A Multidimensional Analysis of Religious Extremism' (2019) 10(2560) *Frontiers in Psychology* 1, this can also be found at <<https://bit.ly/3gK3Viu>>; M A Gabriel, *'Islam and Terrorism: Revised and Updated Edition'* (Front Line, 2015) 41; M Saleem & C A Anderson, 'Arabs as Terrorists: Effects of Stereotypes Within Violent Contexts on Attitudes, Perceptions, and Affect' (2013) 3(1) *Psychology of Violence* 84; E Alsultany, 'Arabs and Muslims in the media after 9/11: Representational Strategies for a "Postrace" Era' (2013) 65(1)

as news, shows and movies. Over and above, sometimes media adopts a manipulative approach; as they may not frankly refer to Arabs as terrorist, but they function through their productions on taming the receivers' mind to accept their hidden messages, and they usually succeed, even if these productions are based on lies.

Turner carried out an investigation to identify actors of terrorist activities in Europe, in particularly the United Kingdom. He concluded that they were young, not extremists, newly converted to Islam and have criminal records¹²⁵. None of the terrorists that were mentioned in his chapter were of Arab origin. Walker similarly explained that "for those who maintain the paradigm image of the terrorist who is an alien in terms of nationality, race, and religion, not all of these "neighbour terrorists" even fit the description of "Arab" or Middle Eastern"¹²⁶.

However, this does not mean Arabs are infallible. A broader perspective has been adopted by Meftah, who attempted to figure out whether terrorism is rooted from Islam or the Arab Culture, concluding that terrorism is most likely rooted from the Arab culture, particularly within the Bedouin culture. He also added that there is no link between Islam and terrorism¹²⁷.

What this section of the chapter is trying to demonstrate is the fact that not all Arabs are terrorist and considering otherwise shows a misinformed sense of generalisation, hence lacks credibility and accuracy. In a recent theoretical analysis of the social contract theory, Turner has been able to show that Jean-Jacques Rousseau's approach provided more guarantees of security and liberty of person on the grounds of collective

American Quarterly 161; C Schiavini, 'Terrorists on Screen, Actors on Stage: Stereotyping Arabs and the Cinema Industry in Contemporary Arab-American Theatre' (2021) 17 *Iperstoria* 155; H Zainiddinov, 'Divergent Perceptions of Muslim Americans on Being Stereotyped as Terrorists' (2021) 13(3) *Behavioural Sciences of Terrorism and Political Aggression* 231; H Zainiddinov, 'Responses of US-based Muslim Organizations to Being Stereotyped as 'terrorists' (2021) 13(3) *Behavioural Sciences of Terrorism and Political Aggression* 1; S Melhem & N M Punyanunt-Carter, 'Using Cultivation Theory to Understand American College Students' Perceptions of Arabs in the Media' (2019) 39(2) *Journal of Muslim Minority Affairs* 259; C M Corbin, 'Terrorists are Always Muslim but Never White: At the Intersection of Critical Race Theory and Propaganda' (2017) 86 *Fordham Law Review* 455.

¹²⁵ I D Turner, 'Individualism in Times of Crisis: Theorising a Shift Away from Classic Liberal Attitudes to Human Rights Post 9/11' in M Chmieliński & M Rupniewski (ed) *The Philosophy of Legal Change: Theoretical Perspectives and Practical Processes* (Routledge, New York, 2018).

¹²⁶ C Walker, 'Keeping Control of Terrorists Without Losing Control of Constitutionalism' (2006) 59(5) *Stanford Law Review* 1399.

¹²⁷ J B T Meftah, 'Roots of Sadistic Terrorism Crimes: Is it Islam or Arab Culture?' (2018) 42 *Aggression and Violent Behaviour* 52.

sovereignty. Taking the UK counter-terror law as an example in preserving security, he maintains that although individual's liberty will be affected, it is only terrorist suspects who will be under this effect¹²⁸. All in all, the chapter should not go further and return to its main context.

2.4.4 The Relation Between Arabs and the Arabic Language

Arabs may also be recognised by their language. A great deal of previous research that was employed to figure out Arab's identity has focused on their language, claiming that whoever speaks the Arabic language is an Arab¹²⁹. Arabs have several common factors that unify them which includes the language¹³⁰ as it has been enshrined in the constitutions of most Arab countries as their first language, yet it has various dialects¹³¹. This research concurs with the mentioned views to a high extent yet some of them must be clarified better because they seem misleading and/or contradicting to each other. To be more precise, how can the Arabic language unify Arabs in light of its various dialects, which may cause difficulties in communications¹³²; the trump card in this context, however, would be the Qur'anic Arabic language which is the pure formal Arabic language that is understood by all Arabs and most Muslims¹³³.

It can be deduced, therefore, that the language of the Holy Qur'an (the classical or formal Arabic language) has worked in unifying Arabic speaking Muslims¹³⁴ and not

¹²⁸ I Turner, 'Jean-Jacques Rousseau, Liberty and Counter-Terror Law Since 9/11' (2021) 3 *Keele Law Review* 43-44.

¹²⁹ TM, 'Arab, Middle Eastern, and Muslim? What is the Difference?!' (*TeachMideast*, n.d.) available from <<https://bit.ly/3szooeF>> accessed 20th Feb 2021; The Editors of Encyclopaedia, 'Arab' (*Britannica*, 2019) available from <<https://www.britannica.com/topic/Arab>> accessed 19th Feb 2021; NO, 'Arab Cultural Awareness: 58 Factsheets' (*Office of the Deputy Chief of Staff for Intelligence- US Army Training and Doctrine Command- FT. Leavenworth, Kansas, 2006*) available from <<https://fas.org/irp/agency/army/arabculture.pdf>> accessed 17th Feb 2021, 3; T Mackintosh-Smith, 'Arabs: A 3,000- Year History of Peoples, Tribes and Empires' (Yale University Press, UK, 2019) xxiii; B Lewis, 'The Arab in History' (Oxford University Press, UK, 2002) 1&2.

¹³⁰ M Rodinson, 'The Arabs' (A Goldhammer, University of Chicago Press, U.S, 1981) 45.

¹³¹ TM, 'Arab, Middle Eastern, and Muslim? What is the Difference?!' (*TeachMideast*, n.d.) available from <<https://bit.ly/3szooeF>> accessed 20th Feb 2021; S Bangura, 'The Language of (أرض)' (*Medium.com*, 2019) available from <<https://bit.ly/2Ymhgrb>> accessed 20th Feb 2021; NO, 'Arab Cultural Awareness: 58 Factsheets' (*Office of the Deputy Chief of Staff for Intelligence- US Army Training and Doctrine Command- FT. Leavenworth, Kansas, 2006*) 56 available from <<https://fas.org/irp/agency/army/arabculture.pdf>> accessed 17th Feb 2021.

¹³² There are a number of Arab language dialects in the Arab region, such as North Africa, Arabian Gulf and the Levant region.

¹³³ L Smith, 'Arabic' (*Slate.com*, 2002) available from <<https://bit.ly/2WVK09C>> accessed 15 Feb 2021.

¹³⁴ It is important to mention here that Arabs and the Arabic language exist before Islam, Allah (TA) revealed the Qur'an in Arabic because it was the dominant language back then. Most importantly, it was the language the Prophet Mohamed (SAW) speaks, through which he (SAW) will be able to deliver Allah (TA) messages. Even more, the Arab language was cherished by Arabs back then, as they mastered it

merely Arabs. Yet, since the main focus of this research centralised on the Arab World, then the formal Arabic language is one of the common factors that unifies Arabs.

2.4.5 The Arab Culture and Islam

The religion of Islam is also considered as another factor that unifies Arabs; as it “shapes people’s mindsets and opinions at a very deep level in addition to being responsible for many of the behavioural patterns that can be observed throughout the [Arab] region”¹³⁵. Arabs are greatly in line with Western societies in terms of cultural richness, yet they are heavily in touch with their religion, namely: Islam. It should be also noted that besides the footprint of colonised countries (Italy, Great Britain and France) in the culture of the region, the influence of the migrants and workers who are living in the Arab region from all over the world is undeniable. Any Arab person who is living in the Arab region can realise these impacts; they can be seen in a number of social sectors therein including education and health. However, their influence is limited because the Arab World is highly touched by Islam which penetrates all parts of an Arab’s life¹³⁶ as they believe that their own life is controlled by Allah (SWT)¹³⁷. This is unsurprising since this is one of the required conditions for being a Muslim, namely; submission.

It is needless to say that culture differs from religion as it refers to the social heritage, characteristics and knowledge gained by people who are living in certain area through time; it includes music, food, habits, language, religion and more. While religion is a divine belief and instructions that a group of people follows, it regulates their daily life patterns, including marriage, morals, values, food and worship, as clarified in each religions’ written Scripture. It also helps in realising the facts behind natural disasters, human life and death¹³⁸.

fluently and were distinguished in poetry, hence the Quran revealed to challenge these experts as a miracle. Although, the Qur’an might be translated to other languages, it is hard to say that most of these translations are accurate.

¹³⁵ J Al-Omari, ‘*Understanding the Arab Culture: A Practical Cross-Cultural Guide to Working in the Arab World*’ (2nd ed, How to Books, UK, 2008) 74.

¹³⁶ M Kalliny et al, ‘The Impact of Advertising and Media on the Arab Culture: The Case of the Arab Spring, Public Sphears and Social Media’ (2018) 17(1) *Journal of Political Marketing* 70.

¹³⁷ S Bangura, ‘The Language of (خ)’ (*Medium.com* 2019) available from <<https://bit.ly/2Ymhgrb>> accessed 20th Feb 2021.

¹³⁸ J Angelo, ‘Difference Between Religion and Culture’ (*Differencebetween.com*, 2018) available from <<https://bit.ly/3h3gHci>> accessed 7th Mar 2021; M Ismaeil, ‘Recognising the Difference Between Culture and Religion’ (*Modernhejab.com* 2017) available from <<https://bit.ly/3jHLuNI>> accessed 7th Mar 2021.

In the case of the Arab culture, however, separating it from the religion is rather challenging due to Islam's great influence. Islamic principles are based on the Qur'an and the Sunnah, and have an integral role in shaping the Arab culture. These principles function to guide Muslims in their search of facts concerning their existing, knowledge, norms, thought, values, commerce and more¹³⁹. Linking culture with religion feeds the delusion of as if they are one, in which culture will likely be threatened notwithstanding some religions cannot be separated easily, due to their strong involvement in peoples' life, such as Islam in the Arab World¹⁴⁰.

Moreover, this research believes that the outcomes of many published works regarding various Arab affairs has revealed the significance of Islam in the Arab World including its infiltration of the culture and its involvement in running Muslims lives. Islamic principles, norms and values are usually regarded in research related to Arabs, since it is considered for Muslims as the solid base on which life's affairs are measured. For example, business dealings including entrepreneurial endeavours¹⁴¹ and education¹⁴², history and civilisation¹⁴³, Arab women affairs¹⁴⁴, advertisements effect on Arab culture¹⁴⁵, self-assertive interdependence in the Arab culture¹⁴⁶, human rights¹⁴⁷, human resources

¹³⁹ A O Altwaijri, *'The Islamic World and the West: Challenges and Future'* (Islamic Educational, Scientific and Cultural Organization (ISESCO), Riyad, Saudi Arabia, 2007) 20 (in Arabic, translated by Author)

¹⁴⁰ D W Ray, *'The God Virus: How Religion Infects our Lives and Culture'* (IPC Press, U.S, 2009) 61.

¹⁴¹ A A Gümüşay, 'Entrepreneurship from an Islamic Perspective' (2015) 130(1) *Journal of Business Ethics* 199, as cited in H A Tlaiss & M McAdam, 'Unexpected Lives: The Intersection of Islam and Arab Women's Entrepreneurship' (2021) 171(2) *Journal of Business Ethics* 255.

¹⁴² I Oplatka & T Hassan, 'Leading Schools Spiritually: Some Speculative Insights into Arab Societies' (2021) *International Journal of Leadership in Education* 2, DOI: 10.1080/13603124.2021.1934555.

¹⁴³ M H Islam, 'Islam and Civilization: Analysis Study on The History of Civilization in Islam' (2019) 5(1) *Al-Insiyroh: Jurnal Studi Keislaman* 22.

¹⁴⁴ H A Tlaiss & M McAdam, 'Unexpected Lives: The Intersection of Islam and Arab Women's Entrepreneurship' (2021) 171(2) *Journal of Business Ethics* 253; V V Kostenko et al, 'Attitudes Towards Gender Equality and Perception of Democracy in the Arab World' (2016) 23(5) *Democratization* 862; R George, 'The Impact of International Human Rights Law Ratification on Local Discourses on Rights: The Case of CEDAW in Al-Anba Reporting in Kuwait' (2020) 21(1) *Human Rights Review* 43; S I Islam, 'Arab Women in Science, Technology, Engineering and Mathematics Fields: The Way Forward' (2017) 7(6) *World Journal of Education* 17.

¹⁴⁵ M Kalliny et al, 'The Impact of Advertising and Media on the Arab Culture: The Case of the Arab Spring, Public Spheres and Social Media' (2018) 17(1) *Journal of Political Marketing* 62.

¹⁴⁶ A S Martin et al, 'Self-Assertive Interdependence in Arab Culture' (2018) 2(11) *Nature Human Behaviour* 832.

¹⁴⁷ See for example D E Arzt, 'The Application of International Human Rights Law in Islamic States' (1990) 12 *Human Rights Quarterly* 202; A A An-Na'im, 'Human Rights in the Arab World: A Regional Perspective' (2001) 23 *Human Rights Quarterly* 701; K A Alfadhel, 'The GCC Human Rights Declaration: An Instrumentation of Cultural Relativism' (2017) 31(1) *Arab Law Quarterly* 89.

management¹⁴⁸, democracy¹⁴⁹, manners and attitude¹⁵⁰. It can, therefore, be inferred that those cultures and religions set the standards whereby individuals' behaviours are organised but this is common in most of the cultures. The key factor here is these standards are derived from religion as the deepest root of ordination¹⁵¹.

Expectedly, however, the Arab people's embracement of Islam afforded them many noble traits that are recommended by Allah (SWT) and the Prophet Mohamed (SAW), including tolerance and peaceful coexisting with others. This is well respected among Arabs, because their region is considered as the cradle of the divine religions, in which all prophets and messengers born, lived and passed away. The Arab region is also preciously appreciated among the adherent of the three divine religions (Muslims, Christians and Jews) as per the Qur'an.

Apart from other religions, the Arab region is overwhelmed by Muslims Arabs, beside minorities of Christian and Jewish Arabs who all share the Arabic language as their mother tongue (see Figure 2)¹⁵². This would bring up a question of whether Arab minorities (Christian and Jews) are enjoying their human rights in the Arab World or not.

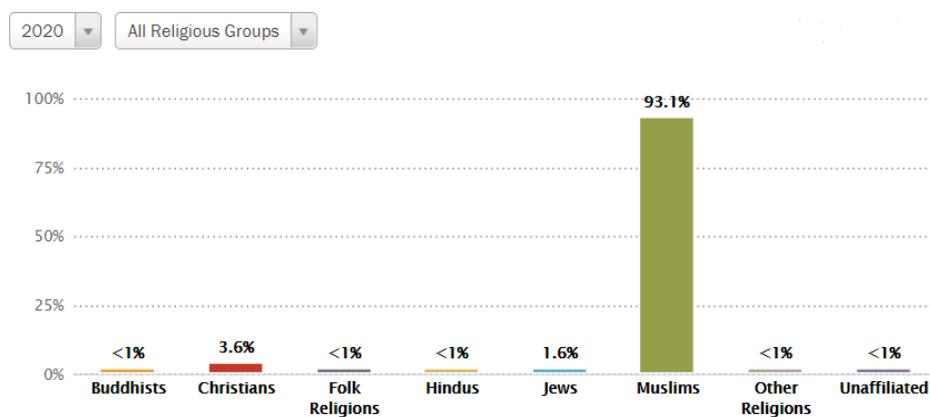


Figure 2: Religious Affiliations in the Arab World

¹⁴⁸ I Oplatka & T Hassan, 'Leading Schools Spiritually: Some Speculative Insights into Arab Societies' (2021) *International Journal of Leadership in Education* 1, DOI: 10.1080/13603124.2021.1934555.

¹⁴⁹ A K Upadhyay, 'Islam and Democracy: A Complex Dynamics in the Arab World' (2015) 2(9&10) *International Journal of Applied Social Science* 301; P C Schmitter & N Sika, 'Democratization in the Middle East and North Africa: A more Ambidextrous Process?' (2017) 22(4) *Mediterranean Politics* 443.

¹⁵⁰ H Rababah & Y Rababah, 'Rules and Ethics of Hospitality in Islam' (2016) 20 *Journal of Culture, Society and Development* 44.

¹⁵¹ J D Eller, 'Introducing Anthropology of Religion: Culture to the Ultimate' (Routledge, USA, 2007) 159.

¹⁵² MENA, [Religious Affiliations Chart] 'Compare Middle East-North Africa' (*Globalreligiousfutures.org*, 2020) available from <<https://bit.ly/3CYnrDD>> accessed 29 Feb 2021; there are also non- Arab minorities live in the region and follow other religions.

From a legal perspective, people who live in the Arab World are protected by law notwithstanding the imposed political, social and economic pressure they face. These guarantees can be found in the constitutions of all Arab countries¹⁵³ though most of them indicate that Islam is their religion¹⁵⁴. This has also been strengthened by international and regional agreements which will be covered later in a subsequent chapter. These provisions are allocated to provide the required human rights protection and, ensure that Arabs (Muslims and non-Muslims) and other residents are enjoying these rights. Furthermore, the United Nations has adopted the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, which consist of 9 articles aimed to urge states to ensure the promotion and protection of minority rights¹⁵⁵. Although Arab countries adopted many of these agreements, some of them did not comply. These provisions have not been implemented as they should have been in some Arab countries. This would likely have resulted in the occurrence of harsh consequences, such as inter-religious and inter-ethnic violence¹⁵⁶.

From a religious view, however, Islam (the dominant religion in the region) has also promoted human rights, including ensuring the protection of minorities rights. Islamic principles, which were shaped by the Qur'an and the Sunnah, entitle all humans and not merely Muslims, regardless to their origin, colour, gender, religion and belief. Th Qur'an says:

¹⁵³ Examples of two countries from each area of the Arab region, see constitution of 1) North Africa: Algeria articles 32, 41, 42; Egypt article 3, 8, 9, 53, 64, 65/ 2) East Africa: Comoros article 2; Djibouti articles 1, 3, 10, 11/ 3) the Arabian Gulf: UAE articles 25, 32; Bahrain articles 18, 22/ 4) the Levant Region: Jordan articles 6(1), 14; Lebanon the preamble 1(c) & article 7, 9.

¹⁵⁴ Examples of one country from each area of the Arab region, see constitution of 1) North Africa: Algeria article 2; Egypt article 2; 2) East Africa: Comoros article 97; Djibouti the preamble/ 3) the Arabian Gulf: UAE article 7; Bahrain article 1(a), 2, 6/ 4) the Levant Region: Jordan article 2; Lebanon: adherence to Islam has not been explicitly mentioned in the constitution, yet this can be seen in reality since Muslims population is more than others; see WPR, 'Lebanon Population 2021' (*Worldpopulationreview.com* 2021) available from <<https://bit.ly/3BLuex2>> accessed 3rd Sep 2021.

¹⁵⁵ Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, G.A. Res 47/135, 3 February 1992; this has been also supported by CCPR General Comment No. 23: Article 27 (Right of Minorities) Adopted at the Fiftieth Session of the Human Rights Committee, on 8 April 1994 CCPR/C/21/Rev.1/Add.5.

¹⁵⁶ A Al Zu'abi, 'Tolerance in Arab Societies' (2018) 53(6) *Journal of Asian and African Studies* 961; ONB, 'How Did the Christian Middle East become Predominantly Muslim?' (*Oxford News Blog*, 2018) available from <<https://bit.ly/3naEQ4p>> accessed 3 Sep 2021; N Sahgal & B J Grim, 'Egypt's Restrictions on Religion Coincide with Lack of Religious Tolerance' (*Pewresearch.org*, 2013) available from <<https://pewrsr.ch/3BJWcJs>> accessed 3 Sep 2021; E Monier, 'Christians and Other Religious Minorities in the Middle East' (Tcf.org, 2019) available from <<https://bit.ly/38L1hEP>> accessed 3 Sep 2021.

O humanity! Indeed, We created you from a male and a female, and made you into peoples and tribes so that you may 'get to' know one another. Surely the most noble of you in the sight of Allah is the most righteous among you. Allah is truly All-Knowing, All-Aware¹⁵⁷.

As mankind was created equally and eventually will face the same fate (death), and should live together and learn from each other. Islam has not prioritised Muslims over others, as they should all be equal in practicing their human rights. In his Farewell Sermon, the Prophet Mohamed (SAW) emphasised that:

All mankind is from Adam and Eve, an Arab has no superiority over a non-Arab nor a non-Arab has any superiority over an Arab; also a White has no superiority over a Black nor a Black has any superiority over a White except by piety and good action¹⁵⁸.

Non-Muslims are known in Islam as '*Ahl Althemah*' translated as the protected people. Its origin came from the Prophet's (SAW) time, in particular within the period of spreading Islam and the expansion of the Islamic State. This put them in a situation in which they will be facing threats and need protection. This protection will be provided by Allah (SWT) and his Prophet (SAW)¹⁵⁹. This protection is not provided for free, as non-Muslims should pay '*Jizya*' tax or an amount in return. There has been an obvious general change though the civilised transformation since the 19th century, including *Jizya*. Non-Muslims became equal with Muslims in most Islamic countries without the need to leave their religions or to change their belief and they have the same duties, rights and obligations practiced by citizens¹⁶⁰. This also indicates that they will be treated just like other citizens in terms of accountability, in the case of violating domestic laws. In a study that has been conducted to measure the harmony between Arabs and non-Muslims in the Arab World, Hoffman concluded that unlike states authorities, the

¹⁵⁷ The Holy Quran, 'Al-Hujurat' (*Quran.com* 49:13) available from <<https://bit.ly/3yXT3Ut>> accessed 10th Mar 2021.

¹⁵⁸ see The Last Sermon of Prophet Muhammad (Peace be Upon Him), (*Iium.edu.my*) available from <<https://www.iium.edu.my/deed/articles/thelastsermon.html>> accessed 1st Sep 2021.

¹⁵⁹ T Alkiek, 'Religious Minorities Under Muslim Rule' (*Yaqeeninstitute.org* 2017) available from <<https://bit.ly/3z4fR5n>> accessed 1st Sep 2021.

¹⁶⁰ A E Mayer, 'Law and Religion in the Muslim Middle East' (1987) 35(1) *The American Journal of Comparative Law* 147; Weitz, 'Religious Minorities in the Modern Middle East' (*Fpri.org*, 2015) available from <<https://bit.ly/3DXpDd3>> accessed 1 Sep 2021

majority of Arab Muslims (citizens) show tolerance and are willing to accept non-Muslims in their communities¹⁶¹. However, considering the limited scope of this chapter, the discourse will be halted to this end.

2.5. Reflections and Conclusion

Thus far, the chapter has provided a brief background of the Arab World. It was undertaken to demonstrate the nature of the region in general and, the people, culture and religion of the region in particular. Based on this chapter, Arabs can be defined as the people who speak Arabic and understand most of its dialects, and have the ambition to learn them in case if they do not. They heavily appreciate their civilisation and history, through which they have been influenced. This will include Islam and all the instructions and guidance provided by Allah (SWT). An Arab is also the person who is aware of the Arab identity when claiming that he/she is an Arab.

The chapter has also provided an insight of the Arab culture and the religion of Islam and found that the Arab culture does not diminish Islamic identity nor is the other way, as they are both hardly linked together in the Arab World. Arabic is the language of the Qur'an and the Arab culture coherently evolved through the campaigns of extending Islam. Assuming the separation of the Arab culture from Islam is just like as if separating the Arabic language from the Quran. The history shows that many Arab countries have been colonised and became fertile to acquiesce other cultures and this was overcome by remaining steadfast and adhered to Islam and the Quran. To Muslims, Islam is not merely a religion, but rather it is a way of life¹⁶².

Further, it has addressed minorities of the Arab region, and the extent to which they are protected from both legal and Islamic views. The discussion, however, laid the ground to realise that the Arab countries legislations protect minorities, yet violations are relatively still existing. Additionally, the Islamic principles, which are based on divine guidance and must be applied by Muslims, have evolved to be adequate in promoting minorities rights. Moreover, since these legislations are either based on or derived from the Islamic principles, as mentioned in most of the Arab countries' legislations.

¹⁶¹ M Hoffman, 'Attitudes Towards Religious Minorities in the Arab World' (*Religiosfreedominstitute.org* 2016) available from <<https://bit.ly/3yTmelu>> accessed 1st Sep 2021.

¹⁶² R Beekun & J Badawi, 'Balancing Ethical Responsibility Among Multiple Organization Stakeholders: The Islamic Perspective' (2005) 60 *Journal of Business Ethics* 143; J D Eller, '*Introducing Anthropology of Religion: Culture to the Ultimate*' (Routledge, New York, 2007) 213.

Accordingly, the Author of this research argues that the genuine appointment of the Islamic principles, while considering faith and submission to Allah (SWT), beside the relevant international standards and their subordinate monitoring mechanisms, will likely make a difference. Following this approach in enhancing the protection of human rights in the Arab World is the main objective of this research. In doing so, the Arab human right which has been created under the umbrella of the Arab regional organisation must be addressed.

Having discussed a general background on the Arab world, the next chapter outlines a historical review of the Arab regional organisation including Arab nationalism, which is considered as an important factor that works to unify Arabs; followed by the emergence of the Arab human rights system.

CHAPTER 3: THE EVOLUTION OF THE LAS AND THE GENESIS OF THE ARAB HUMAN RIGHTS SYSTEM

3.1. Introduction

The idea of a Pan-Arab organisation has been gradually evolving during the early 20th century, beginning with the struggle against colonialism and the embracement of nationalism, eventually resulting in the formation of the LAS just after World War II. Since then, the development wheel of all fields around the world has never stopped, including human rights. Likewise, Arabs and the LAS have passionately worked to enhance the human rights protection in the region. While doing so, however, they have faced a number of barriers that are believed to have impacted the human rights development therein¹⁶³. The main purpose of this chapter is to demonstrate the implications of Arabs struggling throughout history, especially within the 20th century and its effect on their contribution to contemporary human rights movement including their effort to enhance Arab human rights protection.

Accordingly, the chapter will provide an explanatory overview about the Arab struggle against colonialism, the circumstances upon which the idea of an Arab regional organisation was developed, the LAS and its organs, and eventually a general glance about the Arab human rights system. Most importantly, covering these areas will provide an understanding about some major points that will be discussed later in this research, such as the reason behind Arab's hesitation to adopt an international agreement.

3.2. A Historical Review

On 29 May 1941, during World War II and as recorded in the Hansard transcript of parliamentary debates in Britain the Foreign Secretary, Anthony Eden, declared:

Some days ago I said in the House of Commons that His Majesty's Governments had great sympathy with Syrian aspirations for independence. The Arab world has made great strides since the settlement reached at the end of the last War, and many Arab thinkers desire for the Arab peoples a greater degree of unity than they now

¹⁶³ For example, it is challenging for Arabs to unify their decisions regarding human rights matters, this can be seen in their adoption of the Arab Charter on Human Rights, which last more than half a century to be adopted; this will be explained later in this research.

enjoy. In reaching out towards this unity they hope for support. No such appeal from our friends should go unanswered. It seems to me both natural and right that the cultural, and economic ties, too, should be strengthened. His Majesty's Government for their part will give their full support to any scheme that commands general approval¹⁶⁴.

It is important to clarify the facts behind this support since the outcome of such a step might be regional rivalry. As clarified in the previous chapter, Arab countries share a number of factors that are likely function to enhance the possibility of creating a solid regional organisation such as culture, religion, language, norms, values and geographical proximity. Moreover, Arabs had long wished for unity, although the idea of creating a regional organisation at government level only emerged during World War II¹⁶⁵.

3.2.1 The Rise of Arab Nationalism

As far back as the 13th century, Arabs were involved in warfare. At that time, they were subject to the authority of the Abbasids, who were then conquered by the Tartars. Then came the Crusades, in which some Arab territories were occupied by the Christians, mostly from Europe. Despite overcoming this massive colonial tide, Arabs remained divided and weak. A new player then emerged: The Ottoman Empire. Arabs suffered under the Ottomans for nearly four centuries, from 1516 to 1917. During the Ottoman era, they were subjected to repression and unjust¹⁶⁶. In the late 18th century, the intention to dominate the Arab countries became a European priority, particularly after the noticeable weakening in the power of the Ottoman Empire¹⁶⁷. By the late 19th century, Europeans had colonised vast areas of Arab territory and divided it up as follows: Algeria, Tunisia and Morocco went to France; Libya was occupied by Italy; and

¹⁶⁴ M Khadduri, 'The Arab League as a Regional Arrangement'(1946) 40(4) *The American Journal of International Law* 761.

¹⁶⁵ A Abdul-Munneim, *'The League of Arab States 1945-1985'* (Center of Arab Unity Studies, Bairut, 1986) (in Arabic, translated by Author).

¹⁶⁶ M Shihab, *'The League of Arab States: The Charter and The Achievements'* (Arabic Studies and Research Centre, Cairo, 1978) (in Arabic, translated by Author); D Fromkin, *'A Peace to End All Peace: The Fall of the Ottoman Empire and the Creation of the Modern Middle East'* (Owl Books-Henry Holt, New York, 2001) 28; E Rofan, *'The Fall of the Ottomans: The Great War in the Middle East'* (Basic Books, New York, 2015); N Faulkner, *'Lawrence of Arabia's War: the Arabs, the British and the Remaking of the Middle East in WWI'* (Yale University Press, U.S, 2016) 78, 97, 169, 459 and 461; M Afifi, *'Arabs and Ottomans: Hetero-Visions'* (Dar Alshroq, Cairo, 2008) 6 (in Arabic, translated by Author); E Rogan, *'The Arabs: A History'* (Basic Books, U.S, 2009) 39.

¹⁶⁷ T Hasou, *'The Struggle for the Arab World: Egypt's Nasser and the Arab League'* (Kegan Paul plc, London, 1985); H Hassouna, *'The League of Arab States and Regional Disputes: a Study of Middle East Conflicts'* (Oceana Publications, New York, 1975).

Egypt, Aden, and some areas of the Arabian Gulf came under British control. Simultaneously, the rest of the Arab countries were governed by the Ottomans¹⁶⁸.

The Europeans were aware of the elements that made the Arab World a strategically important region. There were two main attractions: first, the possession of natural and economic resources, especially oil; and secondly the unique location including the Suez Canal which played a vital role on the route to India and the Far East, as indicated in the last chapter.

As a result of what Arabs had encountered during these events, the ideology of nationalism sprang up amongst them. What made Arab nationalism even more powerful was their sharing of several substrates of success in terms of the struggle against the colonists¹⁶⁹. In other words, the Arab world enjoys such unifying factors as cultural homogeneity, linguistic oneness, common spiritual values, history and civilisation. Geographically, people of the Arab world inhabit a region characterised by contiguity and is of immense international strategic importance¹⁷⁰.

3.2.2 Conflict of Interests in the British-Arab Relationship

At the beginning of the 20th century, Arabs had been resisting the Ottomans for nearly a decade before the onset of World War I¹⁷¹. Principally, they were inspired and motivated by the promise of the then British High Commissioner in Egypt, Sir Henry McMahon. In 1915, Sir Henry promised the Sharif of Mecca, Hussein bin Ali, who was leading the resistance against the Ottomans, that the Arab countries would be granted their independence and recognition if they joined the Allied Powers. The Allies were one of the warring parties; their most prominent members were Britain, France and Russia. The Ottoman Empire fought for the Central Powers, along with Germany, Austria, and

¹⁶⁸ M Shihab, 'The League of Arab States: The Charter and The Achievements' (Arabic Studies and Research Centre, Cairo, 1978) (in Arabic, translated by Author).

¹⁶⁹ A Gomaa, 'The Foundation of the League of Arab States: Wartime Diplomacy and Inter-Arab Politics 1941-1945' (Longman Group Ltd, London, 1977); S Haim, 'Arab Nationalism: An Anthology' (University of California Press, Los Angeles, 1974).

¹⁷⁰ M Ghanim, 'Lectures on the League of Arab States' (Arabic Studies and Research Center, Cairo, 1966) 29 (in Arabic, translated by Author).

¹⁷¹ J Al-Jaburi, 'Genesis of the Idea of the Arab League' (1983) 25 *Journal of Arab Affairs* 6, (in Arabic, translated by Author).

Bulgaria¹⁷². Although the Arabs sided with the Allies and weakened the Ottomans until they gained victory, the Allies later broke their promise¹⁷³.

Understandably, this unfulfilled promise led Sharif Hussein and others to lose trust in Britain and its allies¹⁷⁴. At the same time, the allies adopted the Balfour Declaration in 1917, which suggested Palestine as a home country for the Jews¹⁷⁵. This has been opposed by Arabs and subsequently led to lack of confidence in the Allies¹⁷⁶.

The Declaration was in accordance with the Sykes-Picot Agreement of 1915-1916, which addressed the distribution of the Arab World. To be more precise, this agreement called for the division of the Ottoman Empire, and the distribution of its component parts. At this point, Palestine was referred to as an international administration location under British control (Brown Area) and its fate would be considered after consultation. Despite the fact that the agreement had been abrogated by the allies, a number of instruments confirmed that the main intention behind the Sykes-Picot Agreement was approved¹⁷⁷.

An example of this is the Covenant of the League of Nations of 1919, in particular Article 22, which included justification for the continuation of the colonial powers' authority over countries under colonisation¹⁷⁸. Another step taken to reinforce the Allies' stance was the San Remo Agreement of 1920, which was outlined in section B the Mandate of Palestine based on the Balfour Declaration and the Covenant of the League of Nations¹⁷⁹.

¹⁷² G Lewis, *'Balfour and Weizmann: The Zionist, the Zealot and the Emergence of Israel'* (Continuum, London, 2009); B Morris, *'1948: A History of the First Arab-Israeli War'* (Yale University Press, US, 2008).

¹⁷³ JVL, 'Pre-State Israel: The Sykes-Picot Agreement 1916' (jewishvirtuallibrary.org 1916) available from <<https://bit.ly/3Gv8ybB>> accessed 25th Oct 2021.

¹⁷⁴ Y Porath, *'In Search of Arab Unity 1930-1945'* (Routledge, UK, 2013).

¹⁷⁵ G Lewis, *'Balfour and Weizmann: The Zionist, the Zealot and the Emergence of Israel'* (Continuum, London, 2009); BBC, 'The Balfour Declaration' (news.bbc.co.uk 2001) available from <<https://bbc.in/3CpbJPM>> accessed 25th Oct 2021.

¹⁷⁶ Since then, Arab countries have been opposed to this treacherous step taken by Britain, which opened the way to the occupation of Palestine; see J Beinin, J and L Hajjar, 'Palestine, Israel and the Arab-Israeli Conflict A Primer' (merip.org 2014) available from <<https://bit.ly/3vQGZEG>> accessed 25th Oct 2021.

¹⁷⁷ WWI.LIB, 'Sykes-Picot Agreement' (wwi.lib.byu.edu 2009) available from <<https://bit.ly/3bjafdV>> accessed 20th Oct 2021.

¹⁷⁸ League of Nations, Covenant of the League of Nations, 28 April 1919. (refworld.org 2019) available from <<https://bit.ly/3bl3sAg>> accessed 25th Oct 2021.

¹⁷⁹ J Teitelbaum, 'Israel as the Nation-State of the Jewish People: From the San Remo Conference (1920) to the Netanyahu-Abbas Talks' (jcpa.org, 2010) available from <<https://bit.ly/3vWrYRN>> accessed 18th Oct 2021; League of Nations, Covenant of the League of Nations, 28 April 1919. available from <<https://bit.ly/3bl3sAg>> accessed 25 Oct 2021.

There was a retrospective attempt at reconciliation between the Allies and Turkey; however, the Treaty of Sèvres of 1920 literally stipulated in Article 95 the establishment of a homeland for the Jews in Palestine. The harsh conditions imposed on Turkey resulted in the Turkish War of Independence against the Allies. The treaty was “rejected by the new Turkish nationalist regime... [and was] ...replaced by the Treaty of Lausanne in 1923”¹⁸⁰. On the one hand, the Treaty of Lausanne resulted in the establishment of the Republic of Turkey and peace was achieved. On the other hand, Palestine, which had been one of the Ottoman affiliates, came under British administration¹⁸¹.

The Arabs had resisted colonialism not only because of the Palestine-Israel agreement, but also because they wanted to obtain their independence. There had been a number of rebellions against colonialism which had led to the rapprochement of the Arabs, ending with restricted independence under a colonial mandate¹⁸². Examples of these uprisings were the 1919 Egyptian Revolution, 1921 Iraqi Revolution, 1925 Syrian Revolution, and rebellions in other Arab states. These increased in the following two decades. Concurrently, new nationalist groups were being formed, in particular during the 1930s with the Zionist settlers in Palestine. These incidents greatly strengthened Arab unity, strengthening the relationships and increasing the resistance. Consequently, the rejection of colonial domination and the goal of unity, became Arab priorities. Simultaneously, several meetings were held between Arabs to discuss their common problems¹⁸³.

3.2.3 Progress in the British-Arab Relationship

Contrary to expectations, Britain announced her support for an Arab federation in mid-1941, as mentioned earlier, despite the poor relations between the two parties. Furthermore, on 24 February 1943, the British Foreign Secretary, Anthony Eden, stated:

As they have already made plain, His Majesty’s Government would view with sympathy any movement among Arabs to promote their economic,

¹⁸⁰ Britannica, ‘Treaty of Sèvres: Allies-Turkey [1920]’ (*britannica.com*, 2014) available from <<https://bit.ly/3mov8ec>> accessed 23rd Oct 2021.

¹⁸¹ Sam.baskent, Treaty of Peace with Turkey: Signed at Lausanne, 1998. available from <<https://bit.ly/3blkb6y>> accessed 19th Oct 2021.

¹⁸² J Al-Jaburi, ‘Genesis of the Idea of the Arab League’ (1983) 25 *Journal of Arab Affairs* 6, (in Arabic, translated by Author).

¹⁸³ M Ghanim, ‘Lectures on the League of Arab States’ (Arabic Studies and Research Center, Cairo, 1966) 29 (in Arabic, translated by Author); T Hasou, ‘The Struggle for the Arab World: Egypt’s Nasser and the Arab League’ (Kegan Paul plc, London, 1985).

cultural or political unity. But clearly the initiative in any scheme would have to come from the Arabs themselves, and so far, as I am aware no such scheme, which would command general approval, has yet been worked out¹⁸⁴

These statements encouraged Arabs to think seriously of unity, acting like a green light for Arab cooperation. However, there are two trends in the literature concerning this matter. On the one hand, British support was considered one reason for the creation of the Arab League¹⁸⁵. On the other hand, Arab nationalism had itself originated with sufficient harmony to achieve unity and independence¹⁸⁶.

It is important to bear in mind that there were several factors pushing Britain to support unity among Arab countries in the war years. One reason behind Britain support for unity was the threat from the Axis powers and their interest in the Arab region. Germany and Italy had shown sympathy towards the Arabs' struggle against colonialism, encouraging them to unite. Concurrently, the early conspicuous occupation by the Axis powers of most of Europe, including France, caused concern to Britain¹⁸⁷.

A further reason was the strategic location of the Arab region. World War II revealed how strategic the Arab region was, as it linked the West with the East in terms of transportation and shipping services. Moreover, there were huge reserves of oil in most of the Arab region. Accordingly, interest in the area became one of the warring parties' priorities, especially with the emergence in the Cold War of powerful new poles, namely

¹⁸⁴ Hansard, 'Arab States, Middle East' (*hansard.millbanksystems.com*, 1943) available from <<https://bit.ly/2ZDy0dU>> accessed 22nd Oct 2021.

¹⁸⁵ H Hassouna, 'The League of Arab States and Regional Disputes: A Study of Middle East Conflicts' (Oceana Publications, New York, 1975); M Shihab, 'League of Arab States', *Encyclopaedia of Public International Law*, (Vol 1, The Max Planck Institute for Comparative Public and International Law, Amsterdam, 1992) 202; N Izzel-dean, 'The Arab World: Past, Present and Future' (Heanry Regnery Company, Chicago, 1953).

¹⁸⁶ L Omran, 'The Arab League: Origination, Improvement and Future Role' (1995) 85 *Journal of Arab Affairs* 188; H Hassouna, 'The League of Arab States and Regional Disputes: a Study of Middle East Conflicts' (Oceana Publications, New York, 1975); M Ghanim, 'Lectures on the League of Arab States' (Arabic Studies and Research Center, Cairo, 1966) 29 (in Arabic, translated by Author); A Farid, 'Factors behind the Foundation of the League of Arab States' in *The Golden Jubilee of the League of Arab States: Looking to the Future* (League of Arab States, Cairo, 1995); J Al-Jaburi, 'Genesis of the Idea of the Arab League' (1983) 25 *Journal of Arab Affairs* 6, (in Arabic, translated by Author).

¹⁸⁷ M Khadduri, 'The Arab League as a Regional Arrangement' (1946) 40(4) *The American Journal of International Law* 756; M Ali, 'The Notion of Regionalism in the Arab League' (1979) 35 *The Egyptian Journal of International Law* 167 (in Arabic, translated by Author).

the United States of America and Russia¹⁸⁸. Another reason which cannot be ignored is the fact that Britain considered France to be a competitor, given their rivalry in the domination of the Arab area¹⁸⁹.

It can therefore be assumed that the steps taken by Britain towards Arab unity were motivated by self-interest. Since the peace settlement after World War I, British policy was to control Arab countries individually. Arab nationalism was an obstacle to the implementation of this policy¹⁹⁰. Britain appeared to encourage some of the Arab leaders to gain a comprehensive unity and had recommended unification projects. Nonetheless, these recommendations were rejected not only by Britain, but also by other Arab states¹⁹¹. In the long term, Britain was “aware that it was imperative to keep peace and tranquillity in the Middle East and recognising the growing strength of the Arab movements, thought it best to swim with the tide rather than try to stem it”¹⁹².

3.3. Arabs’ Path to Salvation

Despite the fact that the Arab nations believed in nationalism as a means of achieving unity and independence, they had chosen the weaker option in this regard, namely independence over unity. The following paragraphs illustrate the influence of the colonial powers on Arabs at that time.

The Fertile Crescent Project suggested by the Iraqi Prime Minister Nuri Al-Said; it suggested gathering to gather Syria, Lebanon, Transjordan and Palestine to create a Greater Syrian State. This attempt was to be followed by the establishment of a league consisting of Iraq and the new federal state; other Arab countries would be allowed to join whenever they wished. Another plan was proposed by Amir Abdulla of Transjordan

¹⁸⁸ Y Al-Gamal, ‘The Arab League: an Overview’ (1981) 10 *Journal of Arab Affairs* 12 (in Arabic, translated by Author); M Al-Ghunaimi, ‘The Arab League: Legal and Political Studies’ (Munsha’at al Ma’arif, Alexandria, 1974) (in Arabic, translated by Author); M Ghanim, ‘Lectures on the League of Arab States’ (Arabic Studies and Research Center, Cairo, 1966) 29 (in Arabic, translated by Author).

¹⁸⁹ M Khadduri, ‘The Arab League as a Regional Arrangement’ (1946) 40(4) *The American Journal of International Law* 756; T Hasou, ‘The Struggle for the Arab World: Egypt’s Nasser and the Arab League’ (Kegan Paul plc, London, 1985).

¹⁹⁰ J Al-Jaburi, ‘Genesis of the Idea of the Arab League’ (1983) 25 *Journal of Arab Affairs* 6 (in Arabic, translated by Author).

¹⁹¹ H Hassouna, ‘The League of Arab States and Regional Disputes: A Study of Middle East Conflicts’ (Oceana Publications, New York, 1975); Y Al-Gamal, ‘The Arab League: An Overview’ (1981) 10 *Journal of Arab Affairs* 12 (in Arabic, translated by Author); M Khadduri, ‘The Arab League as a Regional Arrangement’ (1946) 40(4) *The American Journal of International Law* 756.

¹⁹² N Izzel-dean, ‘The Arab World: Past, Present and Future’ (Heanry Regnery Company, Chicago, 1953) 321.

in support of the establishment of the Greater Syrian State; this was rejected in its turn¹⁹³. Ostensibly Britain supported these ideas while in fact she knew that it would cause tensions with some other Arab states. Thus, other countries like Saudi Arabia, Egypt and Lebanon, who preferred achieving their own independence to federation, were not interested in such steps. Furthermore, another barrier to Arab unity was the support by Britain and France for Syrian and Lebanese independence. Consequently, failure to implement either of these two projects would guarantee the progress of the British policy of dealing with each Arab state individually. As a result, the blame for not approving these projects would fall on the Arabs themselves¹⁹⁴.

In 1943, the Egyptian Prime Minister Mustafa Al-Nahaas Pasha stated:

When Mr. Eden made his statement, I thought about it and concluded that the best way to achieve it is to let the Arab governments themselves take care of it. I thought that the Egyptian government should take an official initiative by consulting other Arab governments, one by one, then Egypt should coordinate these different views as much as possible. Egypt will then invite Arab representatives to discuss the issue collectively. If an agreement is reached, Egypt will then convene a meeting in Egypt chaired by the Egyptian prime minister¹⁹⁵.

Egypt had adopted the responsibility for stabilisation on one level by holding a series of Arab Unity Consultations. The meetings made acceptable progress by using bilateral consultation; in other words, there were preliminary meetings between the committee and each Arab state individually¹⁹⁶. Three views were addressed at these meetings: “full union, with a central executive authority..., union on a federal basis... [and] a loose association of independent Arab states”¹⁹⁷.

¹⁹³ M Obedat, ‘Syrian Regions Stance of the Grater Syria Project (1920-1951)’ (2009) 15(1) *Al manarah* 9 (in Arabic, translated by Author); J Al-Jaburi, ‘Genesis of the Idea of the Arab League’ (1983) 25 *Journal of Arab Affairs* 6 (in Arabic, translated by Author).

¹⁹⁴ I Pogany, ‘*The Arab League and Peacekeeping in the Lebanon*’ (Avebury, Aldershot, 1987).

¹⁹⁵ A Dawisha, ‘*Arab Nationalism in the Twentieth Century: from Triumph to Despair*’ (Princeton University Press, 2009) 122.

¹⁹⁶ Y Al-Gamal, ‘The Arab League: An Overview’ (1981) 10 *Journal of Arab Affairs* 12 (in Arabic, translated by Author); M Ali, ‘The Notion of Regionalism in the Arab League’ (1979) 35 *The Egyptian Journal of International Law* 167 (in Arabic, translated by Author).

¹⁹⁷ M Khadduri, ‘The Arab League as a Regional Arrangement’ (1946) 40(4) *The American Journal of International Law* 763-764.

3.3.1 Alexandria Protocol

In 1944, Egypt called a conference in Alexandria to discuss the results of the consultative meetings. Seven countries were involved in this process; Syria, Egypt, Jordan, Saudi Arabia, Yemen, Iraq, Lebanon, along with a representative from Palestine. The conference produced an instrument which contained the basic issues that needed to be settled in the Arab World in order to achieve unity¹⁹⁸.

It is worth noting that this instrument was later called the Alexandria Protocol; it consisted of five main headings. Primarily, it mentioned the creation of a LAS and emphasised the formation of a committee to document the founding principles of the LAS. The second section of the protocol covered economic, cultural and social cooperation between Arab member states. Thirdly, the protocol urged member states to strengthen their bonds for a better future. Also indicated was the committee's support of Lebanese independence. The last part of the protocol referred to the matter of Palestine and showed the committee's support for an Arab Palestinian state. A committee of the seven countries (Syria, Egypt, Iraq, Jordan, Saudi Arabia, Yemen and Lebanon) was established as the Subsidiary Committee of the Preparatory Conference. This committee specialised in moving from consultation to the drafting stage of the Arab League Charter¹⁹⁹.

3.3.2 The Pact of the League of Arab States

On 22 March 1945, a Prime Ministerial-level meeting was held in Cairo. It represented the member states of the Subsidiary Committee and they approved an instrument that consisted of a preamble, twenty Articles and a number of annexes. Signing the instrument signalled the formal establishment of the LAS. The act was named the Pact of the LAS²⁰⁰, also referred to as the Charter of the Arab League (LAS Charter) which is considered as an official international agreement between Arab countries. It covered a number of subjects, including membership of the LAS, organs, location of headquarters,

¹⁹⁸ M Al-Ghunaimi, *The Arab League: Legal and Political Studies* (Munsha'at al Ma'arif, Alexandria, 1974) (in Arabic, translated by Author); M Ghanim, *Lectures on the League of Arab States* (Arabic Studies and Research Center, Cairo, 1966) 29 (in Arabic, translated by Author); H Hassouna, *The League of Arab States and Regional Disputes: A Study of Middle East Conflicts* (Oceana Publications, New York, 1975).

¹⁹⁹ M Seton-Williams, *Britain and the Arab States: a Survey of Anglo-Arab Relations 1920-1948* (Luzac., 1948); AIC, *Basic Documents of the League of Arab States* (Arab Information Center, New York, 1955).

²⁰⁰ League of Arab States, Charter of Arab League, 22 March 1945 available at <<https://bit.ly/3nQNkN4>> accessed 30 Oct 2021 (Arabic); Pact of the League of Arab States, signed at 22 March 1945, UN Treaty Series Vol. 70 No. 241 Pp. 237-263.

cooperation between members, the LAS council and sessions²⁰¹. Fifteen other Arab countries later joined the League after they had obtained their own independence and fulfilled the main condition in accordance with the first Article of the LAS Charter, indicating that the “League of Arab States is composed of the independent Arab states which have signed this Charter”²⁰². The chronological order of these countries is: Libya in 1953, Sudan in 1956, Tunisia in 1958, Morocco in 1958, Kuwait in 1961, Algeria in 1962, Emirates in 1971, Bahrain in 1971, Oman in 1971, Qatar in 1971, Mauritania in 1973, Somalia in 1974, Palestine in 1976, Djibouti in 1977 and finally Comoros in 1993²⁰³.

Although the main purpose of establishing the LAS which was the Arab unity, was not accomplished, the LAS Charter had pictured the Arabs as a nation and put them on an equal footing with other regional organisations. Others believed that this is to an extent, a failure. They stated that Arabs were optimistic about this opportunity, nonetheless that they did not exploit it correctly. They adopted the weaker paradigm which was characterised by cooperation between member states, rather than unity which embodies the long journey of their struggle and resistance against the colonial powers²⁰⁴. Furthermore, Article 7 of the LAS Charter states that any decision taken unanimously by the LAS Council would be obligatory for all member states. In the case of majority consent, the decision will merely be binding on those who approved it. In short, this article reinforced the principle of sovereignty and independence for member states even within the process of making the decision or voting, instead of adopting a consensual way of decision making as one of the features of unity²⁰⁵.

Ghanim further proclaimed that the aforementioned is a positive feature for a regional organisation. As the LAS Charter reflects the relation between the Arab countries at that

²⁰¹ M Shihab, *The League of Arab States: The Charter and The Achievements* (Arabic Studies and Research Centre, Cairo, 1978) (in Arabic, translated by Author).

²⁰² Pact of the League of Arab States, signed at 22 March 1945, UN Treaty Series Vol. 70 No. 241 Pp. 237-263, Article 1.

²⁰³ LAS, *League of Arab States: Basic Information: Golden Jubilee 1945-1995* (League of Arab States, Egypt, 1995); M Shihab, 'League of Arab States', *Encyclopaedia of Public International Law*, (Vol 1, The Max Planck Institute for Comparative Public and International Law, Amsterdam, 1992) 202-207.

²⁰⁴ M Shihab, 'League of Arab States', *Encyclopaedia of Public International Law*, (Vol 1, The Max Planck Institute for Comparative Public and International Law, Amsterdam, 1992) 202; A Farid, 'Factors behind the Foundation of the League of Arab States' in *The Golden Jubilee of the League of Arab States: Looking to the Future* (League of Arab States, Cairo, 1995).

²⁰⁵ M Ali, 'The Notion of Regionalism in the Arab League' (1979) 35 *The Egyptian Journal of International Law* 167 (in Arabic, translated by Author); M Al-Ghunaimi, 'The Arab League: Legal and Political Studies' (Munsha'at al Ma'arif, Alexandria, 1974) (in Arabic, translated by Author).

time and the extent to which they were adhered to the acquisition of their sovereignty and independence. Hence, Arabs passed the LAS Charter in order to formulate a regional organisation based on an optional cooperation between them rather than to be ruled by one central authority²⁰⁶. Others concentrated on the origin of the LAS claiming that member states faced three main challenges during the period of its establishment; the influence of the international environment on Arabs, the issue of Arab nationalism, and member states' concern to obtain their independence²⁰⁷. Additionally, this indicates that the Arab countries at that stage have placed greater value by prioritising their sovereignty and independence over their unity²⁰⁸. This is not surprising given the struggle and hardship they had been through which would probably led to their intent on putting an end to these miserable situations i.e. under colonial control, with struggles and resistance.

3.4. The LAS in Action

There were several reasons behind the establishment of the LAS, such as increasing the security level to protect member states, supporting the Palestine cause, achieving Arab independence, strengthening the foreign policies of member states, boosting cooperation between member states and cultivating means of transportation and communication between member states. In 1945, the first session was held at the Arab League headquarters in Cairo. It addressed several crucial issues intended to achieve the League's objectives. Three of these objectives were covered in Articles 3, 4 and 12 of the 1945 LAS Charter, as they considered establishment of its main organs, namely the Council, the Permanent Secretariat and Permanent Commissions. The rest of the organs were approved according to the Collective Security Treaty in 1950 namely: The Joint Defence Council, the Consultative Military Organisation, the Permanent Military Commission, the Arab Unified Command and the Economic Council²⁰⁹.

²⁰⁶ M Ghanim, 'Lectures on the League of Arab States' (Arabic Studies and Research Center, Cairo, 1966) 29 (in Arabic, translated by Author).

²⁰⁷ A Abul-saud, 'The League of Arab States and the Capability of Development' (1997) 89 *Journal of Arab Affairs* 7 (in Arabic, translated by Author); Y Al-Gamal, 'The Arab League: an Overview' (1981) 10 *Journal of Arab Affairs* 12 (in Arabic, translated by Author).

²⁰⁸ F Dakhllallah, 'The League of Arab States and Regional Security: Towards an Arab Security Community?' (2012) 39(3) *British Journal of Middle Eastern Studies* 392.

²⁰⁹ M Shihab, 'League of Arab States', *Encyclopaedia of Public International Law*, (Vol 1, The Max Planck Institute for Comparative Public and International Law, Amsterdam, 1992); LAS, 'League of Arab States: Basic Information: Golden Jubilee 1945-1995' (League of Arab States, Egypt, 1995); C Toffolo, 'Global Organizations: The Arab League' (Infobase Publishing, U.S, 2008).

3.4.1 Organs Created under the LAS Charter

The Council is the main branch of the LAS and is afforded the highest authority by Article 3 of the LAS Charter. It is tasked “to achieve the realisation of the objectives of the League and to supervise the execution of agreements which member-states have concluded... [In addition, it is 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”²¹⁰. It also requires representatives of member states to run two regular sessions annually, one in March and one in September²¹¹. Other tasks, specialisation and responsibilities of the Council were outlined in the LAS Charter²¹².

By way of illustration, Article 12 of the LAS Charter allowed the possibility of holding an additional session in times of necessity upon a request from two-member states. Moreover, each member state has one vote. The LAS Charter defined the departments need to maintain the League, execute its requirements, and implement the approved treaties. Furthermore, the Council must strengthen cooperation between the Arab countries and international bodies in matters related to international peace and security²¹³.

The Council should organise economic and social relations among states according to Article 3 of the LAS Charter. Moreover, it is responsible for settling potential disputes between member states by means of mediation or arbitration with regard to Article 5 of the LAS Charter. It was also entitled to supervise the procedures for designating Secretaries General, who head the league for a defined period. According to Article 12 of the LAS Charter, Secretaries General can be elected for five years by the consent of two-thirds of the member states²¹⁴. In general, however, the LAS Council is instrumental

²¹⁰ Pact of the League of Arab States, signed on 22 March 1945, UN Treaty Series Vol. 70 No. 241, 237, Article 3.

²¹¹ Pact of the League of Arab States, signed at 22 March 1945, UN Treaty Series Vol. 70 No. 241, 237, Article 11.

²¹² Pact of the League of Arab States, signed at 22 March 1945, UN Treaty Series Vol. 70 No. 241, 237, Articles 5, 6, 12, 13, 16, 17 and 18.

²¹³ LAS, *‘League of Arab States: Basic Information: Golden Jubilee 1945-1995’* (League of Arab States, Egypt, 1995); Pact of the League of Arab States, signed at 22 March 1945, UN Treaty Series Vol. 70 No. 241, 237, Article 12.

²¹⁴ M Ghanim, *‘Lectures on the League of Arab States’* (Arabic Studies and Research Center, Cairo, 1966) 29 (in Arabic, translated by Author); LAS, *‘League of Arab States: Basic Information: Golden Jubilee 1945-1995’* (League of Arab States, Egypt, 1995); I Pogany, *‘The Arab League and Peacekeeping in the Lebanon’* (Avebury, Aldershot, 1987); B Ghali, *‘The Arab League (1946-1970)’* (1969) 25 *Revue Egyptienne* 67; Pact

in organising Arab affairs; it acts as the main driver of the region's politics, by which decisions and resolutions concerning member states matters are being taken, including those related to human rights.

3.4.1.1 The LAS Secretariat General

The LAS Charter directed to establish other organs, including a Secretariat General, run by a Secretary General with assistant secretaries and a sufficient number of employees. It added that member states should select the Secretary General. For the other organs, employees are to be chosen by both the Secretary General and the member states. The Secretariat is also in charge of the technical and administrative body in the League and assists other organs for the purpose of meeting their goals²¹⁵.

Moreover, the Secretary General has to redeem any financial obligations related to the League without exceeding the allocated budget. In addition, he has to apply Council resolutions, attend Council meetings and ensure the application of the assigned work for the Secretariat General as required²¹⁶.

The Secretariat General of the Arab League consists of several specialist departments: a Political Department, Legal Department, Secretarial Administration, Secretariat of Military Affairs, General Directorate of Social and Cultural Affairs, General Directorate of the Palestinian Affairs, General Directorate, General Directorate of Information Affairs, General Directorate of Organisational and Administrative Affairs and finally the main Office of Boycotting Israel. Moreover, the Secretariat General comprises special commissions²¹⁷.

This wide capacity is not surprising, since the LAS Secretariat General is involved in organising all of the LAS Council affairs. In terms of Arabs human rights, it circulates the proposed projects, reports, case etc. from relevant organs to the LAS Council for final decision.

of the League of Arab States, signed at 22 March 1945, UN Treaty Series Vol. 70 No. 241, 237, Articles 5, 12.

²¹⁵ LAS, *'League of Arab States: Basic Information: Golden Jubilee 1945-1995'* (League of Arab States, Egypt, 1995)

²¹⁶ R Macdonald, *'The League of Arab States: A Study in the Dynamics of Regional Organization'* (Princeton University Press, New Jersey, 1965).

²¹⁷ M Ghanim, *'Lectures on the League of Arab States'* (Arabic Studies and Research Center, Cairo, 1966) 29 (in Arabic, translated by Author); M Al-Ghunaimi, *'The Arab League: Legal and Political Studies'* (Munsha'at al Ma'arif, Alexandria, 1974) (in Arabic, translated by Author).

3.4.1.2 The LAS Permanent Commissions

The permanent commissions are also known as special or technical commissions²¹⁸; they address various fields of necessity for the LAS member states. Article 2 of the LAS Charter states that its members must cooperate in various fields to strengthen their relations, including:

- a. Economic and financial affairs, including commercial relations, customs, currency and questions of agriculture and industry;
- b. Communications which includes railways, 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 affairs²¹⁹

Accordingly the LAS established a number of permanent commissions pursuant to Article 4 of the LAS Charter in order to meet “each of the questions listed in Article II...[, and they]... shall be charged with the task of laying down the principles and extent of co-operation”²²⁰. These are the Political Commission, the Financial Affairs Commission, the Commission of Social and Cultural Affairs, the Transportation Commission, the Legal Commission, the Information Commission, the Oil Expert Commission, the Meteorology Commission, the Health Commission, the Commission of Financial and Administrative Affairs and finally the Human Rights Commission.

One or more officials may represent member states on each committee. Annex Two of the LAS Charter allows non-LAS members to be part of these commissions. Additionally, they are responsible for providing the necessary technical preparations to achieve cooperation between member states and to strengthen their relations. Moreover, the

²¹⁸ I Pogany, ‘The Arab League and Peacekeeping in the Lebanon’ (Avebury, Aldershot, 1987).

²¹⁹ Pact of the League of Arab States, signed at 22 March 1945, UN Treaty Series Vol. 70 No. 241, 237, Article 2.

²²⁰ Pact of the League of Arab States, signed at 22 March 1945, UN Treaty Series Vol. 70 No. 241, 237, Article 4.

agreed topics within the commissions are to be displayed to the LAS Council as a draft agreement for the purpose of revision by member states²²¹.

It is worth mentioning here that these commissions have made visible efforts in improving the rules for cooperation between Arab countries in many fields, such as the Postal Union Convention, the Joint Defence and Economic Cooperation Agreement, the Extradition Agreement, the Sentences Execution Agreement, and others²²². This means that all of these fields are subjected to the jurisdictions of the mentioned permanent commissions. More specifically, Arab human rights are supposed to be protected and promoted by the Arab Permanent Commission of Human Rights, since it was the only relevant mechanism back then.

3.4.2 Organs Created under the Treaty

For the purpose of complementing the objectives of the LAS Charter, member states concluded in 1950 a Treaty on Joint Defence and Economic Cooperation²²³. This intended to meet a number of the LAS Charter's goals such as the common defence of member states and, maintenance of peace and security in the region according to the principles of the LAS, and the 1945 United Nations Charter. In order to fulfil these goals the treaty referred to the creation of the Joint Defence Council, the Permanent Military Commission, and the Economic and Social Council²²⁴.

3.4.2.1 Joint Defence Council

Article 6 of the Joint Defence and Economic Cooperation treaty illustrates the need to form a council "to deal with all matters concerning the implementation of the provisions of Articles 2,3,4 and 5 of this treaty". Article 2 was designed to ensure that any member states "individually and collectively...undertake to go without delay to the aid of the State or States against which...an act of aggression is made, and immediately to take...all steps available, including the use of armed force, to repel the aggression and restore security and peace". Article 3 indicates that member states shall "hold consultations

²²¹ LAS, *'League of Arab States: Basic Information: Golden Jubilee 1945-1995'* (League of Arab States, Egypt, 1995).

²²² M Ghanim, *'Lectures on the League of Arab States'* (Arabic Studies and Research Center, Cairo, 1966) 29 (in Arabic, translated by Author); M Al-Ghunaimi, *'The Arab League: Legal and Political Studies'* (Munsha'at al Ma'arif, Alexandria, 1974) (in Arabic, translated by Author).

²²³ Joint Defence and Economic Co-operation Treaty Between the States of the Arab League, signed at 13 April 1950, reprinted from Egyptian Society of International Law, Brochure No. 13 April 1952, p18-21; Official Documents (April 1955) 49(2) *The American Journal of International Law* 51-54.

²²⁴ I Pogany, *'The Arab League and Peacekeeping in the Lebanon'* (Avebury, Aldershot, 1987).

whenever there are reasonable grounds for the belief that the territorial integrity, independence, or security of any one of the parties is threatened". Article 4 maintains that member states "desiring to implement fully the above obligations..., shall cooperate in consolidating and coordinating their armed forces, and shall participate according to their resources and needs in preparing individual and collective means of defence to repulse the said armed aggression". Article 4 of the Treaty notes that a "Permanent Military Commission composed of representatives of the General Staffs of the armies of the Contracting States shall be formed to draw up plans of joint defence and their implementation".

In short, the Joint Defence Council will be responsible for all issues related to the defence affairs of member states. The Joint Defence Council falls under the supervision of the LAS Council and its adopted resolutions must be approved by two-thirds of that Council with its resolutions are binding on member states. In 1951, the LAS Council approved a supplementary protocol to the Treaty, which includes the creation of a military consultation body consisting of the Joint Chiefs of Staff as representatives of each member state. As per the protocol, this body is named the Military Advisory Organisation and is in charge of supervising the Permanent Military Commission.

3.4.2.2 The Permanent Military Commission

According to Article 5 of the Arab Collective Defence Treaty, a "Permanent Military Commission composed of representatives of the General Staffs of the armies of the Contracting States shall be formed to draw up plans of joint defence and their implementation". The committee should report matters within its field of competence to the Defence Council. Moreover, it specialises in providing military services for member states such as collective defence plans, consultation with regards to military affairs, organising training schemes and holding joint exercises between the contracting states' forces.

3.4.2.3 The Economic and Social Council

Article 7 of the Treaty emphasises the fact that member states must "undertake to cooperate in the development of their economies and the exploitation of their natural resources; to facilitate the exchange of their respective agricultural and industrial products; and generally, to organize and coordinate their economic activities and to conclude the necessary inter-Arab agreements". Consequently, Article 8 states that an

“Economic Council consisting of the Ministers in charge of economic affairs, or their representatives, if necessary, shall be formed by the Contracting States to submit recommendations for the realization of all such aims as are set forth in the previous article”. However, the term ‘Social’ in the title of this council was added in 1977 when the League Council reformed Article 8.

Importantly, this Council has many duties for instance, to fulfil economic and cultural purposes mentioned in both the LAS Charter and the Treaty; it is in charge of supervising all types of economic and cultural activities carried out by member states; enhancing cooperation between member states by adopting the appropriate strategies; preparing the economic and cultural file and submitting them to the League Council to this end²²⁵. All in all, the mentioned above organs have been adopted to serve Arabs needs. In other words, apart from organs that are tasked to run LAS procedural issues, all of these organs are function to somehow enhance the human rights protection and promotion in the Arab region.

3.5. International Legal Personality of the Arab League

Another important issue is the nature of the LAS. A jurisprudential controversy arose with regard to the legal personality of the LAS at the international level. As mentioned earlier, the LAS Charter states that the League’s decisions must be unanimous, otherwise, once made, these decisions are binding only on those who approve them. As the LAS Charter does not refer to the nature of the League, its legal personality cannot be confirmed, because the League does not have an absolute will²²⁶.

On the other hand, this situation changed after the advisory opinion of the International Court of Justice in 1949, when the United Nations inquired about seeking compensation for the people who had been injured while serving under the Organisation. The Court pointed out that the “Members of the United Nations created an entity possessing objective international personality and not merely personality recognised by them alone”²²⁷.

²²⁵ LAS, ‘Additional Protocol to the Arab League Joint Defense Treaty 1950’ (*lasportal.org*, 1977) available from <<https://bit.ly/3Cjcjvp>> accessed 25 Oct 2021.

²²⁶ Y Al-Gamal, ‘The Arab League: An Overview’ (1981) 10 *Journal of Arab Affairs* 12 (in Arabic, translated by Author); Y Al-Gamal, ‘The International Legal Personality of The League of Arab States’ (1983) 28 *Journal of Arab Affairs* 121.

²²⁷ ICJ, ‘Reparation for Injuries Suffered in the Service of The United Nation’ (*ICJ-CIJ.ORG*, 1949) 9, available from <<http://www.icj-cij.org/docket/files/4/1837.pdf>> accessed 25th May 2021.

The Court's opinion concerning the international legal personality of the United Nations led to the conclusion that other international organisations would be treated in the same way. Consequently, the LAS has an international legal personality, not only in relation to its own members, but also to other international persons²²⁸.

In order to meet its objectives, the LAS must have the legal capacity to conclude international treaties although the LAS Charter did not mention this explicitly. Rather, Article 9 allows member states to sign treaties either between themselves or with third parties for the purpose of achieving greater cooperation and strengthening bonds. After the 1949 International Court of Justice advisory opinion, the LAS engaged in several treaties with international bodies, such as the United Nations Educational, Scientific and Cultural Organization (UNESCO) in 1957, the International Labour Organization (ILO) in 1958, the Food and Agriculture Organisation of the United Nations (FAO) in 1960 and the World Health Organisation (WHO) in 1961²²⁹.

Another important fact that cannot be ignored with regards to legal personality is the LAS right of diplomatic representation. In 1950 the United Nations General Assembly sent an invitation to the LAS Secretariat General to attend its sessions. Since then, the LAS has strengthened its political existence by enhancing mutual relations and diplomatic representation not only with other organisations, but also with other countries²³⁰. Furthermore, Article 14 of the LAS Charter outlines the League's privileges and immunities, although it does not specify their types, scope and when they should be used²³¹. Therefore, in 1953 the LAS Council approved an agreement over this concern²³². Article 1 of the agreement affirms that the LAS has a legal personality in

²²⁸ Y Al-Gamal, 'The Arab League: an Overview' (1981) 10 *Journal of Arab Affairs* 12 (in Arabic, translated by Author); M Khadduri, 'The Arab League as a Regional Arrangement' (1946) 40(4) *The American Journal of International Law* 761.

²²⁹ M Abdul-Aal, 'Arabic Regional Organization: League of Arab States and its Specialized Organizations' (2016) *Arabic Studies and Research Center*.

²³⁰ UN, Permanent Invitation to the Secretary-General of the League of Arab States to Attend Sessions of the General Assembly' (*digitallibrary.un.org*, 1950) available from <<https://bit.ly/3BzqjmF>> accessed 29th May 2021.

²³¹ M Abdul-Aal, 'Arabic Regional Organization: League of Arab States and its Specialized Organizations' (2016) *Arabic Studies and Research Center*.

²³² Convention on the Privileges and Immunities of the League of Arab States signed 10 May 1953, modified 1961 (resolution 574/regular session 18/L 4); also available from the League of Arab States official website at <<https://bit.ly/2Y488Ym>>.

terms of the capacity of funds ownership, contracting and litigation. It provides benefits to the LAS employees such as customs exemption and judicial immunity.

3.6. The LAS and Human Rights

One of the major fields that helped in the development of the LAS is Human Rights, although it was not mentioned in the LAS Charter. Typically, international organisations often include human rights in their fundamental structure in order to guarantee the best for their member states. Most of these rights were derived from one basic document, the UDHR, which was approved in 1948.

However, this was not the case for the LAS Charter, which was signed and released before the emergence of the UDHR. The universal human rights movement launched just after the UDHR due to which LAS was encouraged to adopt their own human rights system. In 1968, the LAS established a Human Rights Permanent Commission (the Commission)²³³. It consists of a representative of each member state and it is regulated by the same procedural code applied to the other permanent commissions. In 2007 the LAS Council adopted a specific regulation for the Commission which was later modified in 2015. Subsequently the LAS established a Human Rights Department working under the Commission as a technical secretariat²³⁴.

Additionally, the LAS adopted the Charter in 1994. The Charter was comprised of 53 Articles addressing political, social, economic, civil and cultural rights. Article 45 defines the working mechanism of the Charter, namely the Committee, also known as the Charter Committee. This Committee is responsible for examining member states' reports which reflect the extent of their commitment in implementing the Charter's provisions. However, the Charter was amended in 2004 and came into full force in 2008²³⁵.

²³³ This will be addressed in more details in the second part (chapter 6) of this research.

²³⁴ M A Al-Midani, 'The Enforcement Mechanisms of the Arab Charter on Human Rights and the Need for an Arab Court of Human Rights' (*acihl.org*, 2008) available from < <https://bit.ly/3vTr4p5> > accessed 25th Oct 2021; LAS, 'Background on the Arab Charter on Human Rights and the Arab Human Rights Committee' (*lasportal.org*, 2008) available from <<https://bit.ly/3mmAQ01>> accessed 31 Sep 2021 (in Arabic, translated by Author).

²³⁵ More details about the Arab human rights system, including the Arab Charter on Human Rights, will be covered in chapter 5 of this research; see M Rishmawi, 'The League of Arab States Human Rights Standards and Mechanisms' (*cihrs.org*, 2015) available from <<https://goo.gl/gLk0Z0>> accessed 23rd Oct 2021.

After the Arab uprising in 2011, the Bahraini ruler recommended the establishment of an Arab Human Rights Court²³⁶. In 2014 the LAS Council approved the basic statute of the Court and indicated that seven-member states must sign in order to activate any potential project. The court will promote the wishes of member states in the implementation of its obligations with regard to human rights. The LAS Council passed member states consent on amending the LAS Charter to include some new institutions, including a Court.

3.7. Conclusion

This chapter has covered an overview on the creation of the LAS and the circumstances Arabs endured. It showed that the genesis of the LAS idea resulted in the Arabs movement towards liberation from colonialism and the prominence of Arab nationalism in the region pre, during and post-WW2. The main purpose of the Arab nationalist campaign was to achieve Arab independence and unity, yet this had been circumvented by supporting and urging Arab countries to create their own regional organisation, that is, an entity that represent the governments who have significant passion to be independent and sovereign rather than promote Arab nationalism and unity.

This can be considered as a reason to why Arab countries often show hesitation or/and negligence to international agreements through which member states are ought to implement their contractor obligations, as the nature of such agreements would probably bend Arab states to apply them and hence affect their sovereignty. In fact, the LAS was tailored to regimes that care more about their sovereignty overachieving Arab unity not only on states level, but also citizens. It can be therefore deduced that the achievement of Arab governments sovereignty has undermined the Arab citizens rights, in particularly their right to self-determination. This research is not objecting on Arab's decisions to form their loose confederation, rather it just attempting to elucidate that this might affect the future of the LAS.

However, the LAS organisational structure has been also clarified and indicated that most of these organs initiate in the protection and promotion of Arab human rights. To illustrate, the permanent commissions are entitled to promote civil, political, economic,

²³⁶ BICI, 'Report of the Bahrain Independent Commission of Inquiry' (*bici.org.bh*, 2011) available from <<http://www.bici.org.bh/BIClreportEN.pdf>> accessed 27th Oct 2021.

cultural and social rights. This has been enhanced by adopting the Treaty on Joint Defence and Economic Cooperation in 1950 which is mainly entitled to preserve peace and security in the region, and reinforce Arabs economic and social rights. Believing that human rights contribute to the development of nations, the LAS eventually created its own regional human rights system. Sadly, the violations of human rights in the Arab World still exist. The chapter that follows will discussed human rights violations in the Arab region, with a particular emphasis on the Arab Spring.

CHAPTER 4: HUMAN RIGHTS VIOLATIONS IN THE ARAB WORLD

4.1. Introduction

So far, this part of the research has provided an overview about Arabs and their culture, a history of their regional organisation, the LAS, and a brief background on the development of the human rights concept in the Arab World. This chapter now turns to illustrate some human rights violations that occurred in the Arab World and their implications.

As mentioned in the introduction of this research, human right rights violations led the Arab World to face a huge tide of uprisings and revolutions that began in late 2010 and was aimed at dropping all forms of authoritarians. However, “the process has been painful, convulsive and protracted with numerous internal conflicts, civil wars, internal displacements, rise of terrorism and extremism, military interventions, and involvement of regional and extra-regional players”²³⁷.

Investigating a number of cases occurred during the Arab Spring will attempt to discover whether the Arab human rights system is sufficient to protect human rights in the Arab World. Moreover, it will seek to strengthen the main research argument by determining whether the system needs reformation or not. Before proceeding, however, it is necessary to investigate the reasons behind the unexpected trend of the Arab Spring revolutions to better understand the failure to protect human rights in the region.

4.2. Theoretical Standpoints of the Arab Spring

Several theories presented in the literature may elucidate the Arab Spring scenario. First would be the Rational Choice Theory which refers to those decisions or actions taken by individuals while they were being inspired by their needs²³⁸. It can be clearly seen that the Arab Spring revolutions were seeking to improve people’s difficult lives and to ensure that everyone enjoyed their human rights. Arabs took their own path to fulfil these aims, choosing to change regimes by revolution. Lundskow claimed that “scholars applied the concept of rational choice primarily to political issues and then primarily to

²³⁷ P K Pradhan, *Arab Spring and Sectarian Faultlines in West Asia: Bahrain, Yemen and Syria* (Pentagon Press, New Delhi, 2017) ix.

²³⁸ J Scott, ‘Rational Choice Theory’ in G Browning et al., (eds.) *Understanding Contemporary Society: Theories of the Present* (Sage, UK, 2000) 126-138.

social movements with political objectives”²³⁹. The Arab Spring revolutionists succeeded in toppling the regimes that were treating their citizens violently and repressively, although they were trying to achieve something to their benefit. This research believes that the uprisings spread so quickly from one country to another not only because of Arabs’ ambitions to promote human rights in the region, but also the success of the mass demonstrations in overthrowing their regimes in neighbouring countries²⁴⁰.

This assumption can be considered as a combination of two social sciences theories, the Bandwagon Effect and the Domino Theory. The former refers to “an accelerating tendency of more and more individuals to join in the behaviour of some members of a group when they perceive the new behaviours will serve their interests”²⁴¹. In other words, in order to claim their abused rights, people in the Arab Spring changed their behaviours and abandoned their principles by imitating others who had succeeded in their revolutions. Presumably, some of them just wanted to copy others while actually being unaware of the consequences that might follow their actions.

The Domino Theory proposes that when an event or an action occurs in one place, after a while it moves on to occur in the next place, just like a row of dominoes in which each piece is pushed over by the fall of the previous one. The Arab Spring was one of the US foreign policy agendas aimed at seeing Arabs enjoying a new democratic outlook. The US invasion of Iraq in 2003 was the starting point of the intention to create a democratic Arab country, which spread throughout Arab countries²⁴², culminating in the Arab Spring of 2011. By this time, Arab countries were exposed to upheaval for the sake of democracy. The Arab Spring news media and especially social media, and geographical contiguity played a crucial role in the progress of the domino effect²⁴³.

Another significant and relevant influential assumption would be the Butterfly Effect, which is one of the main pillars of Chaos Theory. The term Butterfly Effect has been used

²³⁹ G Lundskow. ‘The Concept of Choice in the Rise of Christianity: A Critique of Rational-Choice Theory’ in W Goldstein (eds.) *Marx, Critical Theory, and Religion: A Critique of Rational Choice* (Brill, Boston, 2006) 225.

²⁴⁰ Y Alexanded, ‘*Terrorism in North, West, & Central Africa: From 9/11 to the Arab Spring*’ (Potomac Institute for Policy Studies, U.S, 2012) 8, 12 & 14.

²⁴¹ D Matsumoto, ‘*The Cambridge Dictionary of Psychology*’ (Cambridge University Press, 2009) 75.

²⁴² P Leeson & A Dean, ‘The Democratic Domino Theory: An Empirical Investigation’ (2009) 53(3) *American Journal of Political Science* 533.

²⁴³ S Fregonese, ‘Beyond the Domino: Transnational (in) Security and the 2011 Protests’ (*societyandspace.org* 2011) available from <<https://bit.ly/3nBQFzf>> accessed 17th Oct 2021.

to refer to situations in which a small event could develop and become a catastrophe²⁴⁴. It started in Tunisia against a background of corruption, unemployment, economic stagnation and shrinking press freedom, when a small dispute between one of the law enforcement officers and a pedlar sparked the fire. The pedlar, Mohamed Bu-Azizi committed suicide by setting himself on fire and thousands of protesters gathered in order to express their abhorrence of this act²⁴⁵. As a result, the situation in Tunisia became worse and neighbouring countries were inspired to follow suit, resulting in other revolutions.

It is therefore likely that Arabs were unknowingly influenced by such theories, that encouraged the spread of the uprisings, causing internal disturbance, loss of control and deterioration of security in the Arab countries. This led to increase the proportion of violating the Arab human rights system.

4.3. The Arab Spring

Since December 2010, the Arab World has witnessed a wave of protest movements which started in Tunisia and spread on to cover other Arab countries; four regimes fell (Tunisia, Egypt, Libya and Yemen), and others are still facing instability²⁴⁶. The reasons behind these sudden protests can be summarised as tyrannical treatment, lack of dignity and justice, political harassment, poor living conditions, widespread corruption, unemployment and economic stagnation. The protests aimed to reform the regime policies which were supposed to ensure political, civil, economic, social and cultural rights in most of the Arab countries²⁴⁷. In his speech concerning the situation of the Middle East and North Africa, the US President Barack Obama declared that the

²⁴⁴ E Lorenz, 'Predictability: Does the Flap of a Butterfly's Wings in Brazil Set off a Tornado in Texas?' (1972) available from <<https://bit.ly/3mnJzPv>> accessed 25th Oct 2021; H Peitgen et al, '*Chaos and Fractals: New Frontiers of Science*' (Springer, New York, 2004).

²⁴⁵ A A Nassar, 'Events of the Tunisian Revolution: The Three First Years' (*uu.diva-portal.org* 2016) available from <<https://bit.ly/3pLKGKQ>> accessed 26th Aug 2021; E Andrew-Gee, 'Making Sense of Tunisia' (2011) available from <<https://bit.ly/3vSEVMw>> accessed 28th Oct 2021.

²⁴⁶ K E Al-Ardawi, 'The Arab Spring: Unfinished Revolutions' (*fcds.com* 2013) available from <<http://fcds.com/polotics/155>> accessed 20th Oct 2021, (in Arabic, translated by Author).

²⁴⁷ A Salamah, 'The Era of Arab Revolutions: Causes and Consequences' (*ahewar.org* 2011) available from <<https://bit.ly/3blHehz>> accessed 25th Oct 2021, (in Arabic, translated by Author); K E Al-Ardawi, 'The Arab Spring: Unfinished Revolutions' (*fcds.com* 2013) available from <<http://fcds.com/polotics/155>> accessed 20th Oct 2021; R Kaplan, 'The New Arab World Order' (*foreignpolicy.com* 2011) Available from <<http://foreignpolicy.com/2011/01/28/the-new-arab-world-order-2/>> accessed 23rd Oct 2021.

countries of the Middle East had obtained their independence long ago, although the Arab people had not yet done so²⁴⁸.

The next section describes selected cases from the Arab Spring in order to illustrate some of the human rights violations in the Arab World, and to relate these violations to the Arab human rights instruments. The cases are classified in accordance with the level of severity of their human rights violations: Syria, Yemen, Libya, Egypt and Tunisia. Further, since the Arab human rights system is created by the Arab countries i.e., LAS member states and, since the reasons that led to the Arab Spring and the human rights violations are mostly caused by them, this chapter will be limited to these violations.

4.3.1 Revolution of Dignity

In late February 2011, Syrian territory witnessed spontaneous protests calling for freedom, dignity, an end to oppression, dictatorship and corruption. The upheavals were launched in marginalised Syrian regions and soon spread over to most of the country. On 26 February 2011, 15 students were arrested by the regime's security services for protesting and writing slogans against the regime on walls, such as "the people want to overthrow the regime". Several protests followed against tyranny, oppression, suppression of freedoms and corruption²⁴⁹.

The Syrian President Bashar al-Assad's forces, however, savagely repressed popular protests on 15 March 2011. Since then, Syria is no longer what it was, due to the significant shift in the status which resulted in ongoing armed conflict and significant human rights abuses. There were cases of bombing civilians, using chemical weapons, torture, arbitrary arrests and the disappearance of anti-regime activists, shelling medical areas, depriving the opposition from necessities including food and medical aid, displacement from homes and refugees fleeing abroad²⁵⁰. In 2016, the United Nations Special Envoy, Staffan de Mistura, estimated the deaths during the Syrian conflict at

²⁴⁸ OWH, 'Moment of Opportunity: American Diplomacy in the Middle East & North Africa' (*The Obama White House-youtupe.com* 2011) available from <<https://www.youtube.com/watch?v=93Aj1PPdFOQ>> accessed 25th Oct 2021.

²⁴⁹ Amnesty, 'Amnesty International Report 2012' (*amnesty.org* 2012) available from <http://files.amnesty.org/air12/air_2012_full_en.pdf> accessed 25th Oct Jun 2021; J Purkiss, 'The Beginnings of the Syrian Revolution' (*middleeastmonitor.com* 2016) available from <<https://bit.ly/2Zv54EU>> accessed 19th Oct 2021.

²⁵⁰ Amnesty, 'Amnesty International Report 2012' (*amnesty.org* 2012) available from <http://files.amnesty.org/air12/air_2012_full_en.pdf> accessed 25th Oct Jun 2021, 338.

400,000²⁵¹ and the Syrian Centre for Policy Research at closer to 500,000, mostly due to Assad's unexpected use of weapons of mass distraction including chemical weapons²⁵².

Other human rights violations systematically practised by Assad's regime including all forms of torture, ill-treatment, arbitrary detention, and forced disappearances, in addition to the Assad forces preventing the access of any humanitarian assistance such as food and medical aid²⁵³. To date, some 6.1 million people have been forcibly displaced from their homes, with 4.8 million fleeing abroad, according to the Human Rights Watch 2017 report²⁵⁴. It has been stated that the Syrian crisis is the "region's bloodiest armed conflict, which emerged in response to the brutal suppression of mass protests by the government of Bashar al-Assad"²⁵⁵. It evolved into a civil war in which a number of human rights violations have been classified as war crimes and crimes against humanity²⁵⁶.

4.3.2 The Youth Revolution

In Yemen, the uprising began sporadically on 3 February 2011 and culminated on 11 February 2011, the day of the fall of Hosni Mubarak's regime in Egypt. The revolution was influenced by the waves of mass protests that broke out following the Tunisian revolution that resulted in the overthrow of the Tunisian President, Zine El Abidine Ben Ali, and subsequently the success of the Egyptian revolution including the fall of Hosni Mubarak. Young Yemenis and opposition parties led the revolution to demand a change of regime from that of President Ali Abdullah Saleh who had ruled the country for 33

²⁵¹ S D Mistura, 'Note to Correspondents: Transcript of Press Stakeout by United Nations Special Envoy for Syria' (*un.org* 2016) available from <<https://bit.ly/3mo3ldH>> accessed 25 Oct 2021.

²⁵² SCPR, 'Force Dispersion: A demographic Report on Human Status in Syria' (*scpr-syria.org* 2016) available at <<https://bit.ly/3nD2Xr9>> accessed 21st Oct 2021.

²⁵³ HRW, 'World Report 2017' (*hrw.org* 2017) available from <<https://bit.ly/3nzYGVr>> accessed 25th Oct 2021; Amnesty, 'Syria: New Report finds Systemic and Widespread Torture and Ill-Treatment in Detention' (*amnesty.org* 2012) available from <<https://goo.gl/dZH1q5>> accessed 25th Oct 2021.

²⁵⁴ HRW, 'World Report 2017' (*hrw.org* 2017) available from <<https://bit.ly/3nzYGVr>> accessed 25th Oct 2021.

²⁵⁵ UN. 'Identical Letters Dated 13 December 2013 from the Secretary-General Addressed to the President of the General Assembly and the President of the Security Council' (*securitycouncilreport.org* 2013) available from <<https://goo.gl/qb3fnK>> accessed 24th Oct 2021.

²⁵⁶ OHCHR, 'Independent International Commission of Inquiry on the Syrian Arab Republic' (*ohchr.org* 2017) available from <<https://goo.gl/1U6RXE>> accessed 23rd Oct 2021; Amnesty, 'Amnesty International Report 2016/ 2017: Syria' (*amnesty.org* 2017) available from <<https://bit.ly/3bjHeyF>> accessed 21st Oct 2021.

years. The protestors aimed to carry out political, economic and social reform in the policies adopted by Saleh's regime²⁵⁷.

In spite of the fact that the demonstrations in Yemen were peaceful and reflected the intention of citizens to make the changes, they were faced with extreme violence and repression by the forces of the Yemenis President²⁵⁸. In their report of March 2012 to the United Nations Human Rights Committee concerning the situation in Yemen, Human Rights Watch confirmed that the demonstrators were attacked "by pro-government gangs and security forces including the Republican Guards and Central Security, units run by the president's son and nephew respectively, [who have] killed at least 270 demonstrators and bystanders during largely peaceful protests in 2011, including dozens of children"²⁵⁹.

Apart from the international community stance and the United Nations resolutions, the excessive use of force led to social disorder and hence pushed the protestors to prioritise another demand, namely the resignation of the President²⁶⁰. In February 2012, President Ali Abdullah Saleh did resign from office and announced his alliance with the Houthis²⁶¹.

The Yemeni President's vengeful reaction has paved the way for a new ongoing phase of conflict, civil war and human rights violations²⁶². Several Yemeni human rights abuses

²⁵⁷ BBC, 'Arab Uprising: Country by Country- Yemen' (*bbc.co.uk* 2013) available from <<http://www.bbc.co.uk/news/world-12482293>> accessed 24th Oct 2021; Amnesty, 'Yemen: Human Rights Agenda for Change' (*amnesty.org* 2012) available from <<https://bit.ly/3CtUPIU>> accessed 25th Oct 2021; Amnesty, 'Days of Bloodshed in Aden' (*amnesty.org* 2011) available from <<https://bit.ly/3pQb06D>> accessed 19th Oct 2021.

²⁵⁸ K Salih, 'The Roots and Causes of the 2011 Arab Uprisings' (2013) 35(2) *Arab Studies Quarterly* 184; CIHRS, 'Fractured Walls... New Horizons Human Rights in the Arab Region Annual Report 2011' (*cihrs.org* 2011) available from <<http://www.cihrs.org/wp-content/uploads/2012/06/the-report-e.pdf>> accessed 28th Oct 2021; HRW, 'Days of Bloodshed in Aden' (*hrw.org* 2011) available from <<https://bit.ly/3pQb06D>> accessed 19th Oct 2021.

²⁵⁹ HRW, 'Report on Human Rights in Yemen: Submitted by Human Rights Watch to the UN Human Rights Committee on the Occasion of its Review of Yemen in March 2012' (*hrw.org* 2012, 1) available from <<https://bit.ly/3bmg5Lq>> accessed 19th Oct 2021.

²⁶⁰ The failure of Saleh's government in preserving peace and maintaining security led Yemenis to call for his demission; APOME, 'The Arab Spring Its Impact on the Region and on the Middle East Conference' (*library.fes.de* 2012) available from <<http://library.fes.de/pdf-files/iez/09609.pdf>> accessed 20th Oct 2021; M S Aldeen, 'Yemen's Houthis and Former President Saleh: An Alliance of Animosity' (2016) *Policy Alternative- Arab Reform Initiative* 1.

²⁶¹ I Fraihat, 'Unfinished Revolutions: Yemen, Libya, and Tunisia after the Arab Spring' (2016) 71(2) *The Middle East Journal* 323.

²⁶² M S Aldeen, 'Yemen's Houthis and Former President Saleh: An Alliance of Animosity' (2016) *Policy Alternative- Arab Reform Initiative* 1; M Young, 'What does Ali Abdullah Saleh's death mean for Yemen?'

were reported, such as extrajudicial killings, torture and ill treatment, use of excessive force, arbitrary arrests and abductions, involuntary disappearance, suppression of freedoms, banning medical assistance to the protesters, lack of fair trial, corruption and unemployment²⁶³. Additionally, “the authorities used various types of collective punishment against the populace, including cutting off communications, random shelling that hit populated areas and hospitals, and resorting to economic restrictions to debilitate citizens’ living conditions, thereby exacerbating the problem of internal displacement”²⁶⁴.

4.3.3 The Libyan Revolution

The Libyan crisis, launched non-violently on 17 February 2011, was similarly transformed from a peaceful demonstration into an armed conflict resulting in overthrowing the regime and the death of President Muammar Gaddafi. Abdul-Ali stated that the “peaceful nature of the protests differed according to the regime in power; the more totalitarian Libyan and Syrian regimes lured the protests into becoming armed revolutions”²⁶⁵. Many factors led up to the Libyan revolution, including abuse of power, suppression of public freedoms, spread of corruption under the regime, the prohibition of political parties, the noticeable decline in the economic and human development,

(*carnegie-mec.org* 2017) available from <<https://bit.ly/3mHwbWG>> accessed 1st Oct 2021; J Schwedler, ‘Is the Houthi-Saleh Alliance Cracking?’ (*atlanticcouncil.org* 2016) available at <<https://bit.ly/3bGKTHE>> accessed 1st Oct 2021; A L Alley, ‘Collapse of the Houthi-Saleh Alliance and the Future of Yemen’s War’ (*crisisgroup.org* 2018) available from <<https://bit.ly/3CNMB5d>> accessed 3rd Nov 2021.

²⁶³ Amnesty, ‘Syria: New Report finds Systemic and Widespread Torture and Ill-Treatment in Detention’ (*amnesty.org* 2012) available from <<https://goo.gl/dZH1q5>> accessed 25th Oct 2021; Amnesty, ‘Days of Bloodshed in Aden’ (*amnesty.org* 2011) available from <<https://bit.ly/3pQb06D>> accessed 19th Oct 2021; Another significant human rights violation involves children in armed conflicts. Many child protection organizations reported the recruitment of children under 18 years old to fight. The United Nations Children’s Fund (UNICEF) confirmed that four Yemeni parties exploited children under 18 years old to join the armed conflict: the Government, the Houthis, pro-government militias and Al Qaeda . This constitutes a violation of this age group’s rights, and it challenges the government to comply with the international human rights standards in order to safeguard these rights; see HRW, ‘Yemen: Stop Using Children in Armed Forces’ (*hrw.org* 2011) available from <<https://bit.ly/3bGQCwx>> accessed 27th Oct 2021; HRW, ‘Letter to President Obama Regarding the Child Soldiers Prevention Act: NGOs Urge Prohibitions on Military Aid to Governments Using Child Soldiers’ (*hrw.org* 2016) available from <<https://bit.ly/3jMhgIS>> accessed 25th Oct 2021; UNICEF, ‘UNICEF Yemen Situation Report May 2014’ (*reliefweb.int* 2014) available from <<https://bit.ly/3CoCEuR>> accessed 25th Oct 2021.

²⁶⁴ CIHRS, ‘Fractured Walls... New Horizons Human Rights in the Arab Region Annual Report 2011’ (*cihrs.org* 2011, 235) available from <<http://www.cihrs.org/wp-content/uploads/2012/06/the-report-e.pdf>> accessed 28th Oct 2021.

²⁶⁵ A Abdul-Ali, ‘Wave of Change in the Arab World and Chances for a Transition to Democracy’ (2013) 6(2) *Contemporary Arab Affairs* 201; also see UN, ‘Repertoire of the Practice of the Security Council 2010-2011: The Situation in Libya’ (*un.org* 2011) available from <http://www.un.org/en/sc/repertoire/2010-2011/Part%20I/2010-2011_Libya.pdf> accessed 28th Oct 2021.

obvious deterioration in the level of education and a considerable increase in the poverty rate²⁶⁶.

In addition, there was a noticeable amount of gender discrimination against women in Libya. Libyan women were exposed to sexual harassment, assault, and restraining their freedom of movement, education, access to information, getting a job and receiving unjust treatment in the workplace²⁶⁷. The situation grew ever worse during the upheaval and the Gaddafi forces extensive violation of the protestors' human rights through war crimes, crimes against humanity, killing and severe injury to unarmed protestors, with torture and other ill treatment²⁶⁸.

4.3.4 The Revolution of Rage

On 25 January 2011 the Egyptian revolution began, in which security forces, including riot police, police snipers and plain-clothed state security officers, as well as "thugs" working for supporters of the ruler Hosni Mubarak²⁶⁹ responded with violence; at least 840 protestors were killed and more than 6,000 injured within 18 days²⁷⁰. This movement came as a consequence of several years of accumulation of oppression practised by the Mubarak regime. To be more precise, some of the main causes of the Egyptian revolution were persecution, poverty, the deterioration of education and health services, the decline in the political level and the president's attempt to prepare his son to replace him²⁷¹.

²⁶⁶ HRW, 'Days of Bloodshed in Aden' (*hrw.org* 2011) available from <<https://bit.ly/3pQb06D>> accessed 19th Oct 2021.

²⁶⁷ S Muscati, 'A Revolution for All: Women's Rights in the New Libya' (*hrw.org* 2013) available from <<https://bit.ly/3bhHNJk>> accessed 28th Oct 2021.

²⁶⁸ Amnesty, 'The Battle for Libya: Killings, Disappearances and Torture' (*amnesty.org* 2011) available from <<https://bit.ly/2ZvKBQk>> accessed 22nd Oct 2021; President Muammar Gaddafi, his son Saif Al-Islam Gaddafi and the former intelligence Chief Abdullah Al-Senussi were accused by the International Criminal Court of committing crimes against humanity and causing a civil war, and a warrant was issued for their arrest. The movement ended with casualties, as a humanitarian intervention took place to stop the upheaval and to protect the human rights from any further violation; see ICC, 'Prosecutor's Application Pursuant to Article 58 as to Muammar Mohammed Abu Minyar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi' (*icc-cpi.int* 2011) available from <<https://bit.ly/3BoiEr7>> accessed 23rd Oct 2021.

²⁶⁹ Amnesty, 'Egypt Rises: Killings, Detentions and Torture in the '25 January Revolution' (*amnesty.org* 2011) available from <<https://bit.ly/3k5cxSQ>> accessed 5th Oct 2021, 18-20, 23, 30, 36-37, 40-42 and 50.

²⁷⁰ Amnesty, 'Year of Rebellion: The State of Human Rights in the Middle East and North Africa' (*Amnesty International USA* 2012) available from <<https://bit.ly/2ZZqdrm>> accessed 21st Aug 2021, 9.

²⁷¹ H Nafah, 'Egyptian Spring: Between the 25 January and 30 Jun Revolutions' in ATF (ed.) *Arabs Seventh Report on Cultural Development* (Arab Thought Foundation, Bayrut, 2014) 33-54.

According to the National Council for Human Rights Fact-Finding Commission Report, the revolution witnessed a tremendous number of human rights violations²⁷². Of the numerous physical assaults by the authorities, were proved to be murders while others were confirmed as random killings. The Commission also reported several cases of physical assault and injuries resulting from the forced suppression of demonstrators²⁷³.

The summary of the Middle East situation in the Arab Spring which was published by Amnesty International in their 2012 Annual International Report started with the words of Ahmed Harara, an Egyptian doctor who lost an eye to a gunshot wound during a protest in 2011; he said “We are not scared of being killed, injured or tortured. Fear does not exist anymore. People want to live in dignity. So we will not stop”²⁷⁴.

The Egyptian government has also violated women’s rights by banning them from any economic and political participation. In 2010 Egypt was ranked 125 out of 134 countries in respect of gender discrimination²⁷⁵. Another unexpected phenomenon arose in 2011 with the conducting of “virginity tests” for female protesters arrested by the army. Women were being arrested for no reason, beaten, subjected to electric shocks and forced to take the virginity test, a humiliating action which destroys their dignity²⁷⁶.

4.3.5 The Jasmine Revolution

The Tunisian crisis came to be known as the Jasmine Revolution reported as starting on 18 December 2010 for economic, social and political reasons. Ostensibly, Tunis had a well-developed economy, although there was a serious imbalance in the distribution of wealth, widespread corruption in state institutions and increasing levels of unemployment. This affected some of the basic rights and services government should

²⁷² Manshurat, ‘Report of the Results that were Conducted by the Inquiry Commission Concerning the Crimes and Abuses Committed During the 25 January 2011 Revolution’ (*manshurat.org*, 2013) Available from <https://bit.ly/2Zz0vcE>> accessed 27th Oct 2021.

²⁷³ Manshurat, ‘Report of the Results that were Conducted by the Inquiry Commission Concerning the Crimes and Abuses Committed During the 25 January 2011 Revolution’ (*manshurat.org*, 2013) available from <https://bit.ly/2Zz0vcE>> accessed 27th Oct 2021 (in Arabic, translated by Author); Amnesty, Egypt Rises: Killing, Detentions and Torture in the ‘25 January Revolution’ (*amnesty.org*, 2011) available from <<https://goo.gl/c7Ndqc>> accessed 25th Oct 2021.

²⁷⁴ Amnesty, ‘Amnesty International Report 2012’ (*amnesty.org*, 2012) available from <http://files.amnesty.org/air12/air_2012_full_en.pdf> accessed 25th Oct Jun 2021, 41.

²⁷⁵ WEF, ‘The Global Gender Gap Report 2010’ (*3.weforum.org*, 2010) available from <http://www3.weforum.org/docs/WEF_GenderGap_Report_2010.pdf> accessed 27th Oct 2021.

²⁷⁶ S Shafy, ‘Horribly Humiliating’: Egyptian Woman Tells of ‘Virginity Tests’ (*Spiegel.de*, 2011) available from <<https://bit.ly/3pMyuJV>> accessed 27th Oct 2021; Amnesty, ‘Egypt: A Year After ‘Virginity Tests’, Women Victims of Army Violence Still Seek Justice’ (*amnesty.org*, 2012) available from <<https://goo.gl/dyWLSi>> accessed 27th Oct 2021.

ensure e.g. employment, housing and public utilities: electricity, water and sanitation. This led to the spread of poverty and the inability to marry and start a family²⁷⁷.

As the ousted president Zain El Abidine Ben Ali and 80% of the members of parliament belonged to the Democratic Constitutional Rally, all constitutional amendments were for the good of the president. For instance, the 1998 and 2002 amendments removed constraints on candidacy for the presidency of the state, abolished the fixed period for which the office could be held and increased the maximum age of presidential candidates. As a result, Zain El Abidine Ben Ali had remained in power for two decades²⁷⁸.

Another cause of the Tunisian revolution was the limitations on the freedom of the press and speech. There were several reports of arbitrary arrests and secret surveillance by Tunisian law enforcement officers, due to attempts at claiming rights or publicly criticising the former Tunisian regime through speeches or press publications²⁷⁹. The success of the Tunisian revolution in overthrowing the regime for the purpose of enjoying a better life encouraged neighbouring Arab countries who were under similar restrictions to follow suit.

This section attempted to demonstrate some of the human right violations prior and during the Arab Spring. It showed that governments of the Arab countries were aware of the fundamental rights humans, and they initiated in protecting them legally and constitutionally, nonetheless violations occurred. What follows is an illustration of these violations in light of the Arab human rights system, in particularly the Charter.

4.4. Violations of the Arab Human Rights System

This section relates the violations surrounded by the Arab Spring to the Charter. It is clear from the selected cases that many Arabs were exposed to human rights abuses which violated several provisions of the Charter. Arab countries who signed, ratified and

²⁷⁷ A Seddiqi, *Tunisia: Citizenship Revolution. A Headless Revolution* (Arab Center for Research and Policy Studies, Qatar, 2011) (in Arabic, translated by Author); Amnesty, 'Amnesty International Report 2012' (*amnesty.org* 2012) available from <http://files.amnesty.org/air12/air_2012_full_en.pdf> accessed 25th Oct Jun 2021.

²⁷⁸ A Seddiqi, *Tunisia: Citizenship Revolution. A Headless Revolution* (Arab Center for Research and Policy Studies, Qatar, 2011) (in Arabic, translated by Author).

²⁷⁹ L Chomiak, 'The Making of a Revolution in Tunisia' (2011) 3 *Middle East Law and Governance* 68; Amnesty, 'Amnesty International Report 2012' (*amnesty.org* 2012) available from <http://files.amnesty.org/air12/air_2012_full_en.pdf> accessed 25th Oct Jun 2021.

adopted the Charter were obliged to apply its provisions to the fullest²⁸⁰. It is also important to clarify that Article 4 of the Charter allowed member states to derogate some articles in cases of emergency, and to adopt measures unconstrained by the Charter's provisions as long as such measures were compatible with international law.

However, one of the main weaknesses of the Charter was allowing member states' domestic laws to override some of its provisions. By way of illustration, most of the Arab countries' legislatures place equal weight on international treaties and conventions under internal laws for which the provisions enshrined in the human rights treaties will be granted accordingly. The constitutions of the five countries described above guaranteed the protection of human rights, taking into account the Charter. The Yemeni constitution, in particular, included in Article 6 "its adherence to the UN Charter, the International Declaration of Human Rights, the Charter of the Arab League, and Principles of international Law which are generally recognized"²⁸¹.

The preamble and Article 1 of the Charter indicates that the main reason for its existence was to ensure the practice of its provisions by people in the Arab region. However, there were many reports of cases of torture within the Arab Spring. A number of these cases involved humiliation, such as the virginity tests on unwilling female protesters. Article 8 of the Charter states that "[n]o one shall be subjected to physical or psychological torture or to cruel, degrading, humiliating or inhuman treatment". Article 8 also imposed on member states the duty to ensure the prohibition of torture by the power of law. Freedom from torture is considered an absolute right and one of the *jus cogens* that cannot be derogated at all, according to international law²⁸².

As mentioned in the last section, Arab women were exposed to sexual harassment during the uprising. There were restrictions placed on their freedom of movement and they were banned from accessing information, as well as facing inequality in

²⁸⁰ As already explained, the Charter Committee meeting in early 2017 revealed that all 22 Arab countries had signed the Charter and that 16 of them had ratified it.

²⁸¹ Constitute, 'Yemen Constitution of 1991' ([constituteproject.org](https://bit.ly/3bLDeqS), 2021) available at <<https://bit.ly/3bLDeqS>> accessed 25th Oct 2021, Article 6; also see Article 10 of the 2015 Yemen's Constitution draft version, available from <<https://bit.ly/3q5nOGt>> accessed 25th Oct 2021.

²⁸² N Mavronicola, 'What is an 'absolute right'? Deciphering Absoluteness in the Context of Article 3 of the European Convention on Human Rights (2012) 12(4) *Human Rights Law Review* 723; M Shaw, '*International Law*' (6th ed, Cambridge University Press, New York, 2008).

employment opportunities and being treated unjustly in their workplace. Article 34(1) of the Charter stated that:

[t]he right to work is a natural right of every citizen. The State shall endeavour to provide, to the extent possible, a job for the largest number of those willing to work, while ensuring production, the freedom to choose one's work and equality of opportunity without discrimination of any kind on grounds of race, colour, sex, religion, language, political opinion, membership in a union, national origin, social origin, disability or any other situation.

Apart from the fact that this article limits the right to work on member states citizens, it does guarantee the practice of this right without any form of discrimination and guarantees equality of opportunity to both sexes.

Furthermore, Article 2 of the Charter considers the right of self-determination as one of the main political rights that enable Arabs "to control over their natural wealth and resources, and the right to freely choose their political system and to freely pursue their economic, social and cultural development... [Even more, they] have the right to national sovereignty and territorial integrity". This Article was violated in the Arab Spring. One key factor for self-determination is people's ability to make their own decisions without any external influence. To be more precise, Arab countries who are members of the Charter must ensure the enjoyment of all forms of freedom in their territories, including the right to self-determination. Several further Articles of the Charter relating to freedom and liberty were violated; for example, Article 32, which "guarantees the right to information and to freedom of opinion and expression, as well as the right to seek, receive and impart information and ideas".

Through the Arab Spring, Arabs attempted to deliver their messages of reforming some existed policies by practising their constitutional right to express their opinions through peaceful protest. In doing so, they were met by excessive force and many of them were arbitrarily arrested, although the Charter guarantees these rights. Article 24 of the Charter also assured the "freedom of association and peaceful assembly", while Article 14 confirms that Arabs have "the right to liberty and security of person. No one shall be subjected to arbitrary arrest, search or detention without a legal warrant".

The Charter does not ignore the power of law and justice. Articles 11, 12 and 13 of the Charter affirm that every human being must be protected equally by member states' laws and the right to complain or to bring cases before courts is guaranteed. These provisions were violated in the Arab Spring as protestors were arrested and jailed without due legal process²⁸³.

Another consequence of the Arab Spring revolutions was the many cases of refugees and people who were forcibly displaced from their homes. For example, in 2016 Amnesty International released a report indicating that "75,000 refugees remain trapped in a desert no man's land between Syria and Jordan"²⁸⁴.

Articles 26(1) and 31 of the Charter showed that every person can freely choose and own the appropriate living place in the territory of member states, and no one shall be exposed to displacement from their home under any circumstances. Further, Articles 36 and 38 of the Charter emphasised that member states should provide sufficient social services, including food, housing, clothing and healthcare. However, some of the medical areas were shelled, and not all the injured protesters received medical assistance.

Even more, cases of involving children in armed conflicts within the Arab Spring have been also reported. Article 33(3) of the Charter says that "States parties shall take all necessary legislative, administrative and judicial measures to guarantee the protection, survival, development and well-being of the child in an atmosphere of freedom and dignity and shall ensure, in all cases, that the child's best interests are the basic criterion for all measures taken in his regard". Article 34(3) also maintains that member states must protect children "from economic exploitation and from being forced to perform any work that is likely to be hazardous or to interfere with the child's education or to be harmful to the child's health or physical, mental, spiritual, moral or social development".

²⁸³ For more details and examples about arbitrary arrests, and unfair trials, see Amnesty, 'Egypt Rises: Killings, Detentions and Torture in the '25 January Revolution' (*amnesty.org* 2011) available from <<https://bit.ly/3k5cxSQ>> accessed 5th Oct 2021; Amnesty, 'Year of Rebellion: The State of Human Rights in the Middle East and North Africa' (*Amnesty International USA* 2012) available from <<https://bit.ly/2ZZqdrm>> accessed 21st Aug 2021; Amnesty, 'Amnesty International Report 2011: The State of the World's Human Rights' (*files.amnesty.org* 2011) available from <<https://bit.ly/3nZwRpR>> accessed 30th Oct 2021.

²⁸⁴ Amnesty, 'Amnesty International Report 2016/17: The State of the World's Human Rights' (*amnesty.org* 2016) available from <<https://bit.ly/3bHbrYz>> accessed 23rd Oct 2021, 12.

In fact, the Arab Spring witnessed not only children permitted to carry weapons and fight in battles, but also their recruitment for this purpose in an organised and authorised manner. On top of the human rights violations, however, a very important issue has also been enhanced within the Arab Spring, namely: terrorism. The consequences of the Arabs failure in protecting the human rights within the Arab Spring will be covered next.

4.5. Implications of Violating the Charter During the Arab Spring

What stands out from the Arab Spring crisis in which many human rights violations were enacted, is the resulting security threat. The first Article of the UN Charter visualised the protection of human rights as important as peace and security²⁸⁵. Moreover, it has been maintained that violating human rights will cause instability and insecurity, and stopping it will prevent possible conflicts²⁸⁶. In 2007, Etzioni emphasised that security must be enhanced and achieved first in order to adopt democracy, which is mostly based on human rights²⁸⁷. Furthermore, Hobbes believed that a sovereign group of states is likely to provide more security and peace, and ensure people's human rights²⁸⁸.

This indicates that human rights, peace and security complement each other. It appears, therefore, that violations of the Charter and other human rights instruments during the Arab Spring led to the increase of terrorism in the region. Arab countries must preserve the enjoyment of people's human rights by ensuring their security. The Arab Spring created fertile ground for radicalisation and terrorism, as presented in Figure 3²⁸⁹. For example, Al-Qaeda terrorist organisation exploited the opportunity of instability in the Arab region to become stronger and ready for future operations. The Arab Spring uprising in Yemen has developed into armed conflict in which security has rapidly deteriorated. Al-Qaeda greatly benefited from this situation in the Arabian Peninsula,

²⁸⁵ J Humprey, 'The International Law of Human Rights in the Middle Twentieth Century' in R Lillich (eds.) *International Human Rights, Problems of Law, Policy and Practice* (Aspen Publishers, 2006) 47.

²⁸⁶ N Graeger, 'Human Rights and Multi-functional Peace Operations' in R Patman (ed.) *Universal Human Rights?* (Macmillan Press Ltd, UK, 2000) 175-182.

²⁸⁷ A Etzioni, *'Security first: for a muscular, moral foreign policy'* (Yale University Press, 2007).

²⁸⁸ T Hobbes, *'Leviathan'* (A&C Black, 2006) 103-121.

²⁸⁹ S Attkisson, 'How Arab Spring Opened the Door to Terrorism's Ugly March' (*dailysingal.com*, 2015) available from <<https://dailysign.al/3CE9LMC>> accessed 27th Oct 2021.

posing a threat. Similarly, in the Islamic Maghreb Al-Qaeda was strengthened by the chaos in Tunisia, Libya and Egypt²⁹⁰.

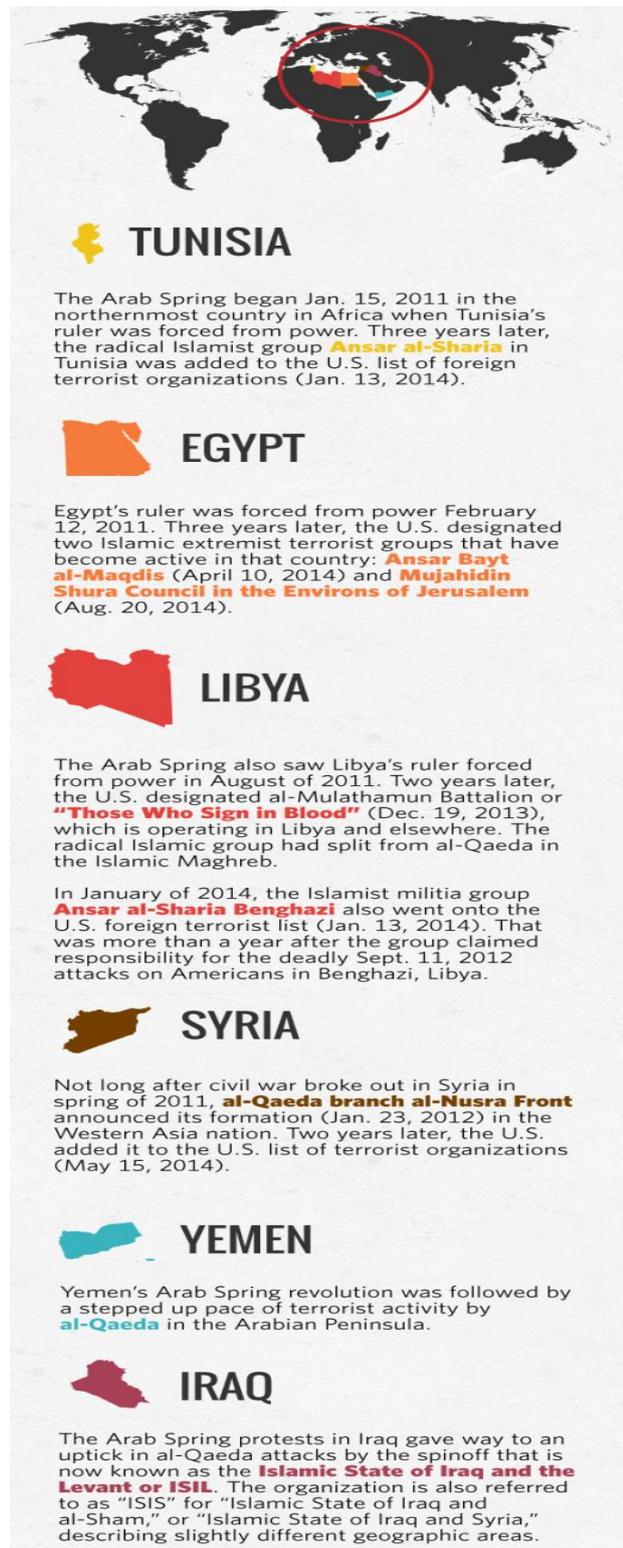


Figure 3: Terrorist Groups after the Arab Spring

²⁹⁰ F Gardner, 'Is the Arab Spring good or bad for terrorism?' (*bbc.com*, 2011) available at <<https://bbc.in/3CZCUDI>> accessed 27th Oct 2021.

In 2015, Hamid published an article in which he demonstrates the way in which the Egyptian uprising produced radicalisation through the Muslim Brotherhood. He claimed that after overthrowing the regime and arresting the former Brotherhood-supported Egyptian President Mohamed Morsi in 2013, many younger Brotherhood members began to act aggressively, calling on other groups to join them in order to fight the authorities²⁹¹. The most significant player that then appeared on the scene was the Islamic State of Iraq and the Levant, also known as *ISIS*, *IS* or *Daesh*. In their review of radicalisation after the Arab Spring, Hamid et al. stated that “*ISIS* should not be solely viewed as a security or territorial threat, but also as an ideological one, challenging the very premises of mainstream Islamists and their traditional methods of political change”²⁹².

It can be therefore deduced that the lack of member states commitment to implement the Charter’s provisions led to the rise of the Arab Spring uprisings and hence paved the way for extremists to take part in the game. The presence of terrorists will cause more oppression and tyranny for the sake of applying their ideologies and beliefs. Accordingly, the Author of this research will place an emphasis on assessing the efficiency of the Arab human rights system to figure whether it needs to be amended or not. Moreover, this will likely provide possible solutions to enable member states to commit in implementing the Charter’s provisions and therefore provide better human rights protection, and reduce the threat of terrorists in the region.

4.6. Concluding Remarks

This chapter has demonstrated that the cause of the Arab Spring was the violation of citizens’ rights and freedoms; people demonstrated to claim their rights which in turn resulted in further human rights violations. The Arab Spring scenario was analysed from theoretical perspectives, considering a number of social sciences theories: Rational Choice Theory, the Bandwagon Effect, the Domino Theory and the Butterfly Theory. It has uncovered Arabs ambitions towards changing their authoritative governments. Although several regimes fell, others were persuaded to reform a number of policies and legislations. Some regimes handled the demonstrations with violence and

²⁹¹ Hamid et al, ‘Islamism after the Arab Spring: Between the Islamic State and the nation-state. (*brookings.edu*, 2015) available from <<https://goo.gl/Qt7ZtE>> accessed 28th Oct 2021.

²⁹² Hamid et al, ‘Islamism after the Arab Spring: Between the Islamic State and the nation-state. (*brookings.edu*, 2015) available from <<https://goo.gl/Qt7ZtE>> accessed 28th Oct 2021, 12.

repression, resulting in serious human rights violations that remain to the present day, namely Syria and Yemen.

Several violations of the Charter provisions during the Arab Spring were identified as this is the main Arab instrument intended to protect human rights in the region. For example, violating the rights to freedom from torture, freedom of expression and the right to a fair trial. This implies that the Charter failed to commit member states in terms of protecting and promoting human rights. This research believes that this might be due to lack of effective enforcement mechanisms in the Arab human rights system.

Another issue which emerged from this chapter is the fact that the Arab Spring also facilitated the emergence of security threats to the region. A number of radical groups benefited from the chaos and terrorism has gradually increased, with an escalation in the number of human rights violations.

Taken together, the results of the present chapter suggest that there is a need to improve the Arab human rights system and to adopt an effective enforcement mechanism that ensures member states meet the requirements of the Arab human rights protection instruments to the fullest extent. The Arab human rights system, therefore, will be examined, analysed and evaluated in the next part of this research in order to identify areas that affect its efficiency, and to figure out whether it needs to be amended or not.

PART 2: THE ARAB HUMAN RIGHTS SYSTEM

The LAS was established in 1945 as per the Alexandria Protocol, for the purpose of protecting Arabs; in particular to gain independence from colonialists and to prevent the evolving of the Palestine-Israel case under the British mandate. The pact has been agreed on grounds of:

strengthen the close relations and numerous ties which bind the Arab States, and out of concern for the cementing and reinforcing of these bonds on the basis of respect for the independence and sovereignty of these States, and in order to direct their efforts toward the goal of the welfare of all the Arab States, their common weal, the guarantee of their future and the realization of their aspirations, and in response to Arab public opinion in all the Arab countries²⁹³.

Nothing was mentioned in the LAS Charter about the adoption of human rights or to create a system that functions to protect human rights in the Arab region. This is understandable and can be justified by the circumstances Arabs faced back then²⁹⁴. Over time, Arab countries gained independence and the pillars of co-operation within the LAS have been boosted coinciding with the flourish of human rights movements all over the world; the LAS and Arabs have had to consider the creation of their own regional human rights system. It took more than half century to adopt their human rights system, and consist of (see Figure 4):

1. the Arab Charter on Human Rights (the Charter); the main Arab human rights instrument;
2. the Arab Permanent Commission of Human Rights (the Commission); the oldest component of and the first mechanism within, the Arab human rights system;
3. the Arab Human Rights Committee (the Charter's Committee); established as per the Charter and function as a mechanism of enforcing its application;
4. and the Arab Court of Human Rights (the Court) and its Basic Statute (the Court Statute); the potential judicial enforcement mechanism and the latest component of the Arab human rights system.

²⁹³ Pact of the League of Arab States, signed at 22 March 1945, UN Treaty Series Vol. 70 No. 241 Pp. 237-263.

²⁹⁴ see Chapter 3.

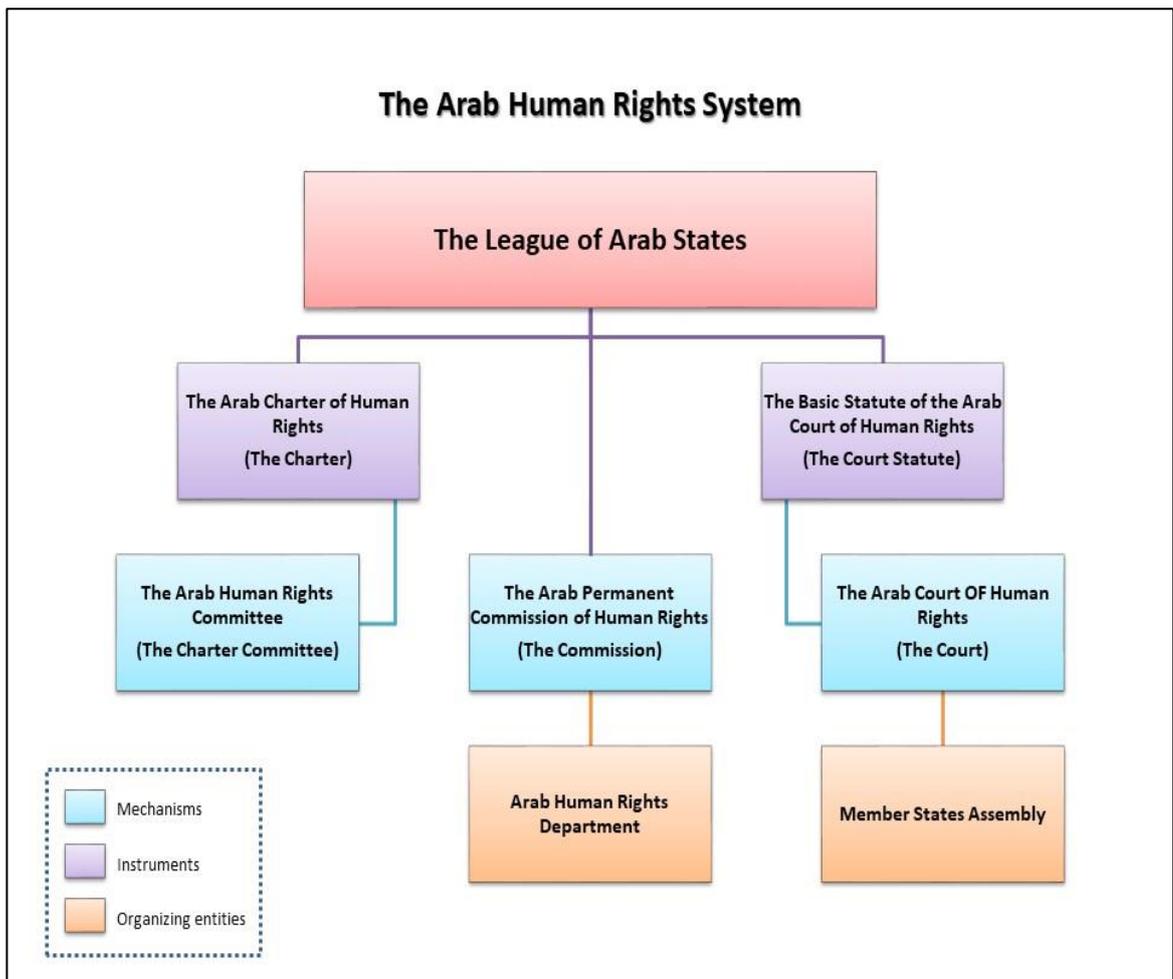


Figure 4: The Arab Human Rights System

Although the LAS adopted the aforementioned system, the previous chapter showed that human rights violations exist. Apart from other possible reasons of the LAS failure in protecting Arabs human rights e.g. lack of implementation of the human rights instruments, lack of effective monitoring and implementation and lack of political will or weak provisions, this research will focus on the Arab human rights system since it is limited on its scope. In fulfilling the argument of this research, however, this part will examine the Arab human rights system in order to identify its efficiency to achieve the purpose of its adoption. This will be achieved through analysing its main components, namely: the main legal provisions enshrined in the Arab human rights instruments and the Arab human rights institutions that are function as an enforcement mechanism of human rights in the Arab region. This will also provide an ameliorated understanding on whether the system is in need for reform or not.

CHAPTER 5: ARAB HUMAN RIGHTS INSTRUMENTS

5.1 Introduction

Adopting an Arab human rights instrument is crucial for the protection and promotion of human rights. The Arab World has witnessed human rights violations for decades and they were unable to protect them despite having established their own human rights system. Protecting human rights has grown in importance in light of the Arab Spring. This chapter attempts to evaluate the effectiveness of the Charter²⁹⁵ as a component of the Arab human rights system. The evaluation will be based on doctrinal analysis of the Charter's provisions. In other words, the chapter will mostly be exploratory and interpretive in nature. By achieving this, the chapter will provide an insight into the void that must be filled in order to protect and promote human rights in the Arab World. The outcomes will also support the argument of this research represented in providing better human rights protection for the Arab World through the neo-relativism approach which requires the consideration of the Arab cultural human rights norms and the International human rights standards.

The Charter, however, is the main Arab League's legal source that binds Arab states to preserve and protect human rights. Technically, it is considered as an international treaty according to the principles of the international law, which imposes obligations on member states. The Charter was established for the benefit of the people who live in the Arab World. The first version was adopted by the Arab League in 1994²⁹⁶ and contains a preamble and 43 Articles. This was revised in 2004 and amended to become 53 Articles in addition to the preamble. It came into force in 2008 after the ratification of seven members, as required by the Charter²⁹⁷. To date, the Charter has been signed by the majority of the League's members and ratified by 16 members as follows: Jordan in 2004; Algeria, Bahrain and Libya in 2006; Syria and Palestine in 2007; the United Arab Emirates and Yemen in 2008; Qatar and Saudi Arabia in 2009; Lebanon in 2011; Sudan and Kuwait in 2013; Iraq in 2014 and; Egypt and Mauretania in 2019²⁹⁸. This is in fact an

²⁹⁵ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004).

²⁹⁶ The Council of the Arab League 'the Arab Charter on Human Rights' (Res) 5437/102 (15 September 1994).

²⁹⁷ The first version of the Charter has never been ratified due to the failure to meet Article 42 which pointed out that 7 members must sign and ratify the Charter in order to enter into force.

²⁹⁸ There are still 6 countries did not join and ratify the Arab Charter on Human Rights: Tunisia, Djibouti, Somalia, Oman, the Comoros and Morocco, as per the reports of the Arab Permanent Commission

achievement, as the LAS struggled for nearly half a century to adopt its own human rights instrument.

5.2 Phases in Forming the Arab Human Rights Instrument

Arab awareness and initiatives towards human rights was not only provided by the las, but also Arab NGOs²⁹⁹. Human rights activists in the Arab World have also struggled to adopt a human rights instrument that can deal with the violations in the region since the establishment of the LAS. The first attempt to adopt an Arab human rights protection instrument was by the Union of Arab Lawyers NGO, who called for an 'Arab Convention on Human Rights'³⁰⁰. The request was not taken seriously, because the LAS and other Arab countries had another matter of concern at that time, namely: the Palestinian case and the colonised countries³⁰¹.

A second attempt for adopting an Arab human rights instrument was in 1977 when the LAS considered the 'Declaration of Arab Citizen Rights in the Arab Countries and States', a project proposed by the Human Rights Society in Iraq in 1970. The mentioned instrument can be considered as the cornerstone of the Charter's first version adopted in 1994³⁰². However, it did not receive sufficient attention due to the political issues taking place in the Arab World at the time, which led not only to ignoring the adoption of an Arab regional human rights instrument, but also to the split of the Arab World into two parts³⁰³. Therefore, only 7 countries and one organisation expressed their views on

Sessions 44 in 2018 available at <<https://bit.ly/3sqALIC>> 171, and 46 in 2019 available at <<https://bit.ly/2NSrTNg>> 155 (in Arabic translated by Author); Lasportal, 'Member States of the Arab Charter on Human Rights' <<https://bit.ly/33tnTbk>> accessed 26 July 2020 (translated by author).

²⁹⁹J Crystal, 'The Emerging Human Rights Environment in the Arab World' in V Bornschieer & P Lengyel (eds), *Conflicts and New Departures in World Society*, vol.3 (Transaction Publishers, New Jersey 1994) 114.

³⁰⁰The 1944 Union of the Arab Lawyer is one of the oldest NGOs in the Arab World, who asked the League to adopt a regional human rights instruments in order to protect Arabs' human rights during a meeting in Damascus; M Shihab, 'The League of Arab States' in Rudolf Bernhardt (eds) 1 *Encyclopedia of public international law. Vol. 1 : Aalands Islands to Dumbarton Oaks Conference* (North-Holland, Amsterdam 1944) 202-207.

³⁰¹The Council of the Arab League on the Summit Level (Res) 119/10 (22 November 1979) (translated by author); not all Arab countries were members in the Arab League back then, because they were not independence, which is one of the Arab League's membership conditions.

³⁰²J A Joyce, 'Human Rights: International Documents Vol. II' (Sijthoff & Noordhoff, 1978, 1271); The Council of the Arab League's Regular Session (Res) 2668/45 the Second paragraph n. 7 (15 September 1970) (translated by author).

³⁰³By decision President Anwar Sadat in 1978, Egypt signed an agreement with the State of Israel, consist of two treaties and called the Camp David Accords, in order to maintain peace and security in the Arab region, but other Arab countries were not happy with this, they did not agree on Egypt action and considered it as a betrayal. Consequentially, the Arab League and its member-states imposed sanctions on Egypt, such as suspending its membership from the Arab League and transferring the Arab League headquarter from Cairo in Egypt to Tunisia. This situation remains for nearly a decade and Egypt was

the mentioned proposed instrument to the LAS, namely: The United Arab Republic (political union of Egypt and Syria), Iraq, Kuwait, Saudi Arabia, Lebanon, Jordan, Libya and the Palestine Liberation Organization (PLO). The replies centred on opposing the proposed project, imposing reservations on its content and others just ignored replying, although it has been prepared to serve as a soft law and will not impose any obligations on contracted states³⁰⁴.

In 1979, the Union of Arab Jurists also called for an Arab human rights agreement and the LAS, in particular the Commission³⁰⁵, initiated this by assigning a team of human rights and legal experts to compile a draft of an Arab charter on human rights. In 1983, the expert team completed the draft of the aforementioned projected charter and submitted it to the Commission, who in turn send it to the Arab League member states for further revision and recommendations³⁰⁶. However, the projected charter was neglected due to disagreement in the views of the LAS member states with regards to whether this project is derived from the UDHR³⁰⁷ and other international human rights instruments, or influence by the culture of the Arab region including the religion of Islam³⁰⁸. Additionally, most of the Arab countries were concentrating on approving another human rights instrument that was proposed by the Organisation of Islamic Cooperation (OIC), which urged Arab countries to participate in adopting the proposed

readmitted in 1989; See MA Bani Salameh and Others, 'The Camp David Accords: Lessons and Facts' (2012) 9(2A) *The Arab Journal for Arts* 45, 46; A Yousif, 'Human Rights in the Context of Globalization' (2006) (Amman: Dar Osama For Publishing & Distribution) (translated by author); The Council of the Arab League on the Summit Level 'Transferring the Arab League Headquarter and the Suspension of Egypt Membership' (Res) 108/9-n.9 (11 May 1978); 'Disagreement on the Camp David Treaty' (Res) 99/9-n.1 (5 November 1978); 'Urging Egypt to Reconsider Approving the Comp David Treaty' (Res) 101/9-n.3 (5 November 1978) (translated by author).

³⁰⁴ The Council of the Arab League '4th Session Recommendations of the Arab Permanent Commission of Human Rights' (Res) 2605/53 n.2-6 (11 March 1970); '4th Session Report of the Arab Permanent Commission of Human Rights (Res) 4409/82 (25 September 1984); 'Israel Human Rights Violations in Jerusalem' (Res) 5767/109 (25 March 1998) (translated by author).

³⁰⁵ Will be addressed in more details in the next chapter.

³⁰⁶ Most of the recommended projects of an Arab human rights instruments were submitted before the Arab Permanent Commission on Human Rights for further study, amendments or/and recommendations; The Council of the Arab League 'The Arab Charter on Human Rights Project' (Res) 4263/79-L (31 March 1983) (translated by author).

³⁰⁷ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

³⁰⁸E Al-abdulla, 'The Arab Charter on Human Rights and its Methods of Activation' (1998) <<http://imamsadr.net/News/news.php?NewsID=3921>> accessed 18 Sep 2016 (translated by author).

instrument³⁰⁹ and made the LAS postpone their projected charter³¹⁰. In 1990, the OIC adopted its first human rights instruments in its' 19th Session at the Foreign Minister Level in Riyadh; namely, 'The Cairo Declaration on Human Rights in Islam'(CDHRI)³¹¹.

Another attempt to create an Arab human rights instrument was the 'Charter of Human and People's Rights in the Arab World, which was proposed by the International Institute of Higher Studies in Criminal Sciences and created a commission of 64 Arab experts in the legal and human rights fields from 12 Arab countries who held meetings in Syracuse, Italy in 1986³¹². The commission was supported by several bodies during the preparatory work of the projected instrument, namely Presidents of Arab countries, the LAS, the United Nation and the Council of Europe. During the preparatory period, the commission kept into consideration a number of existed human rights instruments such as:

- the draft of the 1983 proposed Arab charter and parts of the CDHRI;
- the UDHR;
- the International Covenant on Civil and Political Rights (ICCPR) adopted in 1966, entered into force in 1976, it has 173 state parties; and the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted in 1966 and entered into force in 1976, it has 171 member-states³¹³;
- the European Convention on Human Rights (ECHR)³¹⁴, adopted in 1950 and came into force in 1953, it has 45 members;

³⁰⁹ See the following resolutions of the OIC Council of Foreign Ministers (Res) 19/11-C (Islamabad 3 September 1980); (Res) 3/14-ORG (San'a 5 December 1983); (Res) 3/15-P (San'a 3 Sep 1984); (Res) 2/16-ORG (Morocco 3 September 1986); (Res) 45/17-P (Amman 3 September 1988); (Res) 42/18-P (Riyadh 17 December 1989).

³¹⁰ The project was postponed in several sessions, see The Council of the Arab League Regular Session (Res) 4458/83-L (28 March 1985) (translated by author).

³¹¹OIC Council of Foreign Ministers (Res) 49/19-P and its Annex (20 November 1990).

³¹² MC Bassiouni, *'International Instruments on Human Rights: Vol2 Islamic and Regional Instruments'* (Dar El-Shorouk, Cairo, 2003, 485).

³¹³ 'International Covenant on Civil and Political Rights' (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); 'International Covenant on Economic, Social and Cultural Rights' (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR); UN *'Status of Ratification Interactive Dashboard'* <<https://indicators.ohchr.org/>> accessed 5 June 2020

³¹⁴ Council of Europe, 'European Convention for the Protection of Human Rights and Fundamental Freedoms', as amended by Protocols No. 11 and 14, 4 November 1950, ETS 5 (ECHR); COE *'Chart of Signatures and Ratifications of Treaty 005'* (1950) <<https://bit.ly/33vBMpW>> accessed 5 June 2020.

- the American Convention on Human Rights (ACHR)³¹⁵, adopted in 1969 and entered into force in 1978, it has 25 members to date, and
- the African Charter on Human and Peoples' Rights (ACHPR)³¹⁶, which also known as the African Banjul Charter, adopted in 1981 and entered into force in 1986 and has 54 members.

The Charter of Human and People's Rights in the Arab World which contains 65 Articles and whose name was inspired by the unique ACHPR, adopted an original paradigm comparing with the previous proposals of the Arab human rights instrument. This can be exemplified in prioritizing individuals' rights such as respecting the right to life and imposing limitations on state of emergency, the prohibition of torture, the right to join political parties and the right to a healthy environment. In addition, setting out two mechanisms to protect human rights in the Arab World and to enforce the implementation of the charter, namely: an Arab Human Rights Committee and an Arab Court of Human Rights³¹⁷. The sources of the charter might be the reason behind producing such a superb and comprehensive human rights instrument and was praised by several relevant parties notwithstanding it was neglected by the LAS, and the Charter was adopted instead in 1994. Bassiouni remarks that adopting the 1994 Charter instead of his 1986 draft charter is to fulfil political desires³¹⁸.

The LAS adopted the 1994 Charter although it knew that it lacks effective enforcement mechanisms to protect human rights and ensure the member states implementation of the Charter provisions. This meant that the decision of adopting it by the Arab League was mainly approved to satisfy member states governments rather than promoting and protecting human rights in the Arab World. This also meant that member states of the LAS will not be held accountable in case of committing human rights violations.

³¹⁵ 'The American Convention on Human Rights' O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992); OAS '*American Convention on Human Rights: Signatories and Ratifications*' (1969) <<https://bit.ly/3gCta4A>> accessed 5th June 2020.

³¹⁶ 'The African Charter on Human and Peoples' Rights' (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982); ACHPR '*Ratification Table: African Charter on Human and Peoples' Rights*' (1981) <<https://bit.ly/33AvUvD>> accessed 5th June 2020.

³¹⁷ MC Bassiouni, '*International Instruments on Human Rights: Vol2 Islamic and Regional Instruments*' (Dar El-Shorouk, Cairo, 2003, 18).

³¹⁸ MC Bassiouni, '*International Instruments on Human Rights: Vol2 Islamic and Regional Instruments*' (Dar El-Shorouk, Cairo, 2003, 483).

5.3 The First Version of the Arab Charter on Human Rights

This important step is considered as an achievement for the Arab countries. This is because what really matters is accepting and believing in the rights by the Arab countries. However, the mentioned Charter has never been active in practice for the reason that none of the LAS member states ratified it or/and adopted it, thus it was never entered into force. As mentioned earlier in this chapter, the Charter's roots can be traced back to the 1970s and after being postponed for several times, it was adopted on 15 September 1994³¹⁹ in spite of the reservations which were submitted by seven countries of the Arab League member states in 1992.

The Charter's reservations vary from country to another. For instance, Bahrain and Kuwait tend to focus more on the 'Arab Declaration on Human Rights'³²⁰ rather than the Charter, while Oman clearly indicated its definite disagreement on the Charter without providing any reasons. On the other hand, Saudi Arabia, The United Arab Emirates, Sudan and Yemen proclaimed that the Charter should be more influenced by the CDHRI, because the latter is mostly derived from Islam and it was prepared by Arab and Islamic experts. They also claimed that since they already approved and ratified the CDHRI and as long as they believe that it will protect the human's rights due to the fact that its mainly based on the Islamic Sharia principles, there was no need to adopt the Charter. However, Iraq was the only Arab country who signed the 1994 Charter³²¹.

5.3.1 Contents of the First Version of the 1994 Charter

The Charter³²² has a preamble and 43 Articles. The preamble of the Charter assures that the Arab Nation believes in human dignity, reject all forms of racism and Zionism, believes in the eternal principles established by Islamic law and, that the Arab World is the cradle of religions and the home of civilizations. It also confirms it the International

³¹⁹With the support of the Arab Legal Permanent Commission, the Arab Human Rights Permanent Commission redrafted the Charter in 1992-1993 and then submitted it to the League's Council. The Council of the Arab League postponed the draft till the end of the end of the 1993 International Human Rights Conference in Vienna.

³²⁰A project that was proposed by the Council of the Arab Ministers of Justice, the Charter was adopted instead.

³²¹ Iraq imposed reservations on Articles 46 and 47, Iraq signature on the 1994 Charter has been counted as an acceptance but not an intention of adoption; see MA Al-Midani 'The Enforcement Mechanisms of the Arab Charter on Human Rights and the Need for an Arab Court of Human Rights' (2008) *Arab Centre for International Humanitarian Law and Human Rights Education (ACIHL)* available from <http://www.acihl.org/articles.htm?article_id=22> accessed 15th September 2016; A A An-Na'im, 'Human Rights in the Arab World: A Regional Perspective' (2001) 23 *Human Rights Quarterly* 712.

³²² please note that the following is a summary of the first version of the Charter.

Bill of Human Rights and the CDHRI. The preamble showed that the Charter is influenced by Islam and reflects Arab identity. Even more, highlighting the rejection of Zionism and occupation would probably indicate that the Charter was influenced by the Arab unity and nationalism. The rest of the Charter, however, has been divided into four sections. Section one consists of Article 1 which ensures the right to self-determination and people's ability to benefit from natural wealth and resources. Further, it considers racism, Zionism and foreign occupation not only a challenge to human dignity but also a major obstacle to the basic rights of peoples and therefore should be condemned.

Section two of the Charter is the main section as it consists of 38 Articles that include civil, political, economic, social and cultural rights. For example, ensuring equal enjoyment of the rights and freedoms stipulated in the Charter without any prejudice or discrimination due to race, colour, sex, language, religion, political opinion, national or social origin and wealth. Moreover, protecting the right to life and confining the death penalty on serious crimes with the convicted right to seek pardon and also to not execute the punishment on political crimes on a person whose age is under 18 years old and a pregnant woman as per Articles 5, 10, 11 and 12.

The second section also assures the prohibition of all forms of torture, medical experiments or operations without the patient's consent as per Article 13. Article 3 emphasises the prohibition of derogating any right enshrined in the Charter and Article 4 determines the situations in which derogation can occur e.g. in case of threats on national security, economic, public order, public health, morals or others' rights. Article 4 also added that the rights of freedom of torture, seeking asylum, persons return to their own countries, fair trial and prohibiting the retrospect of some cases must not be derogated. Other examples of rights that are mentioned in the second section of the Charter would be the right of human privacy (Article 17), the right of persons' security (Article 8), the rights of free trial and legal personality (Articles 6, 7, 16, 18), the right to freedom of movement (Article 4, 20, 21, 22), the right of private property (Article 25), the right to seek asylum (Article 23), the right of equality before courts (Article 9), the right of freedom of thought, conscience and opinion (Article 26), the right to practice religious rites (Article 27), the right to freedom of peaceful assembly, strike and to form unions (Article 28, 29), the right to work (Article 31, 32, 33), the right to education (Article 34), the right to establish and protect a family (Article 38).

The third section contains two Articles 41 and 42 and focuses on the mechanism whereby the Charter's provisions will be implemented, which is creating a committee of experts to receive member states human rights reports. Member states shall nominate their representative who should be qualified and will work independently. The committee consists of seven members who are selected by a secret ballot and who serve for three years. The committee shall nominate its Chairperson and adopt its own internal regulation. It then holds its sessions in the LAS headquartered in Cairo with the consent of the LAS Secretary General. Further, member states shall submit the first report after one year of adopting the Charter, three monthly periodic reports and reports that contained replies of questioned issues. The committee received member states reports for more reviews and submitted them to the commission. The fourth and final section contains an explanation of the requirement by which the Charter shall be entered into force, demonstrating that fulfilling the ratifications depository process via submitting the seventh ratification certificate by member states to the Secretary General of the LAS, the Charter will enter into force in accordance with Article 43.

5.3.2 An Implications on the 1994 Charter

Generally, the Charter is a great improvement in the Arab World, except that it has been issued with an unexpected form in terms of consistency with human rights standards which in particular were considered as an international norm in the protection and, promotion of human rights and hence did not meet the purpose of its formation. The author of this research believes that most of the human rights instruments consist of two main parts. The first part outlines the fundamental, universal, inalienable, indivisible, interdependent and interrelated human rights, while the second part focuses on elucidating the mechanisms by which the provision of the first part will be enforced e.g. human rights commission and human rights court. Most of the first part provisions are often constant in such an instrument, especially after the emergence of the International Bill of Human Rights in which many international, regional and national laws has been influenced by and derived from. Therefore the second part, which focuses on the enforcement mechanism, should be more highlighted and must be given more priority.

This version of the Charter failed to meet the required standards in both parts, because it falls short of international human rights standards. The following are some examples of the missing provisions and those that need to be amended in the 1994 Charter:

- the Charter did not include victims' right to appeal to higher courts, particularly cases that are punished by death penalty;
- the Charter did not include the right to political organisations and participation;
- the contradiction between Article 3 which prohibits the restriction on any of the rights and freedoms enshrined in the Charter, with Article 4 which limits and restricts some rights to protect national security, economic, public order, public health, morals or others' rights;
- apart from other rights, the Charter did not include one of the absolute rights, namely the prohibition of slavery;
- the Charter permitted member states internal legislation to undermine some of the fundamental rights, such as Article 4 which states that the rights enshrined in this charter should not be limited except upon what is stipulated by law and Article and 27 of the Charter which prohibited limiting the right to freedom of thought, conscious and opinion unless the law;
- the Charter did not refer to the necessity of considering the extent to which its provisions might be consistent with member states domestic laws.

It is submitted, however, that the importance of the enforcement mechanism of any human rights instrument lays on implementing the relevant human rights instruments provisions and protecting the rights enshrined therein. Fortunately, the first version of the Charter adopted an expert committee as an enforcement mechanism of its provisions notwithstanding part of its rulings were weak, incompatible with international standards and hence ineffective. The responsibilities and duties of the expert committee should be amended, extended and activated. Initially the committee's members must be elected according to their qualification in the legal and human rights field, ability, they must be known for their good morals and reputations, experience and be independent so they can represent themselves. By comparing the mentioned with

other regional human rights systems, Articles 31 and 38 of the ACHPR; Articles 34 and 36 of the ACHR has covered all the mentioned above criteria³²³.

However, after fulfilling the required process including drafting and redrafting, reviewing, commentary and recommendations, the expert committee should transmit member states reports directly to the LAS Council instead of the commission which consists of member states representatives and is not independent, so they can act more freely, impartially and neutrally. Article 52 of the ACHPR indicates that “the Commission shall prepare...a report to the States concerned and communicated to the Assembly of Heads of State and Government”. Furthermore, Article 53 states that “the Commission may make to the Assembly of Heads of State and Government such recommendations as it deems useful”. The American System has frankly encompassed this matter in Article 49 of the ACHR, stating that:

The Commission shall draw up a report, which shall be transmitted to the petitioner and to the States Parties to this Convention and shall then be communicated to the Secretary General of the Organisation of American States for publication. This report shall contain a brief statement of the facts and of the solution reached.

Further, the specialisations of the expert committee created by the LAS must be extended to fulfil its goals. For example, monitoring member states implementation of the Charters’ provisions and the extent to which these provisions correspond with their internal legislations. Unlike other regional systems, Article 41 of the Charter confined the specialisations of the expert committee on merely receiving member states reports, reviewing them and submitting its recommendations to the Commission. Although the mentioned article imposes on member states submitting their human rights status periodically, the expert Committee’s responses were weak and prosaic. By way of comparison, Article 45 section 1 sub-section 2 of the ACHPR remarks that the commission shall “formulate and lay down principles and rules aimed at solving legal

³²³ ‘The African Charter on Human and Peoples’ Rights’ (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) Articles 31 & 38; ‘The American Convention on Human Rights’ O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992) Articles 34 & 36.

problems relating to human and peoples' rights and fundamental freedoms upon which African Governments may base their legislation". The ACHPR added in Article 46 that the "Commission may resort to any appropriate method of investigation; it may hear from the Secretary General of the Organisation of African Unity or any other person capable of enlightening it".

The ACHR also mentions in Article 41 section b, that the commission shall "make recommendations to the government of member states, when it considers such action advisable, for the adoption of progressive measures in favour of human rights within the framework of their domestic law and constitutional provisions as well as appropriate measures to further the observance of those rights". Section d of Article 41, moreover, states that the commission may "request the governments of the member states to supply it with information on the measures adopted by them in matters of human rights". Further, section d of Article 48 authorises the commission to "examine the matter set forth in the petition or communication in order to verify the facts...[and may] carry out an investigation, for the effective conduct of which it shall request, and the states concerned shall furnish to it, all necessary facilities".

Another matter of concern would be the fact that the first version of the Charter did not include an article to guarantee the right to petitions and complaints. Presumably, the right to submit petitions and complaints to the expert committee must be primary, particularly in cases with the absence of another human rights protection mechanism such as the human rights court. The ACHPR ensures this right in Article 45 section 2 stating that the commission shall protect "human and peoples' rights under conditions laid down by the present Charter". In addition, Article 55 section 1 points out that "the Secretary of the Commission shall make a list of the Communications other than those of State Parties to the present Charter and transmit them to Members of the Commission". This has been widely clarified in Rule no. 115 of the commission's rules of procedures, indicating that any communication that is "submitted under Article 55 of the African Charter may be addressed to the Chairperson of the Commission through the Secretary by any natural or legal person"³²⁴. Even more, Article 44 of the ACHR

³²⁴ Rules of Procedure of the African Commission on Human and Peoples' Rights, adopted by the African Commission on Human and Peoples' Rights during its 27th Extra-Ordinary Session held in Banjul (The Gambia) from 19 February to 04 March 2020.

emphasises the possibility of “[a]ny person or group of persons, or any non-governmental entity legally recognised in one or more-member states of the Organisation, may lodge petitions with the Commission containing denunciations or complaints of violation of this Convention by a State Party”.

Presumably, the Charter has been created primarily to benefit the peoples who live within LAS member states territories, whereas the formulation or the wording style of some of its Articles gives the impression as if these rights were granted by the authorities. For example, some of the Charters’ provisions end with ‘as per domestic law’ or ‘according to member states applicable laws’, by which may stimulate member states to restrict these provisions instead of providing them the full support to be applied appropriately, and as stipulated in other human rights instruments.

This is far from being achieved since most of them need compliance with their provisions. The author of this research believes that member states would likely tend to prefer non-involvement in international treaties, because most of them relied on nondemocratic political systems in the past. In other words, joining such international treaties will impose obligations on contracted states, and may complicate the issue of practicing their absolute power. Angrist demonstrates that “until the Arab uprisings of 2010–2011, systems of government in the Middle East were, almost without exception, authoritarian. Indeed, for the last quarter of the twentieth century and the first decade of the twenty-first, the...[Arab]...region was a global outlier”³²⁵. It seems that Arab member states found it hard to accept such agreements in which most of its contents are obligatory, although their enforcement mechanism would provide the effective protection of human rights. On top of that, the issue of member states sovereignty should not be underestimated in this context, as it might be one of the reasons for this abstention.

In general, treaties that aim to promote and protect human rights require acceptance, positive reaction by contracted parties, and willingness to recognise these rights as well. This lead to infer that even if the Charter entered into force after member states

³²⁵ MP Angrist, ‘The Making of Middle East Politics’ in MP Angrist (eds) *Politics and Society in the Contemporary Middle East* (3rd, Lynne Rienner Publishers, USA 2019) 5; also see S Talebi, ‘Democracy in Arab Countries: Between Internal and External Pressures’ (2014) <<https://bit.ly/3m29ha2>> accessed 22 August 2020 (translated by author).

ratification, it will likely still prove ineffective and will mostly fail. The reticence on ratifying the Charter was not surprising not only because it was unreliable and weak, but also due to the fact that member states needed more time to become involved in such a commitment. The 1994 version of the Charter failed to meet international standards in both parts. It can be assumed that the Charter should not only be amended to become in line with the international human rights standards, but also be completed by adding the missing fundamentals. Consequentially, the LAS called for amendments to the Charter. In fact, the Commission took credit in urging Arab member states with all determination and perseverance to amend and improve the Charter. Moreover, the United Nations also supported the LAS in the Charter amendment process.

5.4 Amending the First Version of the Charter³²⁶.

Member states consent and initiative to amend and improve the Charter may reflect their intention in promoting human rights in the Arab World. However, the effort of the Commission in managing the Charter's amendment process was obvious. In its 15th session in January 2001, the Commission called to update and improve the Charter, and then submitted its recommendations which included urging member states to review, ratify, and adopt the Charter. The LAS Council approved the Commission's request in its Ministerial Level Meeting in March 2001 and positioned it as a priority, following through by directing the Arab Human Rights Department (the Department), which is part of the Commission, to follow up. In March 2002, the Council transmitted to member states the recommendations of the Commission's 16th session's, which included urging member states to provide their comments regarding updating the Charter and submit them to the Council. In its 118th regular session, the Council assigned the Department to submit member states comments to the Commission for further review and then to the Arab Legal Permanent Commission before transmitting it to the Council. Likewise, the process was repeated in early 2003 with the necessity of involving Arab experts in the

³²⁶ The following is a summary of several sessions reports of the Council of the Arab League, the Arab Permanent Commission on Human Rights, the Arab Human Rights Department, the expert team and the UNHCR; see The Council of the Arab League 'The Arab Permanent Commission of Human Rights Recommendations' in its 15th Session (Res) 6089/115 (12 March 2001), 16th Session (Res) 6184/117 (10 April 2002), 17th Session' (Res) 6302/119 (24 March 2003); The Council of the Arab League 'The Arab Permanent Commission of Human Rights Recommendations in its Extraordinary Session' (Res) 6353/120 (15 September 2003); The Arab Human Rights Department (Res) 585 (16 September 2002); The Council of the Arab League (Res) 6243/118 (5 September 2002); (in Arabic translated by author); UNHCR 'National Institutions for the Promotion and Protection of Human Rights' (25 April 2003) UN Doc E/CN.4/RES/2003/76 2.

legal and human rights field and then submitting their recommendations no later than the end of April 2003. The Commission then held an extraordinary session in June 2003, adopted its suggestions regarding updating the Charter and submitted them to the Council which then requested another extraordinary session for the Commission to be held in early October 2003. In the second extraordinary session of the Commission, the Secretary General of the LAS clarified the purpose behind updating or/and amending the Charter, indicating that it should be compatible with international human rights standards.

The United Nations High Commissioner on Human rights had suggested the formation of a team of Arab experts who work with the United Nations human rights agencies, and the LAS agreed. The team held its' sessions on 21-26 December 2003 in the LAS headquarters in Cairo. Moreover, it divided the projected Charter according to their specialisations into six sections that represent civil, political, economic, social, cultural and minority rights. They also included the preamble and the enforcement mechanism provisions. The team mainly relied on the 1994 Charter and the outcomes of the Commission's extraordinary sessions. Additionally, the team also took into consideration member states comments and recommendations, regional human rights instruments, the CDHRI, the opinions of Arabs and international NGOs, scholars, activist, and legal experts. On 14 January 2004, the team submitted the projected Charter which included the outcome of the extraordinary sessions and the expert teams draft, to the Commission. On 23 May 2004 the LAS Council adopted the amended version of the Charter that was based merely on the Commission's extraordinary sessions.

By doing so, the Commission has prioritised the draft that was prepared within the LAS over the draft that had multiple viewpoints, and had been urged to be compatible with international human rights standards. This is not surprising, and it happened once before, when the LAS approved the 1994 Charter instead of the 1986 drafted Charter of Human and People's Rights in the Arab World in Syracuse. The Author of this research argues that outweighing the Arab culture, including Islam, over the international standards of human rights, can be justified by the centralised manner adopted by the LAS towards these types of contexts.

5.5 The Second Version of the Arab Charter on Human Rights

As already pointed out earlier, this version of the Charter was adopted in 2004 and consisted of 53 Articles plus the preamble. By fulfilling Section 2 of Article 49, the Charter entered into force in 2008³²⁷.

The consent of more than half of the LAS member states indicated that this version of the Charter will probably be effective and might achieve its purpose. So far, 16 out of 22 of the LAS members have signed, ratified and adopted the Charter. The seven founding member states who entered the Charter into force after submitting their ratification to the LAS Secretariat General as per Article 49 section 2 are Jordan, Algeria, Bahrain, Libya, Syria, Palestine and the United Arab Emirates³²⁸.

However, this version of the Charter has a single reservation by Iraq, who submitted a note to the Commission on 18 January 2004, regarding its reservation on submitting the human rights statute reports³²⁹.

5.5.1 Contents of the Second Version of the Charter

The 2004 version of the Charter consists of 4379 words and 165 paragraphs that constitute a preamble and 53 Articles. The Charter's Articles can be divided into four

³²⁷Section 2 of Article 49 of the Arab Charter on Human Rights states that the "present Charter shall enter into force two months after the date of the deposit of the seventh instrument of ratification with the Secretariat of the League of Arab States".

³²⁸ *ibid* (n 4).

³²⁹ see the note submitted to the Secreterate General of the Arab League regarding its reservations on the Arab Charter on Human Rights C/3/5/85 on 18 January 2004; The Author of this research believes that Iraq reservation can be justified from legal and moral perspectives. The former indicates that the reservations were submitted during the Transitional Administrative Law of Iraq, which was adopted in 31 January 2003 in order to manage the situation in Iraq after the war, till the creation of a new constitution. Article 30(a) of the new constitution states that "[d]uring the transitional period, the State of Iraq shall have a legislative authority known as the National Assembly. Its principal mission shall be to legislate and exercise oversight over the work of the executive authority". Article 25(a) states that the transnational government, including the National Assembly, shall formulate "foreign policy and diplomatic representation; negotiating, signing, and ratifying international treaties and agreements; formulating foreign economic and trade policy and sovereign debt policies". The Iraqi transmitted government released an appendix to the aforementioned law in 1 June 2004 emphasising on the creation of the National Assembly during July 2003. This means Iraq has no legislative authority to adopt treaties and other international agreements, when the Arab Charter on Human Rights was adopted on 23 May 2004. From a moral perspective, however, the Author of this research believes that the reason behind Iraq reservation was the fact that Iraq was in a time of war back then, and in a period of transmitting the regime from dictatorial socialist to democratic one. Accepting the Charter will impose obligations on Iraq, including submitting their human rights status reports, whereby severe human rights violations occurred during the previous regime will be revealed. The new regime needed time to settle and to focus on creating the New Iraq, in which human rights promotion is one of its aims. However, Iraq withdraw its reservation and adopted the Arab Charter on Human Rights in 4 April 2013; Alwaqae Official Gazette, 'An Appendix to the Iraqi State Administration Law for the Transitional Period' 1 June 2004, no. 3981 (translated by author).

parts: Article 1 which demonstrates the purpose of establishing the Charter, Articles 2-44 were allocated to the rights protected by the Charter and member states commitment to take all necessary measures to protect these rights, Articles 45-48 regarding the Arab Human Rights Committee (the Charter Committee) which consider as the enforcement mechanism that supervises and monitors the implementation of the Charters' provisions, and finally Articles 49-53 concerning procedural instructions for member states.

Moreover, the Charter also showed some improvements to its predecessor, as the set of human rights enshrined had increased and mostly become similar to other regional human rights instruments such as the right to self-determination, the right to non-discrimination, the right to life, the right to prohibition from torture, prohibition from slavery, the right to fair trial, the right of freedom and security, children rights, prisoners' rights, the rights of privacy, the right to acquire legal personality, the right to involve in political activity, minority rights, the right to movement, the right to seek asylum, the right to have nationality, the right to freedom of thought, conscience and religion, the right to own private property, the right to freedom of opinion and expression, the right to create family, the right to work, the right to assembly, the right to health, disabled rights, the right to education. Secondly, the mechanism of enforcing member states to implement the Charter's provisions had also been improved. Most importantly, the Charter considered international, regional and Islamic human rights standards³³⁰.

What follows is an analysis of the Charter's preamble and a summary of the rights enshrined therein. The Charter had also stipulated the three generations of rights, namely: civil and political rights, economic, social and cultural rights, and collective or solidarity rights³³¹.

5.5.1.1 The Preamble of the Charter

In its preamble, the Charter affirms the international human rights standards by protecting people's "dignity", considering the enjoyment of "human rights to a decent life based on freedom, justice and equality", "defend[ing] the right of nations to self-

³³⁰ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) see the preamble.

³³¹ K Vasak, 'A 30 Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights' (UNESCO, 1977, 29) <<https://goo.gl/17qMg8>> accessed 23 January 2017.

determination, to the preservation of their wealth and to development; believing in the sovereignty of the law and its contribution to the protection of universal and interrelated human rights³³². Human dignity is also considered as one of the basic human rights³³³. People are afforded the requirement for living in dignity, including food, education, health and security. They will also be treated equally before the law and be able to freely determine a number of issues, such as, choosing their own government, their lifestyle and, expressing their thoughts and beliefs. In addition, their standards of living and liberty are guaranteed, and protected from being abused. It is therefore submitted that the Charter supports the five human rights fundamentals: dignity, freedom, equality, justice and peace. Further, these values are likely to be of democracy features. By considering the aforementioned manifestation, the Charter has embodied some of the democracy values. Landman states “that basic democratic values and principles have personal value to citizens and those democracies have a better record at protecting physical rights and a wide range of other human rights”³³⁴.

In terms of compatibility with international human rights standards, the preamble of the Charter indicates that its provisions reaffirm “the principles of the Charter of the United Nations and the Universal Declaration of Human Rights as well as the provisions of the United Nations International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights and having regard to the Cairo Declaration of Human Rights in Islam”³³⁵. Majid maintains that “Islam is the expression of an Arabian ideology elaborated by scholars and writers over the course of two or three centuries. The language, culture, and habits of Arabia...were made to be the foundations of a new religion”³³⁶. Islam is the religion of the vast majority of the LAS member states, who consider the principles of the Islamic Sharia while preparing their

³³² The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) see the preamble.

³³³ G Kateb, ‘*Human Dignity*’ (Harvard University Press, US 2011) 18; EG Valdés, ‘Dignity, Human Rights, and Democracy’ (2009) 17 *Research in Molecular Medicine* journal 253; also see W Benedek, ‘Introduction to the System of Human Rights’ in W Benedek (eds) *Understanding Human Rights: Manual on Human Rights Education* (3rd edn, European Training and Research Centre for Human Rights and Democracy (ETC), and University of Graz 2012).

³³⁴ T Landman, ‘*Human Rights and Democracy: The Precarious Triumph of Ideals*’ (Bloomsbury, US, 2013) 142.

³³⁵ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) see the preamble.

³³⁶ A Majid, ‘Islam: The Arab Religion’ (TINGIS, 2013) <<https://www.tingismagazine.com/editorials/islam-the-arab-religion/>> accessed 30 September 2016.

internal legislation, in accordance with their own constitutions³³⁷. Arab countries approved most of the international human rights instruments under the condition of not prejudicing Sharia³³⁸. For example, most of the Arab countries signed and ratified the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)³³⁹ although Iraq, Bahrain, Kuwait, Libya and Egypt had reservations that the CEDAW contains some provisions contradict the Islamic Sharia³⁴⁰.

Mattar indicates that Islamic norms and Arab characteristics have been integrated in the preparation of the Charter as well as the basic international human rights instruments, such as the International Bill of Human Rights³⁴¹. El Demery also writes that “there is a direct link between Sharia law and human rights and that the misunderstanding of Islam ‘which prevents others from seeing this connection’ is because of a lack of knowledge and the strong influence of the media”³⁴². Furthermore, most of the rights mentioned in the human rights instruments such as the right to life, the right of protection from arbitrary arrest and the right of fair trial, are addressed in the Islamic Sharia³⁴³.

This appreciation of Islam must be more reflected in the preamble of the Charter. Despite the fact that Islam is mentioned before the other divine religions in the second paragraph of the preamble, there should be more stress on the Islamic human rights instruments. To be more specific, the second paragraph of the preamble promotes “the eternal principles of fraternity, equality and tolerance among human beings consecrated by the noble Islamic religion and the other divinely-revealed religions”³⁴⁴. This is

³³⁷ G Stopler, ‘The Challenge of Strong Religion in the Liberal State’. (2014) 32(2) *Boston University International Law Journal* 411; except Lebanon who also consist of %60 Muslims, %39 Christian and %1 of other religions, see UNRWA, ‘Working in Lebanon’ available at <<https://bit.ly/3aJ7lQf>> accessed 4th Jun 2020.

³³⁸ this will be clarified in more details later in this chapter, precisely in the Arab countries’ compliance to international human rights instruments section.

³³⁹ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) United Nations, Treaty Series, vol. 1249, p. 13.

³⁴⁰ Freeman M, ‘Reservations to CEDAW: An Analysis for UNICEF’ (*UNICEF*, 2009) 28,30 <<https://uni.cf/3coV4zv>> accessed 17 July 2017; this is an example of Arab countries who accepted the CEDAW with reservation, this is because some of its contents are not compatible with Islamic Shari’a Law, in particular Articles 2, 15, 16 and 29.

³⁴¹ M Mattar, ‘Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards’ (2013) 26 *Harvard Human Rights Journal* 91.

³⁴² A El Demery, ‘*The Arab Charter of Human Rights: A Voice for Sharia in the Modern World*’ (kindle version, Chicago: Council on International Law and Politics 2015) Intro, G, Para 3.

³⁴³ I Ahmed, ‘Western and Muslim Perceptions of Universal Human Rights’ (1994) 10(1-2) *Afrika Focus* 29.

³⁴⁴ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) see the preamble.

inevitable due to the fact that the rights enshrined in the Charter are directed to all humans who lives in the Arab World and of all religions. This has been assured by affirming the international human rights standards. However, the preamble did not accord the adequate appreciation to Islam while listing the sources of its creation in the last paragraph. Rather the preamble included a weak expression in this context, as it stated that member states agreed the Charter by “having regard to the Cairo Declaration on Human Rights in Islam” in the last paragraph. Understandably, the drafters of the Charter are realising that affirming international human rights standards is important, yet the Islamic instrument should not be undermined.

Additionally, the rejection of “all forms of racism and Zionism, which constitute a violation of human rights and a threat to international peace and security” is indicated in the preamble of the Charter. This is likely because it constituted a security threat to human rights in the Arab World. As explained in chapter 3 of this research, since the Balfour Declaration of 1917, Israel has been considered tantamount to a threatening intruder on Arab security, particularly with the support of the Zionists. It has been argued that both Israel and the aggressive, racist and violent ideology of Zionism may be considered as a potential threat to the peace and security of the Arab region³⁴⁵.

5.5.1.2 Article 1 “The purpose of the Charter”

Article 1 of the Charter, however, sets out the objectives of creating the Charter, starting with urging members “to place human rights at the centre of the key national concerns of Arab States, making them lofty and fundamental ideals that shape the will of the individual in Arab States and enable him to improve his life in accordance with noble human values”³⁴⁶. This article appreciates and values human rights by emphasising on contracted parties to consider human rights as one of their priorities, and count them as the fundamentals whereby humans may enhance their behaviours.

It moved on to mention the necessity of teaching “the human person in the Arab States pride in his identity, loyalty to his country, attachment to his land, history and common interests and to instil a culture of human brotherhood, tolerance and openness towards

³⁴⁵ Haarets and JTA, ‘UK Intelligence Called Israel ‘True Threat’ to Middle East’ (*HAARETZ* 2016) <<https://bit.ly/3hYp32k>> accessed 27 March 2017; A Brownfeld, ‘Jewish/Zionist Terrorism: A Continuing Threat to Peace’ (2000) 2(4) *Global Dialogue* 107.

³⁴⁶ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) see Article 1 section 1.

others in accordance with universal principles and values and with those proclaimed in international human rights instruments”³⁴⁷. The mentioned statement of Article 1 urges member states to ensure humans bringing up in their territories while considering international human rights values. There is no reference to the Islamic principles here.

The Author of this research believes that this section did not refer to Islam because the mentioned values does not contradict Islam, rather they are supported by Islam. The statement cared to teach humans who lives in Arab countries to be proud of his Arabic identity, which reflects their straggles in promoting Arab nationalism over time. This can be achieved by believing in “human brotherhood, tolerance and openness towards others” pursuance to international human rights standards, and which are also supported by Islam.

Likewise, the drafters of the Charter found it important to clearly condemned Zionism in the preamble because its principles, such as racism and violence³⁴⁸, contradict Islam. Moreover, the third section of Article 1 continued urging member states to promote human rights, stating that they shall “prepare the new generations in Arab States for a free and responsible life in a civil society that is characterised by solidarity, founded on a balance between awareness of rights and respect for obligations, and governed by the values of equality, tolerance and moderation”³⁴⁹.

Furthermore, Article 1 not only identified the aim of creating the Charter but also some of the main features of human rights, indicating that “the principle that all human rights are universal, indivisible, interdependent and interrelated” must be entrenched in order to fulfil the aim of the Charter³⁵⁰. It seems that the drafters of the Charter favoured the universal standards over the Arab culture, including the principles of Islam. In fact, the

³⁴⁷ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 1 section 2.

³⁴⁸ S Goranov, ‘Racism: A Basic Principle of Zionism’ in W Lehnthe (eds) *Zionism & Racism: Proceedings of an International Symposium* (International Organization for the Elimination of All Forms of Racial Discrimination 1977) 27-35.

³⁴⁹ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 1 section 3.

³⁵⁰ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 1 section 4; OHCHR, ‘Human Rights: A Basic Handbook for UN Staff’ (2000) <<https://goo.gl/bYPAsZ>> accessed 25 January 2017.

mentioned human rights features are mostly compatible with Islam, except the one related to universality³⁵¹.

5.5.1.3 Article 2 “Self-Determination”

Before the Charter, the United Nations Charter was insistent on including the right of people to determine their own destiny, naming it as one of the purposes of its creation in Article 1. This right has become one of the basic principles in maintaining peace and enhancing relations between nations and has been expanded in several directions such as national sovereignty over natural wealth and resources within their own territories³⁵². It has been stated that “the desire for self-determination of any people in the world is likely to affect the peace of the world or the good understanding between nations”³⁵³.

Article 2 of the Charter guaranteed the right of people to determine their fate, stating in the first section that “[a]ll people have the right of self-determination and to control their natural wealth and resources, and the right to freely choose their political system and to freely pursue their economic, social and cultural development”³⁵⁴. To be more precise, the Charter guarantees the right to self-determination internally by indicating that all people are entitled to determine their political system and to contribute toward achieving social and cultural development in their own countries. In addition, the article gives people the right to determine their own economic approach whereby wealth and natural resources can be managed freely. On the other hand, paragraphs 3 and 4 of Article 2 ensure the right to self-determination externally, by condemning Zionism and foreign domination, and the right to resist foreign occupation.

The Author of this research believes that the right of people to determine their destiny is considered as one of the international law fundamentals, because applying this right is a basic condition and requirement to achieve the actual respect, promotion and

³⁵¹ This will be explored later in part 3 of this research, in particularly in the chapter that addresses the tension between universality and cultural relativism.

³⁵² N Schrijver, ‘Self-Determination of Peoples and Sovereignty over Natural Wealth and Resources’ in OHCHR, *Realizing the Right to Development* (ohchr.org 2013, 95-102) available from <<https://bit.ly/3xAk2qt>> accessed 25th January 2017.

³⁵³ M, Nawaz, ‘The Meaning and Range of the Principle of Self-Determination’ (1965) 82 *Duke Law Journal* 85.

³⁵⁴ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Art 2 section 1.

strength to individual human rights. This can be a good reason for stipulating this right in Article 2 of the Charter and before other rights.

5.5.1.4 Article 3 “Non-Discrimination Principle”

Article 3 of the Charter prevents discrimination “on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth and physical or mental disability”³⁵⁵, while enjoying the rights and freedoms for any reason and it urges member states to ensure this by all means necessary. However, taking into account the Islamic Sharia, Section 3 of Article 3³⁵⁶ of the Charter ensures equality between men and women while adhering to positive discrimination for the sake of women. The term ‘equality’ was problematic and other regional human rights instruments include the terms ‘eliminate discrimination’, ‘non-discrimination’ and ‘without discrimination’ instead. Unlike other regional systems, the Charter stipulated that member states are obliged to provide gender equality and to guarantee the enjoyment of the rights mentioned in the Charter by women³⁵⁷. Rishmawi maintains that paragraph 3 of Article 3 of the Charter may cause some concern because some Arab societies might neglect this equality and justify it under Islamic Sharia . She also comments that most Arab countries have ratified the CEDAW, which reaffirms non-discrimination between men and women³⁵⁸.

It has been also concluded that the principles of non-discrimination enshrined in the Charter, particularly section 3 of Article 3 was purposely interpreted as “areas of the law where a rule provides for different stipulations for women than men, and then... frame[s] such stipulations to enhance women’s rights or to protect women rather than to discriminate against them”³⁵⁹. In other words, the third section of Article 3 urges

³⁵⁵ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Art 3 section 1.

³⁵⁶ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 3 Section 3; the same Article states that “Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter”.

³⁵⁷ M Mattar, ‘Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards’ (2013) 26 *Harvard Human Rights Journal* 106-108.

³⁵⁸ M Rishmawi, ‘The revised Arab Charter on Human Rights: a step forward?’ (2005) 5(2) *Human Rights Law Review* 375.

³⁵⁹ M Mattar, ‘Article 43 of the Arab Charter on Human Rights: Reconciling National, Regional, and International Standards’ (2013) 26 *Harvard Human Rights Journal* 108.

member states towards regulating their legislation to promote gender equality. Another recent article suggested that gender equality can be ensured in the Arab World by enhancing people's awareness about the perception of gender roles so women will be more accepted in society and involved in drawing the policies of Arab countries, rather than the traditional view that mostly represented in committed to household work. By doing so, and through media or peaceful assemblies, gender equality might be achieved³⁶⁰.

5.5.1.5 Article 4 "Derogations"

Human rights concepts may raise two contradictory matters; on one hand human rights are untouchable either on its meaning or content. On the other hand, the absoluteness of practicing a number of human rights may lead to the violation of other rights e.g. individual or/and society. Consequentially, some of the human rights must be limited to balance the aforementioned matters in the first place and, to protect national security, general etiquette and others' rights. It is necessary to impose limitation on some rights because practicing them might be impossible sometimes, especially in times of war or/and emergency. The following is a brief demonstration of Article 4 of the Charter in which the derogation some of the provisions is addressed.

The Arab League was not the first who considered a scope to derogate some of the human rights in case of emergency, as the ICCPR mentioned a number of rights that cannot be derogated by state parties in case of emergency in Article 4, such as the right to life; the prohibition of torture or to cruel, inhuman or degrading treatment or punishment and the prohibition of slavery. Article 4 of the Charter is almost the same as Article 4 of the ICCPR in terms of wording³⁶¹. It permits member states to derogate some of the human rights mentioned in the Charter in cases of "exceptional situations of emergency which threaten the life of the nation and the existence of which is officially proclaimed, the States parties to the present Charter may take measures derogating from their obligations under the present Charter, to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their

³⁶⁰ A Almutawa and K Magliveras, 'Enforcing women's rights under the Arab Charter on Human Rights 2004' (2020) 25(8) *The International Journal of Human Rights* 1258.

³⁶¹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 4; 'International Covenant on Civil and Political Rights' (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 4.

other obligations under international law and do not involve discrimination solely on the grounds of race, colour, sex, language, religion or social origin”³⁶².

However, the number of non-derogable rights enshrined in the Charter are more than those mentioned in other human rights instruments, including the ICCPR. These rights are covered in Article 5 (the right to life), Article 8 (the right not to be tortured), Articles 9-10 (the prohibition of all forms of human trafficking), Article 13 (the right to a fair trial), Article 14 (the right to liberty and security of person), Article 15 (no punishable crime without provision in the law), Article 18 (no one jailed due to inability to pay a debt arising from a contractual obligation), Article 19 (no one may be tried twice for the same offence), Article 20 (prisoners’ rights), Article 22 (the right to be recognised before the law), Article 27 (the right to settle in the country), Article 28 (the right to seek political asylum), Article 29 (the right to nationality) and Article 30 (the right to freedom of thought, conscience and religion)³⁶³.

Furthermore, in cases of situations by which some of the Charter’s provisions are going to be derogated, member states “shall immediately inform the other States parties, through the intermediary of the Secretary-General of the League of Arab States, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation”³⁶⁴.

5.5.1.6 Civil and Political Rights³⁶⁵

Civil and political rights have been stipulated within Articles 5-33 of the Charter. The Charter addresses the right to life and explains the terms and conditions of applying death penalty in Articles 5-7; the prohibition of inhuman treatment such as torture, trafficking in human organs and slavery in Articles 8-10; equality before the law, ensure the right to litigation, fair trial, prisoners’ rights and the right to acquire legal personality in Articles 11-20 & 22; the right to privacy, and the right to effective remedy in Articles 21-23. The Charter has also highlighted in Articles 26 & 27 the right to freedom of

³⁶² The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 4 section 1.

³⁶³ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 4 section 2.

³⁶⁴ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 4 section 3.

³⁶⁵ The following is a summary of the rights enshrined in the Arab Charter on Human Rights.

movement and to choose place of living within the limits of law and to not prevent anyone from leaving any country including his/her own, or to force anyone to reside in a specific place in his/her own country, or to send someone in to exile from their own country and prevent them from return. Even more, the right to seek asylum and to not extradited political refugees in Article 28. The right to nationality has also been mentioned in Article 29 of the Charter³⁶⁶.

Other human rights that are protected by the Charter would be the right to freedom of thought, conscience and the religion in Article 30; the right to private property in Article 31 and the right to information and to freedom of opinion and expression in Article 32. Moreover, the Charter did not forget to include political rights and Article 24 addressed a number of provisions that enable people to freedom of political practice, to involve in the conduct of public affairs and to form associations. In the following pages however, a number of civil and political rights will be briefly highlighted.

The right to life is considered the first human right, as other rights do not exist without it. It is prohibited to violate another's life, unless upon legitimate causes. The right to life is one of the basics that Allah (SWT) included in the Holy Qur'an. Allah the Almighty says:

Because of that, We decreed upon the Children of Israel that whoever kills a soul unless for a soul or for corruption [done] in the land - it is as if he had slain mankind entirely. And whoever saves one - it is as if he had saved mankind entirely. And our messengers had certainly come to them with clear proofs. Then indeed many of them, [even] after that, throughout the land, were transgressors³⁶⁷

Humans cannot practice any of the other rights if he/she is not alive so this justifies the reasons behind not only prohibiting violating the right to life, but also criminalising it.

³⁶⁶ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 29; the Article states that "[e]veryone has the right to nationality. No one shall be arbitrarily or unlawfully deprived of his nationality...States parties shall take such measures as they deem appropriate, in accordance with their domestic laws on nationality, to allow a child to acquire the mother's nationality, having due regard, in all cases, to the best interests of the child...No one shall be denied the right to acquire another nationality, having due regard for the domestic legal procedures in his country".

³⁶⁷ The Holy Quran, 'Al-Ma'idah' (*Quran.com* 5:32) available from <<https://bit.ly/3rcWTZM>> accessed 25th Nov 2021.

This is because violating the right to life leads to the violation of all other human rights. Islam, in particularly the Qur'an, sees the right to life as a personal right³⁶⁸ in which a persons' activities and relations are linked. This means that the right to life is one of the basics that underpin societies, and therefore it cannot be violated. All of the human rights instruments stipulated the protection of the right to life and personal security including the Charter which illustrates that "[e]very human being has the inherent right to life...[, which] shall be protected by law. No one shall be arbitrarily deprived of his life"³⁶⁹. However, the Charter clarifies the situations in which this right may be derogated, stating that death penalty "may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence"³⁷⁰. The Charter also included some provisions to control applying the death penalty, as it should not be imposed on a person under 18 years old or a pregnant woman before delivering her baby or within the two years from her delivery³⁷¹.

Human rights instruments, including the Charter, embraced the protection of the right to life and the prohibition of any act that may violate this right due to the widespread brutal scenarios of violating this right nowadays, such as the arbitrary execution beyond the scope of law, the execution without trial, the political assassinations, the death that is resulting from enforced disappearance, the death that is resulting from torture and other type of mistreatment in jails³⁷².

However, moving on to another important right that is protected by most of the divine and manmade human rights sources is the right to respect private life, family affairs, home and correspondences. The Qur'an says:

³⁶⁸ L Zhigang, 'The Protection of the Right to Dignity in the Connection and Interaction between the Constitution and Civil Law' (2017) 16(6) *Journal of Human Rights* 546.

³⁶⁹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 5.

³⁷⁰ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 6.

³⁷¹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 7.

³⁷² T E Rakha, 'Human Rights Law between Theory and Practice in Positive Thoughts and the Islamic Shari'a' (Dar Alnahdha, Cairo 2005) 103-104 (in Arabic translated by author).

O you who have believed, avoid much [negative] assumption. Indeed, some assumption is sin. And do not spy or backbite each other. Would one of you like to eat the flesh of his brother when dead? You would detest it. And fear Allah; indeed, Allah is Accepting of repentance and Merciful”³⁷³. Allah added “O you who have believed, do not enter houses other than your own houses until you ascertain welcome and greet their inhabitants. That is best for you; perhaps you will be reminded³⁷⁴

Islamic Sharia emphasised the fact that private homes must not be entered without the consent of the owners, otherwise it will be considered as a violation of human privacy. On the other hand, manmade human rights laws adopted the right to privacy of a person and gave it a high level of importance. The right to privacy has also been enshrined in Article 21 of the Charter, affirming that every person has the right of privacy of personal affairs, family, home and corresponding. Personal affairs refer to persons’ corresponding and not to illegally attack his/her honour or reputation. The privacy of a persons’ family means respecting others family life including marriage life and to protect the relations between parents and their children. Moreover, the right of private home means to respect the homes in which other are living³⁷⁵.

The third right will be the prohibition of torture. Islam has honoured human beings and guaranteed his/her safety, as well as prevented them from being exposed to torture and other inhuman treatment by demonstrating how evil it is and by imposing punishments on such acts. Allah the Almighty says:

“And We ordained for them therein a life for a life, an eye for an eye, a nose for a nose, an ear for an ear, a tooth for a tooth, and for wounds is legal retribution”³⁷⁶. Allah added “And those who harm believing men

³⁷³ The Holy Quran, ‘Al-Hujurat’ (*Quran.com* 49:12) available from <<https://bit.ly/3DRi5ln>> accessed 25th Nov 2021.

³⁷⁴ The Holy Quran, ‘An-Nur’ (*Quran.com* 24:27) available from <<https://bit.ly/3DV6bx3>> accessed 25th Nov 2021.

³⁷⁵ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 21.

³⁷⁶ The Holy Quran, ‘Al-Ma’idah’ (*Quran.com* 5:45) available from <<https://bit.ly/3rcZp2a>> accessed 25th Nov 2021.

and believing women for [something] other than what they have earned have certainly born upon themselves a slander and manifest sin”³⁷⁷.

The mentioned above right is one of the absolute human rights which has been stipulated in the UDHR, the ICCPR, regional human rights instruments and most of the constitutions of the Arab countries. Further, the Charter has also protected this right in Article 8 literally stating that “[n]o one shall be subjected to physical or psychological torture or to cruel, degrading”³⁷⁸. The Article aims to prohibit acts or punishments that are characterised by criminal nature and may be practiced by some of the Arab countries. The right of a human to be protected from being tortured is derived from the human dignity that is inherent in every human being and states must criminalise every breach of it. However, it can be clearly seen from the script of the mentioned Article that torture during punishments is missing.

Islam has absolutely prohibited the occurrence of all forms of torture. On the other hand, “to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world”, the United Nations has adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)³⁷⁹ and adopted a committee that functions to monitor and promote the prohibition of torture. Other international and regional have also guaranteed the prohibition of all forms of torture, including inhuman punishments in their instruments. This will probably result in significant consequences, particularly permitting systematic torture for convicted persons and prisoners. Since both Islamic principles and international human rights standards promoted this right, it can be considered as a gap in the Charter. The Author of this research believes that this may be due to pressure by member states on the grounds of sovereignty, especially since the approved version of the Charter was submitted by the Commission, which acts upon the well of member states³⁸⁰. However, Almutawa holds the position that overcoming this

³⁷⁷ The Holy Quran, ‘Al-Ahzab’ (*Quran.com* 33:58) available from <<https://bit.ly/3DVtqXK>> accessed 25th Nov 2021.33(58).

³⁷⁸ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 8.

³⁷⁹ Convention Against Torture and other Cruel, Inhuman and Degrading or Punishment (UNCAT), UNGA Res 39/46 10 December 1984, *entered into force* 26 June 1987.

³⁸⁰ The Council of the Arab League ‘Internal Regulations of the Special Permanent Commissions of the Arab League’ (Res) 3438/65 (21 March 1976) section 5 (translated by author)

dilemma can be through the mechanisms provided by “supra-national regional and sub-regional human rights regimes...for bridging the gap between human rights as context-independent universal values and human rights as contextualised concrete legal claims”³⁸¹.

However, freedom of expression and opinion is one of the substantial issues that fall under the scope of human rights because it allows humans to speak loudly and freely; providing advice in everything that affects morals, public interests, public order and in everything that comes against values and traditions prevailing in society, as well as everything that is in violation of the provisions of the constitution or the law in action. It also implies that “individuals must be free to receive opinions expressed by others by any means of communication such as books, newspapers, pamphlets, or radio... [States have] a duty to refrain from arbitrary limitation of this freedom and to prevent denial of reasonable access to channels of communication”³⁸².

The importance of the freedom of opinion and expression lays on the fact that it constitutes the basis of one of the intellectual freedoms. Although freedom of opinion differs from freedom of expression, they are strongly interrelated. The former refers to the right to embrace one’s own opinion, thought or idea that is based on personal conviction without any fear or restrictions. The opinion, then, will either be attached to the persons’ idea or may be extended to the expression stage including the right to request, receive and transmit information by any means notwithstanding it is a limited right. The ICCPR has restricted the above mentioned right, emphasising on respecting others’ rights and reputations to protect national security, and public order. The Covenant also emphasized that the restrictions may be applicable only as stipulated by law³⁸³.

The Charter stipulates freedom of opinion and expression in Article 32 as it includes the right to information, freedom of expression, the right to receive news and ideas, and transmit them to others by any means, and without any considerations to geographical

³⁸¹ A Almutawa, ‘The Arab Court of Human Rights and The Enforcement of The Arab Charter on Human Rights’ (2021) 21(3) *Human Rights Law Review* 515.

³⁸² W A Schabas, ‘*The Universal Declaration of Human Rights*’ (Vol I, Cambridge University Press, UK 2013) 22, 23.

³⁸³ ‘International Covenant on Civil and Political Rights’ (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 19.

boundaries. Article 32 also added that the aforementioned rights “shall be exercised in conformity with the fundamental values of society and shall be subject only to such limitations as are required to ensure respect for the rights or reputation of others or the protection of national security, public order and public health or morals”³⁸⁴. However, the implementation of this right on its proper form in the Arab World e.g., the acceptance of others opinion either verbally, printed, written or through the media is to some extent challenging lately, as indicated previously in chapter 4.

Another set of crucial rights that every human must enjoy are judicial guarantees. Most of the human rights instruments recognize legal personality as a right all people should acquire without any discrimination. In addition to this right, every human rights instrument also has a number of fundamental provisions to enhance the path toward real justice in democratic societies and called judicial guarantees. The Charter has included these guarantees in Articles 12, 15, 16, 19 and 22 for the purpose of protecting people’s rights when they involve in the judicial affairs in a society where justice, equality and freedom are prevailed.

Article 15 states that “[n]o crime and no penalty can be established without a prior provision of the law. In all circumstances the law most favourable to the defendant shall be applied”³⁸⁵. This means that it is prohibited to convict and/or punish a person who committed or refrained from an act that is no longer criminalised under the applicable national laws. Furthermore, everyone exposed to violation to his/her freedom for any reason have the ability to seek justice from judiciaries by the power of law through reporting a lawsuit demanding their right or a compensation of moral damages³⁸⁶.

The Charter also stipulates that “[n]o one may be tried twice for the same offence. Anyone against whom such proceedings are brought shall have the right to challenge their legality and to demand his release... [In addition,] whose innocence is established by a final judgment shall be entitled to compensation for the damage suffered”³⁸⁷. This

³⁸⁴ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 32.

³⁸⁵ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 15.

³⁸⁶ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 12.

³⁸⁷ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 19.

bears no relation with reopening a certain case due to the appearance of new evidence or procedural mistakes, because of which a new judgment may be issued and hence the sentenced may acquire the ability to demand his/her a right³⁸⁸.

However, most of international human rights instruments have acknowledged the importance of a person to participate and to be part of one's country public affairs either personally or through representatives that are being chosen freely. This right includes the right to vote and to be elected which is one of the political rights that makes individual feels a sense of belonging to his state. Surprisingly, most of the Arab states constitution's guarantee that sovereignty is for the hands of the people, whereas a few who allow exercising it in full due to the nature of the hereditary ruling system that prevails therein³⁸⁹.

However, Arab countries in which hereditary ruling systems exist e.g., Morocco, Jordan, Kuwait, Qatar and Saudi Arabia, consider the ruler as the one who practiced, managed and supervises the process of legislative authority through elected councils nevertheless their constitutions frankly guaranteed that sovereignty being in the hands of the people who is considered the source of all powers³⁹⁰. The Charter has stipulated a number of relevant provisions in Article 24, such as practicing politics freely by forming political parties and to participate in managing public affairs either directly or through representatives that are being chosen impartially and by the free will of people. The Charter has also referred to people's right to obtain public duties without discrimination while keeping into account the principles of equal opportunities³⁹¹.

5.5.1.7 Economic, Social and Cultural Rights

The second group of rights that is covered by the Charter is the economic, social and cultural rights. Starting with the right to work, which is considered as one of the important rights of this group and is stipulated in Article 34 of the Charter, confirming that the right to work is a natural right to every citizen. Notably, none of the other

³⁸⁸ United Nations, 'Selected Decisions of the Human Rights Committee under the Optional Protocol (Vol 6, 2005) 139; H M Rustom, *Procedural Human Rights in Light of the International Principles of the Criminal Justice and the Code of Criminal Procedures* (2015) 220,221.

³⁸⁹ B Ghalioun and Others, 'Human Rights: International, Islamic and Arabic Perspectives' (vol 41, Arab Unity Centre publications, 2005) 311 (translated by author).

³⁹⁰ Q Hussni, 'Human Rights in Light of the Rise, Evolution and Guarantees of the Political Rights: Comparative Study' (Dar Alkutob Alqanoneyah, Egypt, 2006) 174 (translated by author).

³⁹¹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 24.

human rights instruments gave such description to the right to work. The Charter has also affirmed the person's free will when choosing a job and which equal opportunity is considered without any discrimination. Moreover, it includes the right of every worker to be treated with fair work conditions, to earn a salary that is commensurate with the provided services and to be informed about the working hours, breaks and paid leaves. Even more, member states are obliged to protect children from economic exploitation and other works that may cause harm to their physical, mental, moral or social development as per Article 34. The same Article also added that member states are obliged to provide the required protection to foreign workers and, in accordance with the legislations in force³⁹².

Another relevant right that has also stipulated in Article 35 of the Arab Charter on Human Rights is the right of workers to form and join unions, stating that "[e]very individual has the right to freely form trade unions or to join trade unions and to freely pursue trade union activity for the protection of his interests"³⁹³. It added that this right cannot be restricted unless stipulated by the applicable laws or to protect national security and to maintain public order. Moreover, the mentioned right is considered as "one of the most important international labour standards...[and] means that employees, no matter where they are employed (public or private sector), have the right to form their own organizations (unions)... in order to promote and protect their rights and interests"³⁹⁴.

Most of the international human rights instruments have also promoted the mentioned right by guaranteeing the right to strike and to be practiced within the limits imposed by law in one's democratic society. Even more, the right to strike is guaranteed and recognised by many constitutions; it is considered as a collective method that humans can adopt to express thought or opinions and by which workers may use to put pressure on the employer in order to consider, and approve their demand. This right has been stipulated under Article 8 of the ICESCR indicating that it can be practiced within the

³⁹² The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 34.

³⁹³ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 35.

³⁹⁴ A Majhoshev and K K Velinovska, 'The Right to Form and to Join Trade Unions as Defined in International Legal Instruments' (2017) 5(13) *Journal of Process Management – New Technologies, International* 79.

limit of law of each state party. Some countries may impose restrictions to practice this right on certain sectors in the society as per the law in charge, for instance military forces, police and other governmental sectors to preserve security, order and people's rights³⁹⁵. However, the Charter has guaranteed the freedom to participate in peaceful assembly in Article 24, including to form and join a union and to provide the protection for this union, unless otherwise stipulated by the law in action³⁹⁶.

Other rights that are guaranteed by the Charter would be the right to sufficient living standards to the person and his family, in which each member state must ensure "their well-being and a decent life, including food, clothing, housing, services and the right to a healthy environment", as mentioned in Article 38³⁹⁷. Furthermore, people's right to social security including social insurance are also enshrined in the Charter, as member states are obliged to guarantee citizens all social security component, including health, education and literacy. Member states are also obliged to provide these services with the inclusion of human rights principles in all educational curriculums and programmes and to choose the suitable mechanisms that ensure educational continuity³⁹⁸.

Additionally, the right to be involved in cultural life and the freedom of scientific research is also guaranteed in Article 42³⁹⁹ of the Charter. The Charter also protected the rights of some vulnerable groups, such as women, children, people with disability and minorities⁴⁰⁰. Article 31 of the Charter has also ensured that everyone has the right "to own private property and shall not under any circumstances be arbitrarily or unlawfully divested of all or any part of his property"⁴⁰¹.

³⁹⁵ A M Basher, 'human rights Law: Implementation, National and International Sources' (Mansha'at Alma'aref, vol.5, 2009) 253,254 (translated by author); *ibid* 'ICESCR' (n 19) Article 8.

³⁹⁶ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 24 sections 5,6,7.

³⁹⁷ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 38.

³⁹⁸ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 41.

³⁹⁹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 42.

⁴⁰⁰ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Articles 3 section 3, 33, 17, 40 and 25.

⁴⁰¹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 31.

5.5.1.8 Collective or Solidarity Rights

The third group of human rights are those in which can be practiced collectively, such as the right to development and the right to live in healthy environment. The right to development is one of the basic human rights by which states may adopt the required development measures that function to guarantee this right and, to strengthen the values of solidarity and cooperation with other states and on an international level in order to eliminate poverty, beside enhancing the economy, culture and politics.

According to the right to development, every human has the right to participate and contribute to the development of his/her country, and to enjoy its features, and benefits. The international community has promoted this right by adopting the UDHR to Development in 1986⁴⁰². The right to development has also been stipulated in Article 37 of the Charter, which guarantees that member states are obligated towards eliminating poverty and to strive in achieving economic, cultural and political development, with the participation of citizens⁴⁰³.

This right is considered as one of the rights that facilitate living with the nature of the modern era in which the international system has evolved, knowledge horizons have extended and the rise of telecommunications revolution and technology. The right to development has other important dimensions, as the effect of globalisation which may results the exacerbation poverty led the Charter to endeavour in strengthening the values of solidarity and cooperation between member states in order to eliminate poverty. This requires the adoption of a solid and special strategy whereby people can benefit from development outcomes⁴⁰⁴.

This implies that the right to development is one of the important rights for developed countries, including Arab countries hence the LAS promoted this right in Article 37 of the Charter and emphasised the right of citizens to benefit from own national resources. The Author of this research believes that the right to development can be enjoyed by

⁴⁰² 'The Declaration on the Right to Development' (adopted 4 December 1986) UNGA A/RES/41/128.

⁴⁰³ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Articles 37 and 2 section 1.

⁴⁰⁴ A A Wa'el, 'The International Treaties of Human Rights' (Dar Alketab Alma'sri, Cairo, Egypt, 1999) 95 (translated by author).

humans if member states adopted a fair economic system that is based on respect and believing in human rights.

Another example of collective right is the right to be living in a healthy environment. This right has been stipulated in Article 38 of the Charter indicating that “[e]very person has the right to an adequate standard of living...and the right to a healthy environment. The States parties shall take the necessary measures commensurate with their resources to guarantee these rights”⁴⁰⁵.

5.5.1.9 Other Provisions in the 2004 Charter

The Charter has 10 Articles that focus on the procedural arrangements’ that member states should consider and the monitoring and implementation of the Charters’ provisions. For instance, putting the Charter into practice, members’ inclusion and any reservations on the Charters by member states. As reported previously, one of the targets of amending the 1994 version of the Charter is to bring it in line with international human rights standards. Article 43 of the Charter assures the aforementioned by indicating that “[n]othing in this Charter may be construed or interpreted as impairing the rights and freedoms protected by the domestic laws of the States parties or those set force in the international and regional human rights instruments which the states parties have adopted or ratified, including the rights of women, the rights of the child and the rights of persons belonging to minorities”⁴⁰⁶. The Charter added that “states parties undertake to adopt, in conformity with their constitutional procedures and with the provisions of the present Charter, whatever legislative or non-legislative measures that may be necessary to give effect”⁴⁰⁷.

The mentioned Articles basically function to mitigate the Charter deviation from meeting international human rights standards. On the other hand, these Articles have indirectly restricted some of the Charter’s provisions by permitting member states to undermine international human rights standards and legislate laws in their favour. Just like other human rights instruments, the provisions of the Charter must be recognised,

⁴⁰⁵ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 38.

⁴⁰⁶ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 43.

⁴⁰⁷ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 44.

respected and implemented in a manner that guarantees their actual, adequate and proper enjoyment. Some might ask here, what about the Margin of Appreciation⁴⁰⁸ doctrine, which is well established in the European human rights system? Will it be applicable in the Arab World?

Many works have been published about the Margin of Appreciation, its legitimacy, its implementation and its relevance to other theories e.g., pluralism and relativism. The following is a brief amount of the Margin of Appreciation that might help in understanding whether its applicable in the Arab World or not. The Margin of Appreciation is the idea of permitting member states by a supranational court to outweigh morals and values that are derived from the prevailed cultural status over the international adopted human rights standards. With reference to this, member states can determine the suitable domestic arrangements while considering consistency with international standards by setting up a justifiable margin that are based on judicial review⁴⁰⁹. Additionally, the doctrine “gives the flexibility needed to avoid damaging confrontations between the Court and Contracting States over their respective spheres of authority and enables the Court to balance the sovereignty of Contracting Parties with their obligations under the Convention”⁴¹⁰. Greer concluded that the “principles of democracy, legality, subsidiarity and proportionality give national democratic institutions a legitimate role in demarcating rights from public interests for several good reasons”⁴¹¹.

However, a number of scholars showed some concern regarding the Margin of Appreciation claiming that the doctrine lacks “sound normative basis, and whether...[they] overrides other normative reasons with which it may conflict...[, including] the morality of human rights, the value of state sovereignty and the practice

⁴⁰⁸ see A Almutawa and H Almanea, ‘Analyses of Non-Compliance to Legislation by Signatories to the Arab Charter of Human Rights: A Framework for National Observance and Regional Enforcement’ *The Asian Yearbook of Human Rights and Humanitarian Law* 6 (2022) forthcoming.

⁴⁰⁹ *Handyside v UK* (App no 5493/72) (1976) Series A no 24, 23.

⁴¹⁰ Quoted in J A Roffee, ‘No Consensus on Incest? Criminalisation and Compatibility with the European Convention on Human Rights’ (2014) 14 *Human Rights Law Review* 550 (as cited in MacDonald, Matscher & Petzold, ‘The European System for the Protection of Human Rights’ (eds, Leiden: Martinus Nijhoff, 1993) 123.

⁴¹¹ S Greer, ‘The Margin of Appreciation: Interpretation and Discretion under the European Convention on Human Rights’ vol. 17 (Council of Europe Publishing, Strasbourg, 2000) 33.

of international courts”⁴¹². State parties’ judiciaries must interpret the provisions of the ECHR without infringing their national sovereignty when adopting the doctrine, particularly since one of the main purposes of convention is protecting the rights enshrined therein and not enforcing member states to fulfil their contractual commitment⁴¹³.

Others further focused on the Court regarding the adoption of the doctrine by member states authorities, in particular the consistency and proportionality while applying the doctrine⁴¹⁴. The aforementioned two criteria may put the rules of domestic laws of contracted states at risk due to the adoption of an undetermined legal tool in the ECHR’s script. The doctrine will likely grant contracted states of the ECHR the capacity to look into cases; this may lead them to deviant from fulfilling their commitment to the ECHR and threatening its provisions. The mentioned concern was profoundly expressed by Lord Lester, indicating that the Margin of Appreciation:

has become as slippery and elusive as an eel. Again, and again the Court now appears to use the margin of appreciation as a substitute for coherent legal analysis of the issues at stake... The danger of continuing to use the standard less doctrine of the margin of appreciation is [the fact that] it will become the source of a pernicious, variable geometry of human rights, eroding the *acquis* of existing jurisprudence and giving undue deference to local conditions, traditions, and practices⁴¹⁵.

⁴¹² G Latsas, ‘The Margin of Appreciation Revisited: A Response to Follesdal’ in A Etinson (eds), *Human Rights: Moral or Political?* (Oxford University Press, UK, 2018) 295.

⁴¹³ V Dijk and Others, ‘Theory and practice of the European Convention on Human Rights’ (Martinus Nijhoff Publishers, the Hague, 1998) 74-76; A Asthana & R Mason, ‘UK must leave European convention on human rights, says Theresa May’ (The Guardian, 25th Apr 2016) <<https://bit.ly/3rVbf0b>> accessed 17th Oct 2020; R Spano, ‘The European Court of Human Rights and National Courts: A Constructive Conversation or a Dialogue of Disrespect?’ (2015) 33(1) *Nordic Journal of Human Rights* 3, no.10.

⁴¹⁴ A and Others v. UK (App no 3455/05) (19 February 2009) paragraph. 184; A Jusic, ‘Damned If It Doesn't and Damned If It Does: The European Court’s Margin of Appreciation and the Mobilizations around Religious Symbols’ (2018) 39(3) *University of Pennsylvania Journal of International Law* 573; J Kratochvíl, ‘The Inflation of the Margin of Appreciation by the European Court of Human Rights’ (2011) 29(3) *Netherlands Quarterly of Human Rights* 257; Judge De Meyer opinion in Z v. Finland (9/1996/627/811) (25 February 1997) 371, Partly Dissenting Opinion of Judge De Meye 3, who reflects his believes indicating “that it is high time for the Court to banish...[the Margin of Appreciation] from its reasoning. It has already delayed too long in abandoning this hackneyed phrase and recanting the relativism it implies”.

⁴¹⁵ Lord Lester of Herne Hill QC, ‘The European Convention on Human Rights in the New Architecture of Europe’ in The Counsel of Europe ‘Yearbook of the European Convention on Human Rights: 8th International Colloquy on the European Convention on Human Rights 1995’ (Martinus Nijhoff Publisher, the Hague, 1997) 232, 234.

In his article regarding considering the Margin of Appreciation as a tool of adjudication in cases contains abuses to freedoms, in particularly freedom of religion, Jusic concluded that most of the reasons behind the cases brought before the ECHR and transmitted to member states to be handled by the MOA “across Europe are but minor symptoms of the growing anxieties over institutional and social willingness and capabilities for managing a continuously increasing and likely irreversible religious diversity”⁴¹⁶. Although Europe has its own system to promote and protect human rights from “abuses: the European Court on Human Rights...[it] actually needs to perform as intended and conduct oversight of these policies. Without the court, there is nothing stopping these nations and the growing nationalist movements therein...The margin of appreciation applied in S.A.S. is simply too broad to uphold the purposes of the Convention. If article 9 is to have any value going forward, this standard must change”⁴¹⁷.

This implies that some of the rights that are subjected to the Margin of Appreciation will probably be weak and will likely be defenceless and exposed to exploitation. Hence, the politically influenced application of the Margin of Appreciation in some cases must be addressed as well as proper limitations should be adopted at the very least⁴¹⁸. As noted by one author:

The margin of appreciation doctrine is the concept by which the Convention derives its force, meaning and effect...[It] seeks to strike a fair balance between the demands of the general interest of the community and public order on the one hand, and the requirements of the protection of the individual rights and freedoms on the other, within the context and framework of the Convention. In arriving at such a balance, the scope of a state’s right to limit and restrict the rights and freedoms of the individual will necessarily be determined⁴¹⁹

⁴¹⁶ A Jusic, ‘Damned If It Doesn’t and Damned If It Does: The European Court’s Margin of Appreciation and the Mobilizations around Religious Symbols’ (2018) 39(3) *University of Pennsylvania Journal of International Law* 614.

⁴¹⁷ N Fleming, ‘S.A.S V. France: A Margin of Appreciation Gone Too Far’ (2020) 53(2) *Connecticut Law Review* 941; also see S.A.S v. France (App no 43835/11) (1 July 2014).

⁴¹⁸ I A Görentaş, ‘The Effects of Margin of Appreciation Doctrine on the European Court of Human Rights: Upholding Public Morality over Fundamental Rights’ (2016) 11(2) *Journal of Academic Inquiries* 213.

⁴¹⁹ M Tümay, ‘The “Margin of Appreciation Doctrine” Developed by the Case Law of the European Court of Human Rights’ (2008) 5(2) *Ankara Law Review* 231.

Moreover, Benvenisti visualised the Margin of Appreciation as a relativists ally, stating that “with its principled recognition of moral relativism,...[the Margin of Appreciation]...is at odds with the concept of the universality of human rights. If applied liberally, this doctrine can undermine seriously the promise of international enforcement of human rights that overcomes national policies”⁴²⁰. Logically, this can be affirmed by the aforementioned brief clarification of the doctrine.

An alternative to the Margin of Appreciation was suggested by Tümay who concluded that member states can utilised democratic necessity as a tool to relatively restrict rights, in order to preserve the balance between their interest and individual rights⁴²¹. This concept posits that the ECHR’s provisions that member states ought to implement and can be restricted in an immanent manner within the scope of the democratic values, which are set out by the ECHR specialised institutions to be practiced by European states in common. It seems that this concept will probably work in case of applying it on the Arab paradigm with the condition of restricting rights as per the existed culture, particularly religions, including the Islamic foundations, norms and values instead of democratic necessities.

This can be enriched by An-Na’ims⁴²² attempt to reconcile international human rights standards with Islamic norms. An-Na’im explained that the human rights violations that are committed by Arab countries can be justified by their objection of the noncompliance of these standards with their cultural norms and values and therefore international human rights standards lack recognition on their legal basis therein. He added that the reason behind this is the non-involvement of many Arab countries in the drafting process of the immortal document whereby the human rights movement has been launched since the mid of the 20th century, namely: The UDHR. At that time, most of the Arab countries were not able to be involved in such activities due to the fact that they were under colonialism, as well as not being members of the United Nations.

⁴²⁰ E Benvenisti ‘Margin of Appreciation, Consensus, and Universal Standards’ (1998) 31 *New York University Journal of International Law and Politics* 844.

⁴²¹ M Tümay, ‘The “Margin of Appreciation Doctrine” Developed by the Case Law of the European Court of Human Rights’ (2008) 5(2) *Ankara Law Review* 223.

⁴²² AA An-Na’im, ‘Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives - A Preliminary Inquiry’ (1990) 3 *Harvard Human Rights Journal* 15.

It is hard to say whether the Margin of Appreciation is applicable to the Arab context. It seems that it is attainable yet lots of principles must be considered. Recommendations in this regard can be proposed upon the results of the Charter revision and analysis for the purpose of determining its positives and negatives. These results will help in identifying the areas that need developed.

However, Articles 45-48 of the Charter were enshrined to cover the monitoring mechanism of applying the Charters' provisions by member states, namely: The Committee, also known as the Charter Committee. These Articles will be reviewed in more details in the next chapter. Article 49 focuses on the steps involved in adopting the Charter, from its ratification by member states after the approval by the LAS Council⁴²³. Two months after the initial seven members had submitted their ratification instruments to the LAS Secretariat, the Charter entered into force and became effective on member states. Thereafter it was the responsibility of the Secretary General to keep member states informed of ratification submissions.

Further, member states can amend the Charter by depositing their suggestions with the Secretary General, who will "invite the States parties to consider the proposed amendments before submitting them to the Council of the League for adoption"⁴²⁴, under Article 50 of the Charter. Article 51 indicates that the amendments should be approved by two-thirds of the member states in order to come into force⁴²⁵. Likewise, these procedures are also applicable to member states wishing to add protocols to the Charter⁴²⁶. Last but not least, member states are allowed to consider reservations at any time during the process of joining the Charter, as per Article 53. Those who have "made a reservation...may withdraw it at any time by addressing a notification to the Secretary-General of the League of Arab States...who shall notify the States parties of [these] reservations and of requests for their withdrawal"⁴²⁷.

⁴²³ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 49.

⁴²⁴ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 50.

⁴²⁵ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 51.

⁴²⁶ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 52.

⁴²⁷ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 53; it is important to note here that none of the Arab member states made any

5.5.2 Positives and Negatives of the Charter

Although the adopted 2004 version of the Charter has relatively met the international human rights standards more than its 1994 predecessor, a further improvement or/and amendment is required. In general, adopting the Charter in the existing form is definitely an achievement that sparks optimism for Arabs, particularly after the recent political changes in some Arab countries and the noticeable human rights movements therein. Promoting human rights has become one of the criteria of evaluating states and reflects its commitment to the human rights standards. This led the LAS to adopt a developed version of the Charter that highly considers the international human rights standards despite its positives and negatives.

By comparison with the 1994 version of the Charter, the 2004 version is a developed one in terms of adding rights and guarantees and amending some of provisions to become compatible with human rights standards. It has been stated that the Charter has succeeded in maintaining the Arab culture including the Islamic principles, as confirmed in the preamble by respecting international human rights instruments while considering the CDHRI⁴²⁸. Furthermore, the Charters' goals have promoted the fact "that all human rights are universal, indivisible, interdependent and interrelated"⁴²⁹. This can be seen as one of the essentials by which human rights are underpinned and therefore must be involved in all fields.

The Charter has also assured the rights that cannot be derogated and violated at all under Article 4. This falls in line with international human rights standards and simultaneously guarantees the respect of other human rights. In short, these rights are the right to life; the prohibition of torture, scientific and medical operations without the consent of patients; crimes and punishments legitimacy; treating prisoners humanly; acknowledging legal personality; freedom of movement; the right to seek asylum; the right to nationality; freedom of thought, conscious and religious. The Charter also

reservations on the Charters' provisions except Iraq, as previously explained in this chapter in the section of the second version of the Charter.

⁴²⁸ A A Wa'el, *The International Treaties of Human Rights* (Dar Alketab Alma'sri, Cairo, Egypt, 1999, 236) (translated by author).

⁴²⁹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 1 section 4.

provided the required judicial guarantees to protect these rights emphasised on the non-suspension of these rights⁴³⁰.

A group of new Articles were being added in the 2004 version of the Charter in order to provide more human rights promotion and protection in the Arab World and, to follow suit other international and regional instruments. For instance, prohibiting slavery, trafficking in persons for the purpose of prostitution and sex; and involving children in armed conflicts⁴³¹. Additionally, the Charter has promoted the anti-torture safeguards by emphasising that that it does not fall under the statute of limitations and, on victim's rehabilitation and compensation⁴³². The Charter also affirmed the fair trial guarantees, defence rights, equality before law and placed emphasis on member states to ensure judicial independence⁴³³. The Charter also paid attention to children's rights by focusing on the importance of adopting a special judicial system to handle cases of delinquent children, provide them with special treatment to rehabilitate them and help them integrate in the society again⁴³⁴. Further, the Charter prohibited child exploitation and to enforce them work illegally, and imposed this on member states to take all necessary measures to protect them⁴³⁵.

Unlike the 1994 version, the 2004 Charter stipulated political rights as it has guaranteed the right to participate in running public affairs, stand for election and to vote for others, and to hold public offices⁴³⁶. Additionally, the Charter did not ignore vulnerable peoples'; it added the right to practice and use own culture and own language within minorities' rights⁴³⁷. The Charter has also responded to third generations rights e.g., media rights and the right to development; it has cursory referred to the right to live in

⁴³⁰ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 4.

⁴³¹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 10.

⁴³² The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 8 section 2.

⁴³³ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 10- 14.

⁴³⁴ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 17.

⁴³⁵ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 33 section 3 & 34 section 3.

⁴³⁶ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 24.

⁴³⁷ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 25 section 2 sub-section f.

a healthy environment⁴³⁸; it has also stipulated rights of peoples' who suffer from disability and imposed on member states obligations to guarantee that they live a decent life, and to encourage them integrate in the community⁴³⁹; however, it did not refer to cultural diversity.

Another positive feature that the Charter embraced is distinguishing between individual and collective rights in a number of Articles. As most of the human rights provision are normally formulated to the interest of the human person e.g. every person, every individual or everyone, other rights are being allocated for both individuals and groups, such as the freedom of religion. Some rights in the Charter reflect collective aspects, for example the right to create a family and freedom of association. Moreover, the Charter has also covered nations rights including self-determination, the right to development, the right to peace and security, counter Zionism, racism and foreign occupation. It can be deduced, therefore, that individuals and nations rights have been merged in the Charter.

In spite of the aforementioned positives, the Charter has been criticised. From the outset, its preamble did not come analogous to other human rights instruments as it's wording and sequence of ideas gives the impression of centralisation. It is true such an instrument should include reference to cultural and historical specificity of the region, however universalism should not be underestimated. The Charters' preamble allocates four paragraphs that reflect the Arab culture in general vis-à-vis one paragraph that ensures its consideration to the international human rights standards.

To be distinguished is a good step that reveals the intention of success, but sometimes improving the status quo is the priority. Unlike other international and regional human rights instruments, the Charter allocates Article 1 to identify its goals. None of the international or regional human rights instruments did so, rather, they included the goals within the preamble of their instruments. The beginning of the Charter might have been much expressive, influential and coherence, by the inclusion of the goals in the preamble and the specification of the first article to reflects the importance of the rights

⁴³⁸ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 38.

⁴³⁹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 40.

mentioned in the instrument and to commit the Charters' member states on recognising, respecting and implementing them⁴⁴⁰.

Furthermore, the third section of Article 3 of the Charter which highlights equality between men and women does not comply with the CEDAW notwithstanding it has been signed and ratified by many Arab countries. In spite of the importance of gender equality in promoting dignity, rights and duties, and that member states should take all required measures to guarantee the actual equality between men and women in the enjoyment of the rights enshrined in the Charter, the third section of Article 3 is vague, unclear and devoted to discriminating between men and women under the pretext of adopting the Islamic Sharia's positive discrimination⁴⁴¹. None of the other international and regional human rights instruments have frankly considered positive discriminations. However, the first section of Article 4 of the CEDAW indicated that contracted states are permitted to adopt temporary special measures, for a certain purpose and in a specific period, to endeavour attaining actual equality between men and women. These measures must be suspended once the target of their adoption is fulfilled⁴⁴².

Although the Charter promoted political rights, they were limited solely on citizens. Article 24 of the Charter included some discriminatory provisions by granting Arabs a number of political rights and ignores others e.g., foreign workers and immigrants. This is inconsistent with the first section of Article 2, Article 21 and 22 on the ICCPR which guarantees the enjoyment of political rights without any form of discrimination, for every person live in the territory of the state parties. In addition, Article 24 of the Charter is incompatible with the third section of Article 3 of the ICESCR, and Article 25 of the International Convention on the Protection of the Rights of All Migrant Workers and

⁴⁴⁰ This can be seen in Article 1 of the European, American and African human rights instrument.

⁴⁴¹ The term refers to discrimination in favour of a group of the society that is differs from others in terms of race, religion, sex, personal abilities...etc, through adopting special measures that gives the mentioned groups the priority to benefit from most of the requirement for decent life e.g., education, work and health. In the context of the Arab Charter on Human Rights positive discrimination was considered in favors of women. Positive discrimination is slightly similar to the affirmative and the positive actions in terms of principle, yet their legitimacy differs. As the latter functioned upon legislations, while the former is mostly relying on morals and values. See C Toumieux and S Ekrami, 'Lawful Positive Discrimination in Favour of Women (FR)' (2017) 2017(3) *European Employment Law Cases* 140-142; A Kushwah, 'Women, Discrimination and Empowerment in India' (2016) 3(2) *Research Reinforcement* 50.

⁴⁴² *ibid* (n 45) Article 4 section 1.

Members of their Families (ICRMW) who prohibited depriving workers from the enjoyment of the set of rights enshrined therein, no matter what the reasons⁴⁴³.

What's worse is the fact that the Charter has prejudiced one of the absolute rights, namely: the prohibition of torture. As Article 8 of the Charter did not define torture and has not included to the prohibition of inhuman or degrading punishment, as such as listed in other human rights instruments.

Another controversial matter is giving the capacity to regulate some of the Charters' provisions by member states domestic legislations. For instance, the first section of Article 33 referred to the right of family as a fundamental of one's society and marriage between men and women is an important component for its creation. Men and women can marry once they reach the determined age of marriage and start a family according to the adopted terms and conditions. Full and free consent is mandatory for both, and no marriage may take place without it. Rights and duties of men and women concerning marriage are regulated by member states applicable laws⁴⁴⁴. It is noted that the Charter did not refer to marriage terms and conditions, rather it has transmitted the task to member states so marriage can be managed upon their domestic laws. This will likely restrict gender equality and deprive women from practicing their rights.

The Charter has also listed the rights that can be subjected to derogation in some extraordinary statuses in Article 4 and permitted members to derogate these rights by the power of law. This contradicts Article 4 and the third section of Article 12 of the ICCPR. What's more, the Charter has also endorsed the death penalty in general as per Article 6, as well as executing children under 18 years old if domestic laws stipulated so, pursuant to the second section of Article 7. This provision conflict fifth section of Article 6 of the ICCPR and paragraph (a) of Article 37 of the Convention on the Rights of the Child (CRC) who absolutely prohibited the impose of death penalty on children⁴⁴⁵. Additionally, the second section of Article 33 gives an impression of flimsiness in terms

⁴⁴³ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (adopted 18 December 1990, entered into force 1 July 2003) United Nations General Assembly, A/RES/45/158; 'International Covenant on Economic, Social and Cultural Rights' (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3 (ICESCR) Article 3 section 3.

⁴⁴⁴ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 33 section 1.

⁴⁴⁵ Convention on the Rights of the Child (CRC) (adopted 20 November 1989, entered into force 2 September 1990) United Nations, Treaty Series, vol. 1577, p. 3.

of banning violence against women and, it lacks rigorousness in urging member states to adopt legislations that function to condemn and punish perpetrators. Further, the second section of Article 29 ensures a women's right to acquire nationality for her children unless domestic legislations of member states stipulate otherwise. This contradicts the second section of Article 9 of the CEDAW, which states that contracted states "shall grant women equal rights with men with respect to the nationality of their children"⁴⁴⁶.

The Charter should also consider the inclusion of an article, at the very least, that entitled to explain a persons' duties particularly towards their families, along the lines with Article 32 of the ACHR and the ACHPR who allocated a chapter consisting of 3 Articles to cover the duties a person must fulfil⁴⁴⁷.

Having demonstrated the rights protected by the Charter, what follows is a short highlight on the procedural provisions in particular Articles 43 and 44 of the Charter. The pros and cons revealed the unseen contours with regards to restricting some of the Charters' provisions. As a response to the possibility of applying the Margin of Appreciation doctrine on the Arab context, it seems that it is superfluous. In other words, there is no need to apply the concept for the purpose of solving disputes through restricting rights since the Charter has already permitted member states to derogate or limit some of its rights, as demonstrated in previous sections. The European model of the doctrine also gained its legitimacy since it has been utilised as a tool of solving judicial cases by the European Court of Human Rights until it has become a legal doctrine. It allows judges to obtain a "space for more ideological judging...[through] the adoption of a better model of judicial mind than has currently been offered"⁴⁴⁸.

On the other hand, applying the doctrine on the Arab World context is simply embodied in the Charter permissions to member states in managing some of the rights enshrined therein as per their domestic applicable laws. By doing so, Arab states undermine

⁴⁴⁶ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 9 section 2.

⁴⁴⁷ The American Convention on Human Rights' O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992) Article 32; 'The African Charter on Human and Peoples' Rights' (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) Part 1 Chapter 2 Articles 27-29.

⁴⁴⁸ E H Tiller & F B Cross, 'What is Legal Doctrine' (2006) 100(1) *Northwestern University Law Review* 517.

international human rights standards for the sake of their culture, albeit many of them became a part of the international human rights community. Moreover, the Margin of Appreciation is a judicial option that judges may recourse during trial in certain circumstances. This means the doctrine must be utilised by a court and during a trial. In closing of this section, applying the Margin of Appreciation on the Arab World is not impossible, rather it needs a deep consideration of some problematic areas e.g., the tension between international and cultural human rights standards. Additionally, the aforementioned provides an insight into the importance of adopting a regional human rights court.

5.6 Members of the Arab Human Rights System and the International Human Rights Instruments

It is important to identify the reasons behind Arab countries non-compliance to their contracted obligations in international agreements. Generally speaking, Arab countries which are Islamic, relatively doubt the universality of human rights because its legal foundation is based on international human rights instruments that contain some principles that contradict Islamic norms and values. This leads Arab countries to lose connection with international human rights agreements due to the fact that they have not participated in the preparatory works of many of them and because some of the provisions of these agreements are ineffective on Arab countries by virtue of them believing in Islam. The following is a brief regarding the Arab country's compliance to the main international human rights agreements; namely, the International Bill of Human Rights and couple of other fundamental agreements (see Table 1)⁴⁴⁹.

Although the UDHR is hardly recommended by the United Nations General Assembly, the Author of this research argues that most of the governments approved it while considering its compatibility to their cultures in general including religion, norms and values. Back then, member states of the United Nation were 58 states, 48 support the UDHR project, 8 declined and 2 were absent⁴⁵⁰. Five of the 48 were Arab countries;

⁴⁴⁹ Treaties.UN, 'Multilateral Treaties Deposited with the Secretary-General/ Chapter IV: Human Rights' (*treaties.un.org*) available from <<https://bit.ly/30TOtMo>> accessed 22nd Nov 2021.

⁴⁵⁰ UN.ORG, 'Growth in United Nations Membership, 1045-Present' available at <<https://bit.ly/3ugLiYP>> accessed 30th Dec 2020; UNYEARBOOK, 'Year Book of the United Nations 1948-49' available at <<https://bit.ly/2McDYfl>> accessed 30th Dec 2020, 535; The voting was as follows: Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, the Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway,

namely, Egypt, Syria, Iraq, Lebanon and Jordan. During the deliberations of the UDHR adoption, some Arab countries objected on provisions in relation to religion, such as Articles 16 regarding the right to marriage and 18 regarding the right to change religion⁴⁵¹, while Saudi Arabia abstained to vote because some provisions contradict Islam⁴⁵². To illustrate, Article 16 of the UDHR state that “Men and women of full age...have the right to marry and to start a family”⁴⁵³. Closer revision of Article 16 implies that the couples were given the freedom to choose upon democratic manners. It did not distinguish between establishing a family through a natural relationship and an official marriage, that is recognised by the religion in the first place and the law.

By the same token, Saudi Arabia objected to Article 18 which enhanced the ability of a person to change own’s religion, which also contradict Islamic instructions⁴⁵⁴. Furthermore, Article 2 of the UDHR prohibited “distinction of any kind, such as...birth”⁴⁵⁵. This means there will be no distinction between the birth resulted from an official marriage and the birth outside the marital bond. A related Article would be number 25, which states that all children “are entitled to special care and assistance..., whether born in or out of wedlock”⁴⁵⁶. The objection here is not really about providing the required care, rather it was about recognising a prohibited relationship between men and women in Islam, because of which the birth occurred. The Saudi’s stance was expected, especially since it relied on Islamic Sharia as a source of its legislations. A good example of this is Saudi Arabia’s reservation to the first draft of the 1994 Charter due to the same reason⁴⁵⁷.

Pakistan, Panama, Paraguay, Peru, Philippines, Siam (Thailand), Sweden, Syria, Turkey, United Kingdom, United States, Uruguay, Venezuela were in favour; Byelorussian SSR, Czechoslovakia, Poland, Saudi Arabia, Ukrainian SSR, Union of South Africa, USSR, Yugoslavia abstained; Yemen and Honduras were absence.

⁴⁵¹ Schabas WA, ‘The Universal Declaration of Human Rights: The Travaux Préparatoires’ (ed, Cambridge University Press, 2013) 1441 & 1701.

⁴⁵² Schabas WA, ‘The Universal Declaration of Human Rights: The Travaux Préparatoires’ (ed, Cambridge University Press, 2013, page 2145, 2164 and most importantly 2487)

⁴⁵³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) Article 16.

⁴⁵⁴ Alwasil, AM, ‘Saudi Arabia’s Engagement in, and Interaction with, the UN Human Rights System: Analytical Review’ (2010) 14(7) *The International Journal of Human Rights* 1072.

⁴⁵⁵ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) Article 2.

⁴⁵⁶ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) Article 25 section 2.

⁴⁵⁷ See section 5.3.1.

It can be inferred from the Saudi Arabia scenario, which is one of the Arabic and Islamic countries, falls under the controversy between universalism and cultural relativism. This tension cannot be ignored by international human rights agreements, because the reasoning of the cultural relativists in undermining universal standards cannot be imagined⁴⁵⁸. Therefore, Arab and Islamic countries view on the UDHR was divided into supporters and opposers and then they gradually accepted the notion with caution and perhaps refusal, particularly when the universal human rights protection has been called by the ICCPR, ICESCR and other relevant treaties. This was justified by the content of the UDHR which gives the impression of inconsistency with Islam and which is not divined but rather it was suggested by the United Nations. Additionally, most of the fundamental human rights enshrined in the UDHR are already recognised by Islam since ancient times⁴⁵⁹. As for the rest of the International Bill of Human Rights pillars, 18 of the Arab countries joined the ICCPR and 19 joined the ICESCR (see Table 1).

The aforementioned table showed that few Arab countries have made reservations on some of the Covenant's provisions that contradict Islam. This does not mean that the rest are in fully consent, rather their acceptance on the agreements is conditioned by issuing an explanatory note on provisions that contradict Islam. This ensures that the Covenants will be applied while taking into account Islamic norms and values. Algeria, for instance, joined the ICCPR in 1989 with reservations to Article 23 section 4, which states that member states "shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution"⁴⁶⁰. Algeria then issued an explanatory note to this regard, explaining that the content of the mentioned Article contradicts the religion of the country; namely, Islam⁴⁶¹. Egypt, on the other hand joined both Covenants without reservations, yet it declared that "Taking into

⁴⁵⁸ A whole subsequent chapter will address this tension later in this research.

⁴⁵⁹ S Talebi, 'The Universality of Human Rights and Arabic Islamic Peculiarity' (2012) 3 Aljenan Journal 17 (in Arabic translated by Author).

⁴⁶⁰ 'International Covenant on Civil and Political Rights' (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 23 section 4.

⁴⁶¹ M Mohamed, 'Interpretive Statements and their Impact on International Human Rights Conventions' (Master Dissertation, University of Batna1: Hadj Lakhdar, 2011) 127 (in Arabic translated by Author); Constituteproject, 'Algeria's Constitution of 2020' (IDEA, English version, 2021) available at <<https://bit.ly/3dGKOoO>> accessed 25th Dec 2020 Article 2.

consideration the provisions of the Islamic Sharia and the fact that they do not conflict with the text annexed to the instrument, we accept, support and ratify it"⁴⁶².

Table 1: Arab States ICCPR & ICESCR Adoptions and Reservations

#	Country	Joined ICCPR	ICCPR Reservations that Contradict Islam	Joined ICESCR	ICESCR Reservations that Contradict Islam
1	Algeria	12 th Sep 1989	Articles (23/4)	12 th Sep 1989	N/A
2	Bahrain	20 th Sep 2006	Articles (3, 18, 23)	27 th Sep 2007	
3	Djibouti	5 th Nov 2002	N/A	5 th Nov 2002	
4	Egypt	14 th Jan 1982	Declaration	14 th Jan 1982	
5	Iraq	25 th Jan 1971	N/A	25 th Jan 1971	
6	Jordan	28 th May 1975	N/A	28 th May 1975	
7	Kuwait	21 st May 1996	Article (23)	21 st May 1996	
8	Lebanon	3 rd Nov 1972	N/A	3 rd Nov 1972	
9	Libya	15 th May 1970	N/A	15 th May 1970	
10	Mauritania	12 th Dec 1973	Articles (18, 23/4)	17 th Nov 2004	
11	Morocco	3 rd May 1979	N/A	3 rd May 1979	
12	Oman	N/A		9 th Jan 2020	
13	Palestine	2 nd Apr 2014		2 nd Apr 2014	
14	Qatar	21 st May 2018	Articles number (3, 7, 18/2, 23/4)	21 st May 2018	Articles (3)
15	Somalia	24 th Jan 1990	N/A	24 th Jan 1990	N/A
16	Sudan	18 th Mar 1986		18 th Mar 1986	
17	Syria	21 st Apr 1969		21 st Apr 1969	
18	Tunisia	18 th Mar 1969		18 th Mar 1969	
19	Yemen	9 th Feb 1987		9 th Feb 1987	

Reservations on ICCPR due to contradictions to Islam varied between Bahrain, Kuwait, Mauritania and Qatar, for example Articles 3 regarding gender equality, 7 to change the

⁴⁶² Abdelmonsef A, 'Egypt's Position on Human Rights Conventions' (En.eipss, 11th Jun 2018) available at <<https://bit.ly/2NQ6lk0>> accessed 25th Dec 2020.

word punishment, 18 freedom to change religion and 23 concerning marriage affairs⁴⁶³. The non-recognition of other cultures, particularly Islam, gives the impression that the International Bill of Human Rights is to a certain extent influenced by Western tradition. Arab countries also joined the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)⁴⁶⁴ which has been adopted by the United Nations General Assembly resolution 2106 on 21st Dec 1965 and entered into force on 4th Jan 1969 after the ratification of the 27 members. The Convention committed member states to condemn all harms resulting from racial discrimination. To this end, Article 8 of the Convention refers to the establishment of a committee that is tasked to promote and monitor member states commitment to the Convention.

However, the Convention was ratified by the whole 22 Arab countries⁴⁶⁵ although there were some reservations. It is noted that only one of the Arab countries imposed reservation on the basis of Islamic religion; namely, Saudi Arabia. 12 Arab member states imposed reservations on Article 22 of the Convention, which indicates that any disputes between member states on grounds of interpretation or implementation of the provisions of the Convention must be referred to the International Court of Justice upon the request of a member of the dispute⁴⁶⁶. The concern of violating state sovereignty is natural in this context, as 27 members out of 182 of the Convention objected to Article 22. The Author of this research believes that the Arab members reservations on this article can be identified in chapter 2, whereby history showed that state acquiring sovereignty through independence is of extensive preciousness for Arab countries, to the extent that they undermined their nationalism for the sake of promoting their independence. Hence, it is expected that Arab countries object on any sort of interference in their affaires, even if it was through international treaty.

⁴⁶³ Treaties.UN, '4. International Covenant on Civil and Political Rights' (*treaties.un.org* 1966) available from <<https://bit.ly/3cOE6m>> accessed 22nd Nov 2021.

⁴⁶⁴ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 Dec 1965, entered into force 4 Jan 1969) 660 UNTS 195 (ICEDR).

⁴⁶⁵ Algeria in 1966, Bahrain in 1990, Comoros in 2004, Djibouti in 1998, Egypt in 1967, Iraq in 1970, Jordan 1974, Kuwait in 1968, Lebanon in 1971, Libya in 1968, Mauritania in 1988, Morocco in 1970, Oman in 2003, Palestine in 2014, Qatar in 1976, Saudi Arabia in 1997, Somalia in 1975, Sudan in 1977, Syria in 1969, Tunisia in 1967, United Arab Emirates in 1974 and Yemen in 1972.

⁴⁶⁶ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 Dec 1965, entered into force 4 Jan 1969) 660 UNTS 195 (ICEDR) Article 22.

Another international agreement that has been widely accepted by Arab countries is the CEDAW, in which 21 out of 22 Arab countries have been part of⁴⁶⁷. A number of reservations on the CEDAW have been addressed by Arab countries and they are as follows:

1. made by Algeria, Bahrain, Iraq, Libya, Morocco, Qatar, Syria and the UAE, on Article 2 regarding the prohibition of discrimination in member states constitutions and legislations;
2. made by Bahrain, Jordan, Lebanon, Oman, Qatar, Saudi Arabia, Syria and the UAE, on Article 9 regarding equality between men and women in granting their nationality to their children;
3. made by Algeria, Bahrain, Morocco, Qatar, Syria and the UAE, on Article 15 regarding women freedom to choose place of residence;
4. this reservation made by Algeria, Bahrain, Egypt, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Syria and the UAE, on Article 16 regarding gender equality in the marriage affaires, within and after;
5. made by Algeria, Bahrain, Egypt, Iraq, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, the UAE and Yemen, on Article 29 regarding disputes between member states on ground of interpreting and implementing the CEDAW, and to solve the dispute by arbitration or transfer it to the ICJ in case of necessity⁴⁶⁸.

Most of these reservations were justified by contradiction to Islam. Some of them relate their reservations to inconsistency with internal laws which mostly derived and was underpinned by the Islamic norms and values. However, the aforementioned were examples of the Arab countries' commitment to international agreements. In spite of the reservations, Arab countries were keen to adopt international human rights treaties and accept the contractual obligations imposed by those agreements in order to

⁴⁶⁷ Treaties.UN, 'Convention on the Elimination of All Forms of Discrimination against Women' (1979) available at <<https://bit.ly/3HPEtnQ>> accessed 27th Dec 2020; Arab members are Algeria in 1996, Bahrain in 2002, Comoros in 1994, Djibouti in 1998, Egypt in 1981, Iraq in 1986, Jordan 1992, Kuwait in 1994, Lebanon in 1997, Libya in 1989, Mauritania in 2001, Morocco in 1993, Oman in 2006, Palestine in 2014, Qatar in 2009, Saudi Arabia in 2000, Syria in 2003, Tunisia in 1985, United Arab Emirates in 2004 and Yemen in 1984.

⁴⁶⁸ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) United Nations, Treaty Series, vol. 1249, Articles 2, 9, 15, 16 & 29.

improve the status qua therein. They have always participated in the global efforts represented in promoting human rights through instruments that include human rights principles, and to legitimate them domestically, yet without any prejudice to the culture including Islamic religion.

5.7 Reflections and Concluding Remarks

This chapter has focused on analysing the effectiveness of the Charter in order to detect whether or not it is adequate to protect and promote human rights in the Arab World. This will lead to identify the reasons behind its failure through analysing defective areas. In addition, it will support the main argument of this research which is that human rights in the Arab World could be better protected if they considered the Arab culture alongside the international standards of human rights. To this end, the main instrument of the Arab human rights system has been analysed.

Arab countries have struggled to adopt their own human rights instrument until the adoption of the Charter in 2004, although the intention existed since the establishment of the LAS in 1945. After several attempts to adopt it, the analysis showed that the Charter faced criticisms revolving around its inconsistency with international human rights standards. This might be due to approving the amended draft submitted by the Commission instead of the one that was conducted upon member states comments and recommendations, international and regional instruments including the CDHRI, opinions of Arabs and international organisations including the United Nations, scholars, activist, and legal expert, as demonstrated earlier in this chapter. This might also establish an argument that they showed a tendency to approve the Charter's version they amended with reference to their culture over the version that was widely influenced by international human rights standards. For the sake of enhancing the protection of human rights in the Arab World, the conflict between universality and cultural relativism is a matter that must be dealt with and cannot be neglected in this context.

The preamble of the Charter showed that it has been formed by virtue of Islamic and International human rights standards. In addition, apart from the provisions that were literally shown relation to both international and Islamic provisions, other Articles mentioned solely international standards. This does not mean that the Charter drafters undermine Islam, rather it is obvious that these Articles are influenced by Islam, such as

Article 1 of the Charter. It is important in this chapter to show the extent to which the Charter has been influenced by the Arab culture. Eminently, the historical background in chapter 2 illustrated that resistance, struggle and nationalism have become embodied within the Arab culture. This is likely the reason behind condemning Zionism and foreign occupation in Article 2 of the Charter.

The prohibition of torture is one of the absolute rights that has been promoted by all human rights sources. The outcomes of the analysis indicate that Article 8 of the Charter which has been allocated to promote the prohibition of torture has not addressed inhuman punishment and was suggested that this might be due member states. On the contrary, apart from their commitment to Islam, they showed adherence to international human rights agreements that prohibited all forms of torture, including inhumane punishments such as UDHR, ICCPR and the UNCAT⁴⁶⁹. It seems that the missing gap here can be due to the wording of Article 8 hence there is a need to amend this article to fall in line with Islam and international human rights standards.

The Charter has also protected women's rights in a number of articles. However, the 3rd paragraph of Article 3 raised some concerns, as it has been addressed by Islamic pretext. Whereas in fact, violation of this provision most were likely occurred due to influences from extraneous customs and traditions that is based on the oppression of women in this context and have no relation to the Islamic norms and values. Further, urging member states to ensure gender equality instead of eliminating discrimination in the same article did not follow the intentions and wording of international and regional human rights instruments. Additionally, Arab countries have restricted many articles related to women in international human rights agreements due to incompatibility with Islam, as explained earlier. Again, this supports the argument of this research by reconsidering amending the Charter to fall in line with both Islamic and international human rights standards.

Other provisions have also focused on promoting and protecting merely citizens' rights and ignored other components of the population of one's society. Although most of the international and regional human rights instruments included the term citizen, they

⁴⁶⁹ Convention Against Torture and other Cruel, Inhuman and Degrading or Punishment (UNCAT), UNGA Res 39/46 10 December 1984, entered into force 26 June 1987.

focused on specific provision, namely, participate in government⁴⁷⁰. The word citizen has been mentioned about 8 times in the Charter, for example in Article 24 regarding practicing politics Article 34 paragraph 1 regarding the right to work and Article 39 regarding the right to health. This implies that the Charter has discriminated on the basis of national origin. Hence, there is a need to amend the Charter's provisions that raises suspicions of discrimination to be compatible with Islamic and International standards.

Moreover, by allowing member states' domestic legislations to regulate some of the rights enshrined in the Charter, violations of the rights enshrined in the Charter will probably occur. For example, Article 7(1) which states that death penalty "shall not be imposed on persons under 18 years of age unless otherwise stipulated in the laws in force at the time of the commission of the crime" and Article 25 regarding allowing domestic laws to regulate minorities "right to enjoy their own culture, to use their own language and to practise their own religion". The objection here is not about the procedure of permitting member states to undertake granting of these rights, rather it is about subjecting significant rights to be governed by them. The analysis indicates that this is either due to political dimensions represented by member states pressure on the Commission or due to religious motives. It can be said that some provisions need to be applied with reference to Islam, such as Article 33 which referred regulating marriage's rules and conditions to member states domestic laws. This can be justified by the existence of religious diversity in the region, which must be respected and protected. To this end, considering the Margins of Appreciation for such a purpose may be a good solution, yet its implications must be in a way that does not contradict Islam.

Since the Charter is the only officially adopted instrument to protect and promote human rights in the Arab World, ensuring individual petitions would ensure more effectiveness therein. The Charter must meet the purpose of its formation by protecting and promoting human rights in the Arab region. This might be covered by one of the existed mechanisms that function to ensure the implementation of the Charter, such as

⁴⁷⁰ 'The African Charter on Human and Peoples' Rights' (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) Article 13; 'The American Convention on Human Rights' O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992) Article 23; 'International Covenant on Civil and Political Rights' (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) Article 19.

the Charter's Committee, and raises the issue of not including any guidance in adopting a judicial institution that also work to enforce member states application of the Charter, and which will be explained in more details in the next chapter.

The chapter has also discussed member states compliance to international human rights treaties, such as UDHR, ICCPR, ICESCR, ICERD and the CEDAW. The findings showed that most of the Arab countries adhered to many international agreements. However, their acceptance is conditioned on the consistency with Islam. Taken together, this chapter has provided a deeper insight on the need for an amendment to the Charter in terms of the wording of some articles and its compatibility with Islam and the international human rights standards. This chapter has highlighted the effectiveness of the Arab human right instrument; namely the Charter and the next chapter will address the Arab human rights mechanisms.

CHAPTER 6: THE ARAB LEAGUE'S HUMAN RIGHTS ENFORCEMENT MECHANISMS [THE COMMISSION, THE COMMITTEE AND THE COURT]

6.1. Introduction

The UDHR⁴⁷¹ can be seen as the foundation of most human rights instruments, including the Charter⁴⁷². In spite of the increasing number of human rights instruments on both international and regional levels, there are still violations. Consequentially, such instruments require mechanisms that function to guarantee their proper application. In fact, even with the existence of these mechanisms, violations occurred. The Charter has received considerable critical attention for the fact that its content “falls short on universal standards and, especially to the Inter-American and the European regimes, the monitoring mechanism is...[inefficient, and]...enforcement virtually non-existent”⁴⁷³. It does not have an effective enforcement mechanism which would oblige member states to implement the Charter's provisions⁴⁷⁴. This implies that there is a gap between what is written in the Charter and what is really happening in reality. In 2003, the International Commission of Jurists reported that the “charter lacks a sufficiently prescriptive reporting system and monitoring mechanism. No provision is made for submission of individual complaints”⁴⁷⁵. As the existence of human rights instruments without effective enforcement mechanisms is not sufficient to anchor the values of humanity and other human rights standards.

However, the 2004 revised “charter includes many provisions that are largely consistent with the standards found in the international treaties and to some degree reflects developments in international human rights jurisprudence”⁴⁷⁶. Therefore, analysing the LAS mechanisms that provide the technical supports beside enforcing the implementation of the Charter is a requirement of identifying its effectiveness. This will provide a perception on the void that must be filled to enhance the human rights

⁴⁷¹ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

⁴⁷² The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004).

⁴⁷³ V Hullen, ‘Just Leave Us Alone: The Arab League and Human Rights’ in: Borzel, T and V Hullen (eds.) *Governance Transfer by Regional Organizations: Patching Together a Global Script* (UK: Palgrave Macmillan, 2005, 138).

⁴⁷⁴ M Rishmawi, ‘The revised Arab Charter on Human Rights: a step forward?’ (2005) 5(2) *Human Rights Law Review* 375.

⁴⁷⁵ ICJ, ‘*The Arab Court of Human Rights: A Flawed Statute for an Ineffective Court*’ (icj.org 2015) available at <<https://bit.ly/3r870Mk>> accessed 20th Apr 2019.

⁴⁷⁶ V Dalia, ‘The Arab Charter on Human Rights: The Naissance of New Regional Human Rights System or a Challenge to the Universality of Human Rights?’ (2010) 1(119) *Jurisprudencija* 172.

protection in the Arab World which will simultaneously support the argument of this research.

6.2. The Arab Permanent Commission of Human Rights (the Commission)
The Commission⁴⁷⁷ is considered the first LAS human rights institution. Since the establishment of the LAS human rights issues in the Arab World were handled by the Arab Permanent Political Committee. Even the project of the Commission was reviewed, approved and recommended by the Political Committee. This can be clearly seen in all of the LAS Council resolutions before 1968 where the special technical Commission was adopted and specified that it will be working upon the Arab League Permanent Commissions Regulation⁴⁷⁸, which contains 13 Articles. This means that the Commission has no special rules or/and instructions to regulate and organise its work.

According to the Arab League Permanent Commission Regulations, however, Article 2 and 3 directed that each member state can nominate one or more persons as a representative in the commissions and shall act on behalf of his/her states unless being replaced by their states. The Secretary General should be informed about any action by member states with this concern. Article 4 explains that the commission's sessions shall be held by the Secretary General invitation to member states in the LAS headquarters in Cairo and can be held in any of the member states upon request. The presence of the majority of member states is required to hold a session and Arab human rights organisations may also be invited to attend as an observer in case of necessity and relevance. Article 5 of the regulations indicates that the LAS Council shall appoint a chairperson from member states candidates who are experienced in the commission's field; human rights, to head the commission for a period of two years. If for any reason the head of the commission is absent, a temporal substitution should be nominated by the commission. Articles 6 and 7 of the regulation states that each state has one vote, and no member states representative can vote instead of others. Resolutions and recommendations shall be agreed with the consent of the majority. The LAS Secretary

⁴⁷⁷ The Council of the Arab League 'The Creation of an Arab Permanent Commission of Human Rights Report' (Res) 2443/50 (3 Sep 1968).

⁴⁷⁸ The Council of the Arab League 'The Arab Permanent Commission of Human Rights Report' (Res) 2487/51 (16 March 1969); The Council of the Arab League 'The Arab Permanent Committee's Internal Regulations' (Res) 411/15 (13 October 1951) (in Arabic translated by author).

General shall also appoint one of the Secretariat General staff to be in charge of the commission secretary, pursuant to Article 8.

It seems that the regulation whereby the Commission will function has probably reflected on the Commission while fulfilling the purpose of its formation, namely: to protect and promote the LAS member states human rights. As most of the Commission's reports confined to either issues with political dimensions or procedural matters of the Commission, rather than focusing on the human rights situations of the LAS member states and urging them to submit human rights periodic reports⁴⁷⁹.

An example of the Commission's activities would be recommending the approval of the 1968 Beirut Conference Resolutions, preparing a proposal for the International Conference of Human Rights agenda⁴⁸⁰, condemning violations of Palestinians human rights by Israel⁴⁸¹, enhancing relations and cooperate with the United Nations and other human rights agencies⁴⁸², and the assignment of a chairperson to head the Commission⁴⁸³. However, the regulations might be more effective if they were specially created for a human rights Commission whereby the specialisations, duties, tasks and the roles of the Commission in protecting and promoting Arab's human rights would be included.

The absence of a special regulations for the Commission may also affect the procedures and criteria of its membership. Article 3 of the Arab League Permanent Commissions Regulations determined the conditions of assigning members in the commissions, and

⁴⁷⁹ The Council of the Arab League 'The Arab Permanent Committee's Internal Regulations' (Res) 411/15 (13 October 1951) (in Arabic translated by author) Article 2, which indicates that the technical commissions are willing to receive, study and provide recommendations of any matter of concern related to its specializations.

⁴⁸⁰ The Council of the Arab League 'The Arab Permanent Committee's Internal Regulations' (Res) 411/15 (13 October 1951) (in Arabic translated by author); The Council of the Arab League 'Propose an Agenda for the International Human Rights Conference' (Res) 5199/97 (29 April 1992) (in Arabic translated by author).

⁴⁸¹ The Council of the Arab League '4th Session Recommendations of the Arab Permanent Commission of Human Rights' (Res) 2605/53 n.2-6 (11 March 1970); '4th Session Report of the Arab Permanent Commission of Human Rights (Res) 4409/82 (25 September 1984); 'Israel Human Rights Violations in Jerusalem' (Res) 5767/109 (25 March 1998) (in Arabic translated by author).

⁴⁸² The Council of the Arab League '4th Session Recommendations of the Arab Permanent Commission of Human Rights' (Res) 2605/53 n.2-6 (11 March 1970) number 4, 7, 8 & 10

⁴⁸³ The Council of the Arab League 'Propose an Agenda for the International Human Rights Conference' (Res) 5199/97 (29 April 1992); The Council of the Arab League 'Appointing President for the Arab Permanent Commission of Human Rights' (Res) 2488/51 (16 March 1969), (Res) 4961/92 (13 September 1989), (Res) 5565/105 (21 March 1996) (in Arabic translated by author).

nothing refers to the qualifications of the representative or that they should be free from any previous duty and be working independently. Rather, Section 5 of the regulations indicates that member states representatives should function according to their representative's identity unless being replaced by his country⁴⁸⁴, which probably implies that member states select the commission's members.

Unlike Article 36 of the ACHR⁴⁸⁵ which authorises the General Assembly of the Organisation to nominate the Commission's members from a list of candidates provided by member states or Article 33 of the ACHPR⁴⁸⁶ which embraces the secret ballot for nominating members of the African Human Rights Commission. Consequentially, critics question the ability of the Commission to promote and protect the human rights of the LAS member states. It is believed that the Commission was not making any progress because of the nature of its composition and its regulations⁴⁸⁷. To be more specific, the Commission consisted of representative of member states governments who are likely be politicians and not experts in the field of human rights.

This led the LAS to highlight the possibility of including a condition in the LAS Charter to this regard back then. Indeed, the LAS approved a proposal of its developed Charter which contained 52 Articles instead of 21 in 1974, including an amendment to Article 19 which emphasised in the first section that none of the LAS staff shall request or receive any type of instructions or orders relevant to their duties in the League from any member states or other authority, and they should reject any act that may harm their positions which impose responsibilities before the LAS. The second section pointed out that member states should pledge respect to the independence of the LAS staff and abstain from any interference in their affairs while working⁴⁸⁸.

⁴⁸⁴ The Council of the Arab League 'Internal Regulations of the Special Permanent Commissions of the Arab League' (Res) 3438/65 (21 March 1976) (in Arabic translated by author).

⁴⁸⁵ 'The American Convention on Human Rights' (ACHR) O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

⁴⁸⁶ 'The African Charter on Human and Peoples' Rights' (ACHPR) (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982).

⁴⁸⁷ B Hassin, 'No Protection for Anyone! Regional Protection of Human Rights in the Arab World' in M Alfujairi (eds) *No Protection for Anyone! Arab League Role in Protecting Human Rights* (Cairo: Open Society Foundation 2006) (in Arabic translated by author) 51.

⁴⁸⁸ The Council of the Arab League on the Summit Level (Res) 70/7 (29 October 1974) (in Arabic translated by author).

The mentioned proposal has been followed by creating a follow up commission consisting of Ministers of Foreign Affairs who had held a number of meetings to review and develop its contents, however it had not been adopted and the LAS remains functioning on its previous Charter⁴⁸⁹. This presumably means that the Commission is not an independent body, but rather it is mostly a gathering of member states governments representatives and this might likely be a reason for the need to consider other institutions to function under the umbrella of the LAS as a human rights enforcement mechanism.

Others, however, also believed that the Commission failed in promoting human rights of the LAS member states because its priority was mostly centralised on supporting the Palestinian people in their struggle against Israel, to the extent that it had issued around 20 recommendations with this concern during the early years of its establishment⁴⁹⁰. Over and above, the LAS has urged member states to support their Palestinian's fellows in their case, indicating that the Arab Nation is obliged to struggle for the sake of Palestine against Israel⁴⁹¹. This may explain the influence of politics on Arab countries interest back then and justifies their initiatives towards adopting an independent specialised human rights institution under the authority of the LAS and work to promote and protect the human rights of its member states.

However, this does not mean the Commission is useless or totally ineffective but rather the Commission has remarkable initiatives in the promotion of human rights in the Arab World although they are few. For example, recommending the formation of Nationals Human Rights Committees within member states, reviewing projected treaties such as the 1951 treaty and the 1967 protocol regarding the Arab refugee's rights, emphasising the spread of human rights culture by relying on media and education, anchoring the human rights principles by urging member states to consider and ratify basic

⁴⁸⁹The Council of the Arab League on the Summit Level (Res) 70/7 (29 October 1974) (in Arabic translated by author); The Council of the Arab League (Res) 4013/75 (23 March 1981); (Res) 157/12 (9 September 1982) & (Res) 193 (30 May 1990) (in Arabic translated by author).

⁴⁹⁰P Naskou-perraki, 'The Arab Charter on Human Rights: A New Start for the Protection of Human Rights in the Arab World' (2009) 1(2) *Revue Hellénique de Droit International* 118; R Ziadeh, 'The March of Human Rights in the Arab World' (2000) Casablanca: Arab Cultural Centre (in Arabic translated by author); FS Azaam, 'Civil and Political Rights Guarantees in the Arab's Constitutions: Comparative Study' (1995) (Cairo: Cairo Institute for Human Rights Studies) (in Arabic translated by author) 104.

⁴⁹¹The Council of the Arab League on the Summit Level (Res) 119/10 (22 November 1979) (in Arabic translated by author).

international human rights instruments⁴⁹² and attempting to promote the universality of human rights⁴⁹³.

Furthermore, the Commission also initiated in the creation of the LAS terms and conditions for the Arab regional and international human rights organisations⁴⁹⁴. This was developed according to the Permanent Commission of Legal Affairs recommendation of adopting special conditions for granting an observer status to Arab national and non-governmental organisations, national human rights institutions and regional and international governmental organisations, who work in the field of human rights⁴⁹⁵. For instance, Article 1 indicates that an organisation should be officially recognised by any of the LAS member states in which it located and must work on a non-profit basis. Most importantly, the Commission has played a vital role in the adoption of the Charter⁴⁹⁶. It was involved in the drafting and redrafting of the projected 1994 Charter. Moreover, the Commission was in charge of following up the process of reviewing the Charter by member states and also responsible for reviewing a number of

⁴⁹² There are records of the Arab Permanent Commissions of Human Rights attempts for urging the Arab League member states to accept and ratify intranational human rights instruments, such as the Convention on the Prevention and Punishment of the Crime of Genocide 1948, the International Covenant on Civil and Political Rights 1966 and the International Covenant on Economic, Social and Cultural Rights 1966, these attempts can be found within the Council of the Arab League's sessions; see the Council of the Arab League 'The Arab Permanent Commission 4th Session's Report' (Res) 4408/82 n.2 (25 September 1984) (in Arabic translated by author).

⁴⁹³ The Arab Permanent Commission of Human Rights also attempted to draft guidelines for applying the universal human rights standards in the Arab countries; see The Council of the Arab League 'The Arab Permanent Commission of Human Rights Reports in its 12th and 13th Sessions' (Res) 5564/105 n.2 (21 March 1996); the Arab Permanent Commission of Human Rights has also warned member states to avoid making use of the human rights universality in order to justify their interference in the affairs of other states, who are facing international sanctions, see the Council of the Arab League 'Effects of Economic and International Sanctions on Human Rights Statute in the Arab World' (Res) 5820/110 n.6 (17 September 1998) (in Arabic translated by author).

⁴⁹⁴ The Council of the Arab League 'The Arab Permanent Commission of Human Rights Recommendations in its 4th Session' (Res) 2605/53 section 13 (11 March 1970); *Ibid* (n.9) (Res 4409/82 n. 1&2); 'The Arab Permanent Commission Recommendations in its 6th Session' (Res 4567/ 85) (27 March 1986); 'The Arab Permanent Commission Recommendations in its 9th Session' (Res) 5198/97 section 3 (29 April 1992) (in Arabic translated by author).

⁴⁹⁵ The Council of the Arab League agrees on the Arab Permanent Commission of Human Rights recommendation of granting Arab Human Rights agencies the observer statute, the rules were developed, organised and updated to maintain impartiality and neutrality; see the Council of the Arab League (Res) 7416/136 (13 September 2011); 'The Arab Permanent Commission of Human Rights Report and Recommendations in its 31st Session' (n.9/ p.120) (26-30 February 2012) (in Arabic translated by author).

⁴⁹⁶ 'The Arab Charter on Human Rights' adopted in 15 September 1994 as per the Council of the Arab League's resolution number 5437/102, as mentioned in the last chapter, this version of the Charter has never entered into force (in Arabic translated by author).

proposed projects of Arab human rights instruments⁴⁹⁷. Over and above, the Commission managed to update the mentioned version of the Charter and cooperate with a team of independent human rights experts selected by the United Nations Office of the High Commissioner for Human Rights at the request of the LAS Secretary General who believes that the Charter should be compatible with international standards of human rights⁴⁹⁸, as explained in the last chapter.

However, believing in the importance of protecting and promoting human rights in the Arab World and, confirming the Charter of the United Nations, the International Bill of Human Rights, the Charter and the CDHR, the LAS established the Arab Human Rights Department (the Department). The Department was created by the LAS Secretary General on 16 April 1992 pursuant to Article 9 of the Arab League Permanent Commission's Internal Regulations and generally specialises in providing all the required technical support to the Commission⁴⁹⁹.

In 2007, the LAS Council adopted the internal regulations of the Commission (the Commission Regulation) in accordance with resolution number 6825 and was amended in 2015 as per resolution number 7970⁵⁰⁰. Article 1 of the Commission's Regulation specialises in defining the terms that will be used in the instrument and refers to the Department as the Technical Secretariat of the Commission. Article 11 states that the

⁴⁹⁷ In its forth session, the Arab Permanent Commissions of Human Rights emphasized on implementing resolution 2487/51 (16 March 1969) regarding adopting an Arab regional human rights instrument, and recommended to host a meeting consist of scholars, experts and activists in the field of human rights, in order to draft an Arab Charter on Human Rights and, must be based on the Universal Declaration of Human Rights beside the Arab culture, following by submitting the completed draft to the Commission to be reviewed; The Council of the Arab League 'The Arab Permanent Commission of Human Rights Recommendations in its 4th Session' (Res) 2605/53 section 9 (11 March 1970); The Council of the Arab League 'The Projected Arab Charter on Human Rights' (Res) 4263/79 (31 March 1970); The Council of the Arab League 'The Arab Permanent Commission 4th Session's Report' (Res) 4408/82 n.2 (25 September 1984) (in Arabic translated by author) section 1; The Council of the Arab League 'The Arab Permanent Commission Recommendations in its 9th Session' (Res) 5198/97 section 3 (29 April 1992) section 4/2 (in Arabic translated by author).

⁴⁹⁸ In 24 March 2003 the Council of the Arab League assigned the Arab Permanent Commission to update the 1994 Arab Charter on Human Rights, with the involvement of a team of human rights experts who works in the United Nations human rights agencies, as suggested by the United Nations High Commissioner of Human Rights in October 2003; See the Council of the Arab League Report 'The Arab Charter of Human Rights Project' (2003) n.1-5 <<http://www.bibalex.org/ar/ar/Files/AHRRenew.pdf>> accessed 9 June 2020 (in Arabic translated by author).

⁴⁹⁹ LASPORTIAL, 'A Brief of the Arab Human Rights Department' (leaguepfarabstates.net) <<https://bit.ly/3hbM82f>> accessed 9th June 2020 (in Arabic translated by author).

⁵⁰⁰ The Council of the Arab League 'Internal Regulations of the Arab Human Rights Permanent Commission' (Res) 6826/128 (5 September 2007); 'Amending the Internal Regulations of the Arab Human Rights Permanent Commission' (Res) 7970/144 (13 September 2015) (in Arabic translated by author).

Department shall undertake all of the Commission's secretariat tasks and present the approved recommendations and resolutions to any of the LAS agencies. It is also entitled to contact member states and send them the final reports and follow up on the implementation of the approved recommendations. In short, the Department functions as the general secretariat of the Commission.

The Commission's Regulation contains 12 Articles intended to demonstrate the duties and the work of the Commission and the Department. Article 2/1 of the Commission's Regulation indicates that "the Commission members should be representatives of the LAS member states and must have competence and experienced in the field of human rights". Despite the fact that the involvement of member states still existed, the qualification condition of the Commission's member is an improvement. Article 3 states that the Commission is the LAS human rights institution that branches from the Council and specialises in:

- providing consultations concerning human rights matters in member states upon their request;
- confirming that Arab human rights instruments are compatible with international standards and providing suggestions accordingly;
- recommending Arab human rights treaties as required and ensure their consistency to international standards;
- conducting studies and research in the field of human rights upon request,
- discussing human rights cases that are referred by member states, the LAS Secretary General or Council;
- cooperating with other LAS agencies in issues related to human rights,
- cooperating with the LAS representatives over the World in matters related to human rights;
- enhancing cooperation with member states human rights agencies in terms of promote and spread out the human rights culture, and
- providing member states with any assistance or technical support required with regards to human rights.

Articles 4 of the Commission's Regulation demonstrates the procedures for holding sessions indicating that the Commission hold its sessions twice a year in the LAS

headquarters (Cairo) with the attendance of the majority of its members. It added that the Secretary General attends and may invite Arab human rights agencies to attend as an observer. The Commission can also hold meetings with other permanent commissions if there was a common issue that need to be discussed. Article 5 covered instructions with regards to the Committee's sessions agendas explaining that the Secretary General will invite member states 6 weeks prior to the session and member states shall reply with a previously prepared topics list. The Secretary General prepares the sessions agenda and submit it to the Department in order to send it to the members, including all the relevant documents at least 4 weeks before the session. Members may add to the agenda at any time before its official approval.

The Commission's Regulation also determined sessions and deliberations guidance as per Article 6 stating that the session should be started by the head of the Commission who welcome the members and begin managing the session which ends with completing all of the agenda's points. As for the voting, Article 7 explains that each member state has only one vote in the Commission, and representatives of one state cannot vote instead of others, and that the outcomes of the sessions must be agreed by the majorities consent. Article 8 of the regulations explains that the head of the Commission's affairs who is being is selected by voting for 2 years and must be qualified and has the right experience in human rights.

Moreover, his main duty is to assure that the Commission is functioning upon the LAS Charter in the first place and other internal relevant rules. The Commission shall select one of its members to replace the chairperson in case of absence. Article 9 of the internal regulation's states that the LAS Secretariat General may invite civil societies and NGOs to attend the sessions as observers. The Commission, however, may exclude these institutions and hold the sessions solely in the presence of member states. The Commission's Regulation has also highlighted the possibility of creating sub-committees out of the Commission members to look into certain issues in case of necessity, as per Article 10. Article 11 was allocated to regulate the duties and responsibilities of the Department, as mentioned earlier.

6.2.1 The Commission in Practice⁵⁰¹

After 40 years of its inception, the Commission finally works in accordance with its own special regulation. This is an improvement as the Commission's specialisations terms of functioning and duties are frankly determined. The special conditions of granting an observer status to Arab national and non-governmental organisations, national human rights institutions, and regional and international governmental organisations who work in the field of human rights were also mentioned in the Commission's Regulation. This means that the Commission will implement its regulation's content while operating its sessions nevertheless it has remained ineffective⁵⁰². The Commission has allocated the second and the third sections of almost all of its sessions report to highlight the Palestine-Israel conflict. The second section is specified to decry Israel violations of the Palestinian human rights such as the Israeli government ignorance of the international human rights standards, the ignorance of the Security Council's resolutions, the refusal of providing medical care for injured Palestinians and, disrespecting and assaulting the medical crew and the nongovernmental organisations humanitarian teams. It also urged Arab countries to request resolutions from the Security Council regarding Israel withdrawal from Palestine and, apprised the effort of the United Nations special rapporteur reports on Palestinian human rights violations⁵⁰³.

Spotlighting such matters will require responses therefore the Commission issues the appropriate recommendations. The Commission suggested the adoption of an effective instruction to counter Israel's human rights violations and requested from the international community to immediately convince Israel to stop the violations. Moreover, it emphasised supporting Palestinian educational institutions and ensuring the inclusion of history and geography modules in order to demonstrate the history of Palestine over generations. The Commission also repeatedly urged the international

⁵⁰¹It is important here to distinguish between the Arab Permanent Commission of Human Rights activities before and after the adoption of its internal regulation, because it became independent in terms of its ruling and instructions. The following is a brief summary of the Commission's 26th to 47th Sessions, during the last decade and after the adoption of its own regulation, see the Arab Permanent Commission of Human Rights official website; Lasportal 'The Arab Permanent Commissions of Human Rights Sessions' (*lasportal.org*) <<https://bit.ly/3CTkJMz>> accessed 13 June 2020 (in Arabic translated by author).

⁵⁰² Meaning, emphasising on most of its same topics and activities.

⁵⁰³ UNCHR 'Report of the Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Richard Falk' (2013) UNDOC A/HRC/23/21; 'Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono' (2015) UNDOC A/HRC/28/78.

community to fulfil and respect its legal mandate and stop the Israel siege on Palestine, especially on Gaza. It added that the international community's failure in following the international law and stop Israel's violations of the Palestinian human rights has encouraged them to keep up the siege.

The Commission also outlined the Palestinian prisoners and detainees who were captured by the Israeli authorities under the third section of most of its reports. For example, condemning Israel's break of the international law particularly the 1949 Geneva Convention, by continuing in detaining more than 7000 prisoners and intentionally keeping them in bad living conditions. Even more, demanding the United Nations High Commissioner for Human Rights to keep trying with Israel to treat the Palestinian and Arab prisoners with reference to the 1949 Geneva Convention. It has also suggested to launch an international political and media campaign to express their solidarity with the Palestine and the Arab prisoners at international and regional forums.

Other issue covered in the Commission's sessions is deliberating any instrument that functions to promote and protect human rights in the Arab World. To illustrate, the Commission discusses issues related to the Charter in most of its sessions. It repeatedly insisted on member states who did not adopt the Charter to ratify it and submit their ratifications to the Secretary General. The Commission then followed up with the Charter's member states to submit their periodic report to the Arab Human Rights Committee (the Committee) as per the Article 48 of the Charter. Further, the Commission promotes the relations with the Charter's Committee and receive human rights cases of member states that need further study from the Charter's Committee. It also urges member states to annually celebrate the Arabic Day of Human Rights on 13 March or the day of adopting the Charter.

Additionally, the Commission creates and manages sub-commissions to develop specific topics. For example, the Commission Specialized Subcommittee whose title changed to the Arab Permanent Commission on Human Rights Experts Team, was entitled to conduct studies and on any topic submitted by the Commission or the Secretary General and to provide the Commission with any ideas that reinforce human rights in the Arab World. This team was tasked with developing a plan that worked to enhance the human

rights culture in the Arab World, hence the team drafted the Arab Plan to Foster the Culture of Human Rights in 2010⁵⁰⁴.

The reports of the Commission sessions also included that it supervised another team consisting of governments experts who were assigned by the LAS Council to create a plan that made human rights a priority in life and to follow up implementing it by the member states. Therefore, the Team created the Arab Plan for Human Rights Education 2009-2014, which aimed at integrating human rights in all levels of education, enhance human resources skills in the field of human rights education, create a suitable environment for human rights education and supporting community participation in spreading the human rights culture. The Commission managed the process of creating the aforementioned plan and supervised this team while urging member states to adopt and apply the plan. The sessions' reports showed carelessness in applying the aforementioned plan by member states and to this end, the team adopted a special guide to member states that can be considered to implement the Arab Plan for Human Rights Education. Furthermore, the Commission recommended amending the LAS Charter by literally include the terms 'promote, enhance and protect human rights' to Article 2, which highlighted the purpose of establishing the LAS.

In its 32 sessions in 2012, the Commission also recommended the Arab Declaration of the Human Rights Defenders, which was proposed by the Palestinian representative. The instrument consisted of 21 Articles that aimed to create moral rules to protect human rights defenders who relied on the Charter and other human rights instruments while they are working. It would also promote human rights and fundamental freedoms to all humans without any type of discrimination and will work to ensure adopting the Charter. Additionally, it will eliminate all human rights violations in the Arab World and assure legal accountability before national courts. After a few sessions, the title of the

⁵⁰⁴The mentioned plan was recommended by Morocco's representative and inspired by most of the International, Regional and other human rights instruments such as, The Arab Charter on Human Rights, The Cairo Declaration on Human Rights in Islam, The African Charter on Human and Peoples' Rights, The Convention on the Rights of the Child and the International Bill of Human Rights. The Plan meant fulfil a number of targets, such as enhancing human rights awareness in Arab societies so people can defend their own rights, developing people's knowledge of human rights protection measures and promoting employees' human rights in all working places; see OHCHR 'The formulation of an Arab Plan to Foster the Culture of Human Rights, adopted by the Council of the League of Arab States, 28 March 2010' (*ohchr.org* 2010) <<https://bit.ly/32lr9Uq>> accessed 16th June 2020; OHCHR 'The Arab Plan to Foster the Culture of Human Rights, adopted by the Council of the League of Arab States, 28 March 2010' (*ohchr.org* 2010) <<https://bit.ly/2EgErto>> accessed 16th June 2020.

aforementioned declaration was changed to 'The Arab Declaration Concerning the Right and Responsibility of Individuals, Groups and Community Bodies in the Promotion and Protection of Human Rights and Fundamental Freedoms'. The plan had been drafted and redrafted around three times and then submitted to member states for review and then to the LAS Council to adopt after the Commissions' 54th session in 21 February 2019 but despite all this it is still pending.

Another project to enhance Arab human rights that was recommended and discussed by the Commission in its sessions and was praised by the United Nation High Commissioner of Human Rights was the Arab Strategy on Human Rights⁵⁰⁵. Member states attention and seriousness can clearly be seen from the Commissions' session reports and, after several meeting, deliberations, discussions and distributing the project to member states for further reviews, the Arab Strategy on Human Rights was adopted in February 2019. The Strategy aimed at promoting cooperation on regional level in order to protect human rights; urging Arab countries to adopt regional and international human rights treaties; strengthening Arab countries capabilities in applying human rights and support them to fulfil their obligations; spreading out the human rights culture and the international human rights standards, and following up Arab countries effort and progress in applying human rights. Moreover, the Commission urged member states to apply the strategy in accordance with an organised periodic plan and recommended the adoption of a Guidelines for Implementing the Arab Human Rights Strategy.

Furthermore, the sessions of the Commission also consider the observer status requests which were provided by the Arab non-governmental organisations, civil societies bodies and other human rights agencies. The request mostly submitted to add an entity but sometimes member states asked the Commission to withdraw the observer status of any entity which failed to meet the accreditation requirements.

These are examples of the topics discussed in the Commission sessions by which the Commissions' specialisations are reflected. It's contribution in promoting human rights reflect the effectiveness and indicates that it cannot be separated from the Arab Human

⁵⁰⁵ UNCHR 'Resolution adopted by the General Assembly on 11 November 2014: Cooperation between the United Nations and the League' (2014) UNDOC A/RES/69/9.

Rights System although it has nothing to do with investigating human rights violations in the Arab World. To be more specific, the Commission has a number of specialisations yet they are limited on improving human rights status in the Arab World by enhancing and adopting human rights instruments, facilitating procedures that allow member states to adopt human rights treaties, improving the capability of member states to protect human rights in their territories and attempting to involve the human rights principles in all the policies of member states.

In short, the Commission is a body that is based on member states governments representatives who work under the authority of the LAS Secretary General and take all necessary measures to promote and develop human rights in the Arab World to guarantee the spread out of its culture therein. This means that the Commission cannot investigate human rights violations that occur in Arab member states and therefore the establishment of an institution that work as a mechanism of protecting human rights in the Arab World is required. What follows is an account of another mechanism under the Arab human rights system that is entitled to protect and guarantee the implementation of the Charter.

6.3. The Arab Human Rights Committee (the Committee)

As mentioned in the introduction of this part, protecting human rights by mere legal principles and instructions is challenging unless there are certain procedures that ensures their implementations. Consequentially, the Charter allotted Articles 45-48 to the second Arab human rights mechanism in the Arab human rights system, namely: The Committee. In 2008, the Committee was established in accordance with the first section of Article 45 of the Charter and is considered the main enforcement mechanism of the Charter⁵⁰⁶. Section 7 of Article 45 of the Charter indicates that the Committee should create “its own statute and rules of procedure..., determine how often it shall meet... [and] shall hold its meetings at the headquarters of the League of Arab States... [, or] ... in any other State party to the present the Charter at that party’s invitation”⁵⁰⁷.

⁵⁰⁶ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 49 section 3 states the Charter entered into force after the seventh ratification of member states, and hence the Committee, also see Article 45 section 1.

⁵⁰⁷ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 45 section 7.

Accordingly, the Committee adopted its own operational statute during its 28th session on 24th November 2014 and it consisted of 17th Articles⁵⁰⁸.

The Committee is made up of seven members who are being nominated by a secret ballot and, shall be independent experts with a high level of experience and efficiency in the field and hold member states nationalities and are well known by their fairness and impartiality while working⁵⁰⁹. By limiting the number of the committee members, the Arab human rights system has followed the American and the African ones yet they frankly indicated in their human rights instruments that their commissions represent other members and will work to protect their human rights⁵¹⁰. However, a historical example for the formation of such an entity can be seen in the former European Commission on Human Rights model, which was abolished in 1998 and used to “consist of a number of members of equal to that of the High Contracting Parties”⁵¹¹. The individual representatives that comprises the Commission shall act upon their own capacities rather than representing their states⁵¹².

In fact, this paradigm will likely diminish any possible concerns by applicants in terms of neutrality, impartiality and transparency, although it may give rise to unexpected consequences when applied to the Arab model. As previously explained in the third chapter that state sovereignty has been always one of the Arab states’ priorities and the tenor of the aforementioned paradigm will probably be counted as one of the threats. However, this research sees that the Committee should comprises of a representative from each Arab member state. This may create some satisfaction by state parties since

⁵⁰⁸ The Arab League, ‘Internal Statute of the Arab Human Rights Committee’ (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author); the number of the Arab Human Rights Committee is similar to that of the American Commission of Human Rights.

⁵⁰⁹ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 45 sections 1, 2 & 3.

⁵¹⁰ ‘The American Convention on Human Rights’ O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992) Articles 34 & 35; ‘The African Charter on Human and Peoples’ Rights’ (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) Articles 30 & 31.

⁵¹¹ The Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950 and entered into force 3 September 1953) E.T.S. 5, Article 20; the European Commission on Human Rights has been abolished in accordance with “Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms: Restructuring the Control Machinery Established Thereby (11 May 1994 and entered into force 1 November 1998) E.T.S 155”.

⁵¹² The Convention for the Protection of Human Rights and Fundamental Freedoms (4 November 1950 and entered into force 3 September 1953) E.T.S. 5, Article 20 Article 23

it will enhance the actual and/or genuine following up process to the human rights statuses therein, instead of merely relying on transferred reports.

The third section of Article 45 of the Charter emphasises that no more than one member shall represent each state party and may be renewed for one other term in office which last four years. Section 4 of the same Article also illustrates that “members of the Committee shall be elected for a four-year term, although the mandate of three of the members elected during the first election shall be for two years and shall be renewed by lot”⁵¹³. In addition, the Charter did not forget to include the Committee membership vacancies, as it should be declared by the Secretary General just after informing him by the Committees’ Chairman in case of the death of member, resignation or the unanimous consent by members that a member failed to fulfil his/her obligations without acceptable excuses⁵¹⁴. Even more, the Charter added that the Committee members acquire the status of experts and function their duties far from any influences by their own countries⁵¹⁵. As mentioned previously the Charter Committee’s membership process is mostly similar to these of the American and African systems. However, the process differs from the Commission’s membership process whereby member states play a major role in nominating the members.

The Charter Committee also receives financial support from the LAS budget and its member should be treated and have the same privileges as provided to the Secretariat General experts⁵¹⁶. This is expected especially since the Committee constitutes the only mechanism stipulated in the Charter that monitors and supervises the implementation of its provisions, despite the absence of an induction to its specialisations and competences therein. In other words, none of the 53 Articles of the Charter broached the Committee’s tasks and specialties. This can be counted as an obvious gap in the

⁵¹³ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 45 sections 3 & 4; according to Article 45 of the Charter, the Secretary General requests from member states to submit their candidates six month earlier to the Committee membership elections date; the Secretary General then informs member states the list of the members two months earlier to the election date; nomination occurs upon the majority of votes. In case of equal votes, the process must be relaunched. If the result was the same, a ballot must take place for the contenders.

⁵¹⁴ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 46.

⁵¹⁵ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 47.

⁵¹⁶ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 46 section 6.

Charter that prevents the Committee from attaining its monitoring role in the compliance of member states to the Charter's provisions instead of merely reviewing their periodic reports. However, the Charter's Committee also have its own secretariat that handles all its technical and administrative tasks under the supervision of the Committee's Secretary⁵¹⁷. Even more, the Committee may also call for the establishment of sub-committees or the creation of teams to investigate some matters if required and then submit their reports to the Committee⁵¹⁸.

Furthermore, the Committee holds its sessions as stipulated in the Charter and its internal statute, either in its location in the Secretariat General headquarters or in one of the member states with prior arrangement. The LAS Secretary General calls for the first session of the Committee in which members shall nominate its Chairman and Deputy Chairman⁵¹⁹. The Committee's sessions held with the attendance of the majority of members including the Head of the Committee, Deputy Chairman or both⁵²⁰. The Charter's Committee must convene regularly to follow up human rights status and review member states periodic reports; it may also hold special meetings in case of necessity upon a request from its Chairman or the majority of its member⁵²¹.

The terms of references and duties of such Committees that function on implementing the provisions of international instruments differs from one another albeit they share the same main goal eventually, namely: monitoring the extent to which member states are complying to the relevant international instrument. The Charter's Committee also followed suit, yet its terms of reference are bound to member states reports, as per Article 48 of the Charter and Article 8 of the Committees internal statute. Within a year of adopting the Charter, member states should submit the first report regarding all the measures taken to promote and protect human rights therein, followed by triennial

⁵¹⁷ The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) Article 9.

⁵¹⁸ The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) Article 14.

⁵¹⁹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 45 sections 7 & 8.

⁵²⁰ The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) Article 5 section 3.

⁵²¹ The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) Article 5 section 1 & Article 6.

reports⁵²². The Committee must then review each of the member states reports with the attendance of their representatives and may invite whoever is related to the revision process or request more relevant information either from the member state under question or from the LAS⁵²³.

On top of that, the Charter Committee has also laid down a guideline that facilitates the preparation of the reports by member states in a uniform and symmetric pattern⁵²⁴. The Committee's Chairman directs to hold the meeting and following this the Committee's Secretariat informs member states about the meeting and the due date of submitting their reports; member states then act accordingly and submit their human rights report within no more than three months post the Committee's Secretariat notice to the LAS Secretary General, who in turn transfers the report to the Committee⁵²⁵.

A few days prior to member states report discussion session, the Charter's Committee calls for a constructive dialogue with the reporting member delegation in which the report will be briefly presented and the delegation will have the Committees' feedback and have time to prepare their final version of the report. The Committee should convene by the due date, publicly and may invite National Human Rights Institutes, Non-Governmental Organisations, relevant LAS bodies and other human rights institutions in relation with the reporting member states as an observer, as well as to submit their

⁵²² The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 48 section 2; The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) Article 2 section 1; member states of the Arab Charter on Human Rights must submit their first report to the Arab Human Rights Committee through the Arab League Secretary General, while the rest of the periodic report must be submitted directly to the Arab Human Rights Committee.

⁵²³ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 48 sections 2 & 3; The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) Article 2 section 4 & Article 8 section 3.

⁵²⁴ The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) Article 2 section 6; the Guidelines were adopted within the Arab Human Rights Committee's 26th session as per resolution 152/26 on 26th June 2014: 'Member States Guidelines of Writing Human Rights Reports for the Arab Human Rights Committee' available at <<https://bit.ly/3slHB37>> (in Arabic translated by author).

⁵²⁵ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 48 section 1; *ibid* (n 38) Article 7 sections 1; The Committee has also adopted its own style to conduct human rights reports as per resolution 152/26 on June 2014: 'Mechanism for Examining the Reports of the Arab Charter on Human Rights States Parties to Submitted to the Arab Human Rights Committee' (the Charter Committee)' available at <<https://bit.ly/2N4U5fo>> accessed 28 October 2020 (in Arabic translated by author).

shadow reports⁵²⁶. The head of the delegation of the reporting state shall then provide the closing statement to the Committee followed by a press conference addressing a summary of the session⁵²⁷.

The Committee approves its notes and final recommendations just after the session of discussing member state reports with a particular emphasis on one or more significant recommendations and may request a progressive report to follow up implementing the recommendations in question. The progressive report is sent back to the reporting member state for review and, returned to the committee with replies on specific subjective points that were raised by the Committee, and which have not been included in the report within a month. After approving the queries, the Committee transfers the report to the reporting member state again, uploads it in the Arab League website and includes it in their annual report submitted to the LAS Council⁵²⁸.

The main purpose of these public sessions is to conduct a constructive dialogue that serves in improving the human rights status within member states by providing them with all of the necessary support for the sake of fulfilling their obligations of implementing the Charter's provisions. It is important to mention here that nothing in the previously mentioned four documents⁵²⁹ that regulate the work of the Charter's

⁵²⁶ Lasportal, 'A Guide to the Participation of National Institutions of Human Rights, Nongovernmental Organisation and other Relevant Bodies in the Arab Human Rights Committee's Sessions' available at <<https://bit.ly/2LIFETw>> accessed 20th Dec 2020; The Arab Human Rights Committee or the charters' committee issued a guide that not only organises the participation of National Institutes of Human Rights, Nongovernmental Organisations and other institutes of civil societies, but also helps in preparing, structuring, writing and submitting the shadow reports (the reports that are created and submitted by these interties and contained facts that rarely came in line with the official member states reports).

⁵²⁷ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 48 sections 3 & 4; The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) sections 4, 5, 7 and B section 1-d; Sections 6 and 9 of 'A' of the mechanisms' guidelines also states that the Committee's members who hold the same nationality as the reporting state should not intervene within the discussion and, the Committee may visit the reporting member state upon an invitation of the reporting member or a Committee's request in order to be acquainted with the human rights situation therein and to hold an introductory workshops regarding the Arab human rights system.

⁵²⁸ The Arab Human Rights Committee's 26th session as per resolution 152/26 on 26th June 2014: 'Member States Guidelines of Writing Human Rights Reports for the Arab Human Rights Committee' available at <<https://bit.ly/3slHB37>> (in Arabic translated by author) C; reporting member states shall then focus on following up the Committees' recommendations and may submit written prove on its progress.

⁵²⁹The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004); The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author); The Arab Human Rights Committee's 26th session as per resolution 152/26 on 26th June 2014: 'Member States Guidelines of Writing Human Rights Reports for the Arab Human Rights Committee' available at <<https://bit.ly/3slHB37>> (in Arabic translated by author).

Committee indicate that its recommendations are mandatory on member states. Despite the fact that they are not counted as resolutions or judicial rulings, their political and moral values should not be underestimated at all. In particular there will be a pressure on the reporting state results from publishing the reports' findings which revealed a failure to implement the Charter's provisions. Article 48 section 6 of the Charter assures that the "Committee's reports, concluding observations and recommendations shall be public documents which the Committee shall disseminate widely"⁵³⁰. The aforementioned measure can be considered as a type of sanctions on member states who do not respect human rights by which others will be able to discover their intentions and reality, which may result in the possibility of being boycotted by other states. The question then arises, "is this an adequate enforcement measure for violating human rights?"

6.3.1 The Committee and Human Rights Reports

Human rights reports are considered as an effective protection mechanism that are employed "to record and analyse information, present findings of monitoring and fact-finding activities, express concern about a human rights problem, engage in dialogue with duty bearers, advocate positive change and propose recommendations for corrective action"⁵³¹. Additionally, the United Nations Committee on Economic, Social and Cultural Rights (CESCR) assured that member states reports functioned to attain seven objectives, namely:

1. awareness of domestic legislation and making them compatible with the Covenant in case of they are not;
2. monitoring individual enjoyment of the rights enshrined in the Covenant and assess their application;
3. create foundations for member states' legislations by which the Convention's provisions will be applied;
4. adopt the suitable criteria of evaluating the progress in fulfilling the Covenant's obligations for both member state and the committee;

⁵³⁰ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 48 section 6; the Author of this research called it 'The Scandal Approach'.

⁵³¹ UNCHR, 'Chapter 13: Human Rights Reporting in 'Manual on Human Rights Monitoring'' (2011) available at <<https://bit.ly/3pCnJqO>> accessed 17th Nov 2020 3.

5. audit member state policies in respect of the Covenant implementation and to ease the involvement of all spectrums of society in formulating, applying and reviewing these policies;
6. enable member state to identify the problems and threats hindered the enjoyment of economic, social and cultural rights.;
7. exchange of information between member states to identify common problems to cooperate in adopting the suitable solutions for the sake of fulfilling their Covenant commitments⁵³².

Despite these guidelines, the CESCR struggled while fulfilling its duty, and hence published in its fact sheet no.16 the ‘Concluding observations’, which refers to the decisions taken by the CESCR of member states commitment to implement the ICESCR’s provisions. The CESCR found that some of the member states are not fully cooperating in achieving the approved objectives, and concludes that “for States parties to ignore or not act on...[the Committee’s recommendations and views]...would be to show bad faith in implementing their Covenant-based obligations”⁵³³. Continuing in this line, the United Nations Commission on Human Rights has frankly professed that member states “will be in violation of the Covenant, inter alia, if...it fails to submit reports as required under the Covenant⁵³⁴. In short, human rights reports reflect state progress and performance in the protection of human rights in general, and the implementation of the human rights treaties’ in particular just like the Arab paradigm, yet ostensibly.

The Charter has also stipulated in Article 48 section 5 that the Committee should submit an annual report containing its notes and recommendations to the LAS Council through the Secretary General. This overtly or/and transparency may affect the public opinion in urging the reporting member states to implement the Charter provisions. The Committee may also attract the LAS Council’s attention to any points related to member

⁵³² CESCR, ‘General Comment No. 1: Reporting by States Parties’ adopted 27th Jul 1981, E/1989/22 available at: <<https://www.refworld.org/docid/4538838b2.html>> accessed 19th Nov 2020.

⁵³³ OHCHR, ‘Fact Sheet No. 16 (Rev.1) The Committee on Economic, Social and Cultural Rights’ (*ohchr.org* 1996) No. 16 (Rev.1) section 6, available from <<https://bit.ly/3FK3zTe>> accessed 19 Nov 2020.

⁵³⁴ UNCHR, UN Commission on Human Rights Note Verbale Dated 5 December 1986 from the Permanent Mission of the Netherlands to the United Nations Office at Geneva Addressed to the Centre for Human Rights ‘The Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights’ (8th Jan 1987) E/CN.4/1987/17 available at <<https://www.refworld.org/docid/48abd5790.html>> accessed 27th Dec 2020 principle no. 72.

states reports by including them within its annual report and may suggest measures to be taken in order to facilitate the gradual implementation of adopting the Charter⁵³⁵.

Table 2: Member states of the Arab Charter on Human Rights and the Arab Human Rights Committee's Reports

Country	Signature	Ratification	Session	HR Report	Shadow Reports	Session	1st Periodic Report	Shadow Reports
Jordan	28 Oct 2004	28 Oct 2004	1	Mar 2012	N/A	9	Feb 2015	12
Algeria	2 Aug 2004	11 Jun 2006	2	Oct 2012	N/A	11	Sep 2016	N/A
Bahrain	5 Jul 2005	18 Jun 2006	3	Feb 2013	N/A	15	Jan 2019	1
Qatar	24 Jan 2008	11 Jan 2009	4	Jun 2013	1	13	May 2017	2
United Arab Emirates	18 Sep 2006	15 Jan 2008	5	Dec 2013	N/A	16	Oct 2019	4
Iraq	N/A	4 Apr 2013	6	Dec 2014	2	14	Jul 2018	5
Lebanon	25 Sep 2006	8 May 2011	7	Apr 2015	7	N/A		
Sudan	21 Jul 2005	21 May 2013	8	Nov 2015	7	N/A		
Saudi Arabia	1 Aug 2004	15 Apr 2009	10	May 2016	N/A	N/A		
Kuwait	18 Sep 2006	5 Sep 2013	12	Jan 2017	6	17	Dec 2019	N/A
Tunis	15 Jun 2004	N/A						
Djibouti	N/A							
Syria	17 Aug 2006	6 Feb 2007	N/A					
Somalia	N/A							
Oman	N/A							
Palestine	15 Jul 2004	28 Nov 2007	N/A					
Comoros	N/A							
Libya	14 Feb 2005	7 Aug 2006	N/A					
Egypt	5 Sep 2004	24 Feb 2019	N/A	Apr 2020	N/A			
Morocco	27 Dec 2004	N/A						
Mauritania	N/A	18 Feb 2019	N/A	Apr 2020	N/A			
Yemen	12 Oct 2004	12 Nov 2008	N/A					

⁵³⁵ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 2 section 5.

For the purpose of promoting and protecting human rights in the region, however, the Arab human rights system has imposed on member states to submit their reports in a determined form and time. Since its establishment, the Committee received 17 reports from 11 members, and issued 11 annual reports⁵³⁶. Surprisingly, none of the Arab human rights instruments, including the Charter, have referred to ensuring member states obligation on submitting their human rights reports to the Charter Committee in the specified time. This gives space to members to procrastinate or albeit to manoeuvre in submitting their reports. Table 2 indicates that only Iraq out of the 16th member states has adhered to the Charter's provisions and submitted its first report one year after the ratification in late 2014, followed by its first periodic report on 2018. Egypt and Mauretania have also followed suit and submitted their reports on April 2020, just after one year of their ratification of the Charter nonetheless their reports have not yet been discussed by the Committee. Other countries have signed and ratified the Charter but to date did not submit their first report, namely: Syria and Palestine ratified the Charter in 2007, Libya in 2004 and Yemen in 2008. The irresponsibility and neglect shown by some member states in this scenario will likely undermine the effectiveness of the Charter Committee's role.

The number of reports show that the Committee's work has flourished within the last few years, probably due to the increased number of the members who ratified the Charter, which is 16 member-states out of 22, as mentioned in the previous chapter. This encouraged the Committee to adopt a scheme that underpinned a number of activities to support its main goal, namely: to protect and promote human rights in the Arab World. Despite its activities and efforts toward achieving its goals, the Committee's duties became limited, particularly due to the recent human rights status quo in the Arab World.

Since member states are tasked in submitting human rights reports to the Charter's Committee, it is likely they will show their best actions towards the fulfilment of their obligations, as it is uncommon that a government reveals its violations of recognised rights or its failure in meeting the suitable and required standards to implement the

⁵³⁶ see table (2); Egypt and Mauritania have submitted their first reports in April 2020, but have not been discussed by the Committee yet; Lasportal, 'Member States of the Arab Charter on Human Rights' available at <<https://bit.ly/2M2rjfc>> accessed 3rd Nov 2020.

Charter's provisions. While subjecting member states to the Committee discussion will likely uncover the facts about applying the Charters' provisions. This is important due to the fact that the effectiveness of the reporting mechanism relied upon in the first place assessing the actual human rights status quo, hence shadow reports are necessary. Although the Arab human rights system allows NGOs and other independent institutions of civil society to provide the Charter Committee with the parallel or the shadow reports, their role in the Committee's sessions is still weak. This is because they are merely attending the Committee's sessions as an observer, and without any type of interference in the dialogue or the discussion, beside their role which is confined on submit their written comments and notes after the sessions, as explained earlier.

The human rights reports that are submitted to the Committee showed commitment to the Charter. This means they consider both the international standards of human rights and the Arab culture, since the Charter is based on these two sources, as explained earlier in the previous chapter. Based on the categorisation of the Arab region mentioned in the introduction of Chapter 2, 5 of the Arabian Gulf countries submitted their reports to the Committee, Bahrain, Qatar, United Arab Emirates, Saudi Arabia and Kuwait; 3 from the Levant Region, Jordan, Iraq and Lebanon; 3 from North Africa Algeria, Sudan and Mauritania; at first glance, all of their reports gave an impression of perfection.

During all of its sessions, the Committee initially praised and thanked member states for their effort in promoting and protecting human rights in their territories. For example, the early adoption of the Charter⁵³⁷, creating a fact-finding Committee, recommending the establishment of an Arab Court of Human Rights⁵³⁸; signing and ratifying the Statute of the Court⁵³⁹; adopting new legislations that protect and promote human rights⁵⁴⁰;

⁵³⁷ Arab Human Rights Committee, *Jourdan Human Rights Report* (AHRC Session No 1, 2011); *Bahrain Human Rights Report* (AHRC Session No 3, 2012); *Algeria Human Rights Report* (AHRC Session No 2, 2011) (in Arabic translated by Author).

⁵³⁸ Arab Human Rights Committee, *Bahrain Human Rights Report* (AHRC Session No 3, 2012) (in Arabic translated by Author).

⁵³⁹ Arab Human Rights Committee, *Saudi Arabia Human Rights Report* (AHRC Session No 10, 2016) (in Arabic translated by Author).

⁵⁴⁰ Arab Human Rights Committee, *Kuwait Human Rights Report* (AHRC Session No 12, 2016); *Bahrain Human Rights Report* (AHRC Session No 3, 2012); *Sudan Human Rights Report* (AHRC Session No 8, 2014).

adopting human rights treaties and amending legislations to become compatible with human rights standards⁵⁴¹.

Secondly, the committee emphasised on a number of notes, some of them related to the formatting of the report and other to the content of the Charter, especially the first reports, such as not involving Non-Governmental Organisations, Institutions of Civil Society and National Institutions of Human Rights while conducting the reports⁵⁴². Moreover, the Committee noticed that some reports have not illustrate member states efforts in including the Charters' provisions within their legislations⁵⁴³; addressing all of the rights mentioned in the Charter not all of them, as they consider some of them⁵⁴⁴ (Bahrain, Iraq); not specifying the position of the Charter within member states legislations hierarchy⁵⁴⁵; not showing the steps taken by member states in educating people within their territories about the Charter⁵⁴⁶, exceeding the approved page number for the report⁵⁴⁷. These notes have been diminished by time as per the first periodic report. In short, member states have taken the Committee's notes seriously and implemented them. This also reflects Arab intention towards accepting the mere idea of human rights.

The other type of notes that were mentioned by the Committee, however, are related to objective matters in the Charter. Although all of the countries who have submitted their reports showed commitment to the Charter, the Committee provided a number of notes and recommendations to be considered as well. The following is a brief concerning the most notable notes and recommendations issued by the Committee, and related to

⁵⁴¹ Arab Human Rights Committee, *Jourdan Human Rights Report* (AHRC Session No 1, 2011); *Algeria Human Rights Report* (AHRC Session No 2, 2011); *Kuwait Human Rights Report* (AHRC Session No 12, 2016); *Sudan Human Rights Report* (AHRC Session No 8, 2014) (in Arabic translated by Author).

⁵⁴² Arab Human Rights Committee, *Jourdan Human Rights Report* (AHRC Session No 1, 2011); *Algeria Human Rights Report* (AHRC Session No 2, 2011); *Saudi Arabia Human Rights Report* (AHRC Session No 10, 2016); *Qatar Human Rights Report* (AHRC Session No 4, 2011); *Iraq Human Rights Report* (AHRC Session No 6, 2013) (in Arabic translated by Author).

⁵⁴³ Arab Human Rights Committee, *Bahrain Human Rights Report* (AHRC Session No 3, 2012); *UAE Human Rights Report* (AHRC Session No 5, 2013); *Qatar Human Rights Report* (AHRC Session No 4, 2011) (in Arabic translated by Author).

⁵⁴⁴ Arab Human Rights Committee, *Bahrain Human Rights Report* (AHRC Session No 3, 2012) (in Arabic translated by Author).

⁵⁴⁵ Arab Human Rights Committee, *Qatar Human Rights Report* (AHRC Session No 4, 2011); *Jourdan Human Rights Report* (AHRC Session No 1, 2011) (in Arabic translated by Author).

⁵⁴⁶ Arab Human Rights Committee, *Saudi Arabia Human Rights Report* (AHRC Session No 10, 2016); *Qatar Human Rights Report* (AHRC Session No 4, 2011) (in Arabic translated by Author).

⁵⁴⁷ All of first member states reports.

one of this research basic themes, namely: the tension between universality and cultural relativism. Most commonly, the Committee noticed that there were lack of any samples of judicial judgments that were issued with reference to the Charter provisions⁵⁴⁸. These judgments are considered as one of the evidences of member states' commitment to implement the Charter's provisions, or at the very least attempted to do so. Additionally, including these judgments constitute an explicit declaration by member states that they believe in human rights.

The Committee appreciated the efforts of some member states in promoting equality and non-discrimination, yet recommended to follow Article 3 of the Charter and apply the positive discrimination⁵⁴⁹. This indicates that member states have put more weight on international human rights standards over the rights that derived from culture. Accordingly, the Committee urged them to follow Islamic instruction and apply positive discrimination in favour of women. This reflects the Committee's effective role in maintaining the balance between the two standards reflects.

Even more, the Committee pushed member states to take all necessary measures to ensure women empowerment. It showed concern about male guardianship system, as it effects the enjoyment of some rights by women and violate gender equality⁵⁵⁰.

In fact, this is another scenario of member state's strong connection with their religion. Allah the Almighty says "Women have rights similar to those of men equitably, although

⁵⁴⁸ Arab Human Rights Committee, *Concluding observations and recommendations of the Arab Human Rights Committee: Jordan* (AHRC Session No1, 2012); *Concluding observations and recommendations of the Arab Human Rights Committee: Algeria* (AHRC Session No2, 2012); *Concluding observations and recommendations of the Arab Human Rights Committee: Bahrain* (AHRC Session No3, 2013); *Concluding observations and recommendations of the Arab Human Rights Committee: Qatar* (AHRC Session No.4, 2013); *Concluding observations and recommendations of the Arab Human Rights Committee: UAE* (AHRC Session No. 5, 2013); *Concluding observations and recommendations of the Arab Human Rights Committee: Iraq* (AHRC Session No. 6, 2014); *Concluding observations and recommendations of the Arab Human Rights Committee: Lebanon* (AHRC Session No. 7, 2015); *Concluding observations and recommendations of the Arab Human Rights Committee: Sudan* (AHRC Session No. 8, 2016); *Concluding observations and recommendations of the Arab Human Rights Committee: Saudi Arabia* (AHRC Session No. 10, 2016); *Concluding observations and recommendations of the Arab Human Rights Committee: Kuwait* (AHRC Session No. 12, 2017) (in Arabic translated by Author).

⁵⁴⁹ See previous Chapter, section 5.5.1.4 for more details about positive discrimination; Arab Human Rights Committee, *Concluding observations and recommendations of the Arab Human Rights Committee: Qatar* (AHRC Session No.4, 2013); *Concluding observations and recommendations of the Arab Human Rights Committee: Algeria* (AHRC Session No2, 2012) (in Arabic translated by Author).

⁵⁵⁰ Arab Human Rights Committee, *Concluding observations and recommendations of the Arab Human Rights Committee: Saudi Arabia* (AHRC Session No. 10, 2016); *Concluding observations and recommendations of the Arab Human Rights Committee: Sudan* (AHRC Session No. 8, 2016) (in Arabic translated by Author).

men have a degree 'of responsibility' above them"⁵⁵¹. Member states reservations on international human rights instruments also support this fact⁵⁵², in particularly their stance on Article 18(4) of the ICCPR which emphasises on the "equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution". Moreover, their reservations on Articles 15 and 16 of the CEDAW⁵⁵³; the former refers to the freedom to choose the place of living, meaning women cannot live alone without the permission of their parents or spouses; the latter is about gender equality prior, during and after marriage, as women should follow men in Islam.

This indicates that in spite of member states contractual obligations to the international agreements and the Charter, they preferred outweighing their culture and religion.

The Committee also emphasised on the right to life, in terms of the conditions of executing pregnant women after her birth, as the period differs from a country to another. For example, that period was determined in Bahrain for 3 months⁵⁵⁴, in Iraq 4 months⁵⁵⁵, other countries 2 years⁵⁵⁶. The Committee then recommended that member states should follow Islam⁵⁵⁷ and/or article 7(2) of the Charter, which indicated that capital penalty should not be imposed on "a pregnant woman prior to her delivery or on a nursing mother within two years from the date of her delivery"⁵⁵⁸.

⁵⁵¹ The Holy Quran, 'Albaqarah' (Quran.com, 2:228) available from <<https://bit.ly/3QG8UAv>> accessed 10 June 2022.

⁵⁵² See Chapter Five section 5.6

⁵⁵³ See Chapter Five section 5.6

⁵⁵⁴ Arab Human Rights Committee, *Bahrain Human Rights Report* (AHRC Session No 3, 2012) (in Arabic translated by Author).

⁵⁵⁵ Arab Human Rights Committee, *Iraq Human Rights Report* (AHRC Session No 6, 2014) (in Arabic translated by Author).

⁵⁵⁶ Arab Human Rights Committee, *Jourdan Human Rights Report* (AHRC Session No 1, 2011); *Algeria Human Rights Report* (AHRC Session No 2, 2011); *UAE Human Rights Report* (AHRC Session No 5, 2013); *Lebanon Human Rights Report* (AHRC Session No 7, 2013); *Sudan Human Rights Report* (AHRC Session No 8, 2014) *Iraq Human Rights Report* (AHRC Session No 5, 2014); *Saudi Arabia Human Rights Report* (AHRC Session No 10, 2016); *Kuwait Human Rights Report* (AHRC Session No 12, 2016) (in Arabic translated by Author).

⁵⁵⁷ Islam allows pregnant women who has been sentenced death penalty to firstly give her birth, weaned her child and then be stoned to death. Scholars in Islam estimated this period two years. See Sahih Muslim, 'The Book of Legal Punishments- Chapter 5: One who confesses to Zina' (*Sunnah.com*, 1695b) available from <<https://sunnah.com/muslim:1695b>> accessed 10 July 2022; M Khalil, 'Egypt: A Controversy Over Proposed Legislation on Postponing the Death Penalty for Pregnant Women' (*Asharq Al-Awsat*, 16 December 2008) available from <<https://bit.ly/3ApFilB>> (in Arabic translated by Author).

⁵⁵⁸ See previous Chapter, section 5.5.1.6 for more details

Another issue would be the lack of a frank illustration regarding the criteria of the crimes punished by death penalty or serious crimes, as per Article 6 of the Charter⁵⁵⁹. The Committee noted that some member states came against the aforementioned article and extended the scope of this type of crimes, such as Iraq, Lebanon and Sudan⁵⁶⁰. These crimes are mostly determined upon cultural needs. To be more precise, some of these crimes are punished by death penalty as per Islam, such as adultery and apostasy. Others were added in some member states' legislations due to particularities arisen from political status, globalization and cultural change in the region, such as spying, drug dealing and great treason. This illustrates that member states have acted in accordance with their culture, circumstances and status.

Over and above, most member states do not have a legislation that guarantees the convicted right to seek pardon or to request replacing the death penalty with a lighter punishment, such as life incarceration. Many Arab countries have adopted legislation for replacing punishments, yet not capital punishment. This is mentioned in the first periodic reports submitted to the Committee of member states who adopted this method, such as Bahrain⁵⁶¹. It is hard to abolish or diminish this punishment due to its relation to Islam⁵⁶², nevertheless the reports submitted by member states to the Committee showed that death penalty is nearly frozen⁵⁶³. Finally, none of member states include in their reports any information or numbers about the cases that were judged by death penalty, or that were subjected to reduction from the death penalty or replaced by lighter punishment. This has also been fulfilled in member states first periodic reports⁵⁶⁴.

⁵⁵⁹ Article 6 of the Charter states that "Sentence of death may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence"

⁵⁶⁰ Arab Human Rights Committee, *Sudan Human Rights Report* (AHRC Session No 8, 2014); *Lebanon Human Rights Report* (AHRC Session No 7, 2013); *Iraq Human Rights Report* (AHRC Session No 6, 2013) (in Arabic translated by Author).

⁵⁶¹ Arab Human Rights Committee, *Bahrain 1st Periodic Human Rights Report* (AHRC Session No 14, 20116) (in Arabic translated by Author).

⁵⁶² See Chapter 5 page 107-109.

⁵⁶³ See for example Arab Human Rights Committee, *Jordan Human Rights Report* (AHRC Session No 1, 2011).

⁵⁶⁴ Arab Human Rights Committee, *Jordan 1st Periodic Human Rights Report* (AHRC Session No 9, 2015); *Algeria 1st Periodic Human Rights Report* (AHRC Session No 11, 2016); *Bahrain 1st Periodic Human Rights Report* (AHRC Session No 15, 2019); *Qatar 1st Periodic Human Rights Report* (AHRC Session No 13, 2017);

Other right that has been strictly objected by the Committee and is one of the absolute rights that cannot be derogated at all is the prohibition of torture. The Committee noticed from some of member states reports that their legal systems does not include a definition for torture. Additionally, there is nothing mentioned in the reports indicating that the crime of torture is unable to be subjected to obsolescence or legal abolishment by time in some member states legislations as per their reports⁵⁶⁵. Even more, some member states lack any domestic legislation that regulate compensating torture victims, as they rely on civil law solely⁵⁶⁶. This note pushed member states to adopt special rules for compensating torture victims.

Moreover, the Committee proclaimed that nothing was referred to in some of member states reports regarding determining the rights that must not be subjected to derogations during emergencies, and recommended the adoption of a legislation that regulate the enjoyment of the rights enshrined in the Charter in cases of emergencies and other extraordinary statuses⁵⁶⁷, as per Article 4 of the Charter⁵⁶⁸.

Another issue that was given attention within the Committee's sessions is the rights of child. As it showed some concern regarding the vagueness of regulating marriage, precisely the age, in some of the reports. The Charter stated that when they reaching the age of marriage, and left it to member states to determine this age⁵⁶⁹. For example, in Jordan 18 years old or 15 with the parents and the court permission⁵⁷⁰. In this case, the Charter provides 2 options for member states to deal with this matter: to follow international human rights standards and consider the determined age mentioned there in or to follow the culture and consider the age of marriage determined by Islam. The

UAE 1st Periodic Human Rights Report (AHRC Session No 6, 2019); *Iraq 1st Periodic Human Rights Report* (AHRC Session No 14, 2018) (in Arabic translated by Author).

⁵⁶⁵ Arab Human Rights Committee, *Jourdan Human Rights Report* (AHRC Session No 1, 2011); *Algeria Human Rights Report* (AHRC Session No 2, 2011); *Iraq Human Rights Report* (AHRC Session No 6, 2013); *Saudi Arabia Human Rights Report* (AHRC Session No 10, 2016)

⁵⁶⁶ Arab Human Rights Committee, *Jourdan Human Rights Report* (AHRC Session No 1, 2011); *Iraq Human Rights Report* (AHRC Session No 6, 2013) (in Arabic translated by Author).

⁵⁶⁷ Arab Human Rights Committee, *Jourdan Human Rights Report* (AHRC Session No 1, 2011); *Algeria Human Rights Report* (AHRC Session No 2, 2011); *Kuwait Human Rights Report* (AHRC Session No 12, 2016) (in Arabic translated by Author).

⁵⁶⁸ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 4.

⁵⁶⁹ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 33.

⁵⁷⁰ Arab Human Rights Committee, *Jourdan Human Rights Report* (AHRC Session No 1, 2011) (in Arabic translated by Author).

age has been determined by international standards to be 18 years, while Islam clarified that the age of married is linked to puberty and/or adulthood of a person⁵⁷¹. On the one hand, the Committee's concern is expected since it is representing an instrument that is based on both international and cultural human rights standards, hence the Committee did not undermine Islam here but rather it attempted to preserve the balance between the two standards. On the other hand, member states acted upon the capacity provided to them by the Committee and the age is determined with reference to Islam.

The previous couple pages have briefly provided a background about the nature of the Committees' sessions and member states reports discussions with examples of the important provisions of the Charter that were being discussed in the sessions. Apart from the rights derived from international human rights standards, the emphasis was on the problematic provisions which are influenced by the culture and the religion. This is because many of the former provisions were being addressed and amended, and some of them are under process, in the next reports of most member states. While the status of the provisions that are influence by religion remain constant.

It can be deduced that in spite of Arabs sincere intention in enhancing their human rights statuses by adopting the Charter and other human rights instruments, the impact of culture including the religion therein is significant, and this is most likely justifies their stances and responses regarding the reports. The previously mentioned contributions and efforts provided by the Committee showed relative success, as member states have followed many of its recommendations yet not all of them. In a region like the Arab world, this can be counted as an achievement although more is expected from such a mechanism. Having a brief about member states human rights reports and the Committee's role during its sessions, the research moves on to addresses more of the Committee's specialisations.

What has been also addressed previously is the fact that the Charter Committee is tasked to submit the session's findings to the LAS Council together with its notes and recommendations, yet none of the relevant instruments indicate what will happen

⁵⁷¹ the average age is 11-14 years old; NHS, 'Early or Delayed Puberty' (www.nhs.uk, 2019) available at <<https://bit.ly/3bWiMaJ>> accessed 30th Jun 2022.

then⁵⁷². To be more precise, the Charter and the reports guidelines did not stipulate any further actions or enforcement arrangements to be taken after submitting the reports to the League's council, in case of necessity, they solely stated that the findings will be published. Therefore, the Committee's findings and recommendations will likely be non-binding on member states, resulting in the incapability to follow up their implementation. This obstacle can be considered as a main reason behind the dipping in the level of such Committee' performance towards protecting human rights on the one hand and may also support the phenomena of member states noncompliance to implement their contractual obligations on the other hand. The human rights violations that occurred in the Arab Spring were a good example of the Charter Committee's inability to halt violations by adopting prompt measures to protect victims, particularly in Yemen, Syria and Libya, as illustrated in chapter 4. Simultaneously, this will likely influence the Committee's role and causes inability to interfere for the sake of protecting the Charter's provisions.

One of the other duties of the Committee is to provide the required support to member states while preparing their reports⁵⁷³. The author of this research believes that the quality and contents of the human rights reports submitted to the Charter Committee by member states reflect the path taken to implement the Charter's provisions. Although member states have the intention to adopt the Charter and apply its provisions, they are bend to their culture and religion. The Committee have a great role here, as it provides the support for member states to complete their reports while preserving the balance between international standards and the rights derived from Islam, as mentioned earlier. The dialogue prior to the Committee's sessions with the reporting member state plays an important role in improving the system of submitting the reports, confining its strengths and weaknesses, plus identifying information about the method taken by member states to conduct their human rights reports. Therefore, the Committee adopted its own guidelines for writing the human rights reports that are

⁵⁷² The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 48 section 5 & 6.

⁵⁷³ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 2; the Guidelines were adopted within the Arab Human Rights Committee's 26th session as per resolution 152/26 on 26th June 2014: 'Member States Guidelines of Writing Human Rights Reports for the Arab Human Rights Committee' available at <<https://bit.ly/3slHB37>> (in Arabic translated by author) A sections 4, 5.

submitted by member states, NGOs, national institutions for human rights and other institutions of civil societies that work in the field of human rights⁵⁷⁴. Further, the Committee hosted and joined a number of conferences and workshops relating to human rights in the Arab World⁵⁷⁵.

The Committee also urges non-member states to ratify the Charter who is considered as the Arab regional human rights system's base; hence several meetings have been arranged with non-members officials as an attempt to pave the way for signing, ratifying and adopting the Charter. The Committee hosted a number of meetings with institutions of civil societies and NGOs in Arab non-member states for the same purpose⁵⁷⁶. Additionally, the Committee is also tasked with the coordination and to cooperate with its other counterparts on the international and regional level in order to benefit from their experiences in the human rights field. For instance, in May 2014 the Committee visited the European Court of Human Rights as a part of relationships consolidation between them and the Committee participated in the International Conference on the Arab Court of Human Rights on 25 to 26 May 2014 in Bahrain, which was hosted by the

⁵⁷⁴The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 2 section 4, 6, 8; the Guidelines were adopted within the Arab Human Rights Committee's 26th session as per resolution 152/26 on 26th June 2014: 'Member States Guidelines of Writing Human Rights Reports for the Arab Human Rights Committee' available at <<https://bit.ly/3slHB37>> (in Arabic translated by author) A sections 7; Lasportal, 'A Guide to the Participation of National Institutions of Human Rights, Nongovernmental Organisation and other Relevant Bodies in the Arab Human Rights Committee's Sessions' available at <<https://bit.ly/2LlFETw>> accessed 20th Dec 2020.

⁵⁷⁵ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) Article 2 section 3; the Guidelines were adopted within the Arab Human Rights Committee's 26th session as per resolution 152/26 on 26th June 2014: 'Member States Guidelines of Writing Human Rights Reports for the Arab Human Rights Committee' available at <<https://bit.ly/3slHB37>> (in Arabic translated by author) A sections 9; the Arab Human Rights Committee has participated in a number of events, such as "The International Mechanisms of Human Rights and the Way to Follow up their Recommendations" on 14-17 Nov 2016 in Cairo, and "An Introducing the Arab Charter on Human Rights and its Mechanism to the Kuwait National Institution for Human Rights Employees" on 3-4 May 2016 in Kuwait; the Committee also hosted some workshops that aim to introduce the Arab Charter on Human Rights to member states of the Arab League, such as in United Arab Emirates in 24-26 Nov 2013 and Bahrain in 1-2 Sep 2014, available at <<https://bit.ly/3caTfbq>> accessed 4th Nov 2020 (translated by author).

⁵⁷⁶ For example, the Arab Human Rights Committee visited Mauritania on 30 Jan to 1 Feb 2018, Djibouti on 19-21 Mar 2016, Morocco on 8-12 Jun 2015 and Yemen on 11-13 Sep 2015 available at <<https://bit.ly/3cg3HMT>> accessed 4th Nov 2020 (in Arabic translated by author); the purposes of the afore mentioned Committee's visits were initially to urge non-members to join the Charter, secondly to provide the needed support that help member states to prepare and submit their reports, and to check out the human rights situations therein.

Bahrain National Institute of Human Rights in cooperation with the Arab Institutions of Human Rights Network and the Qatar National Commission of Human Rights⁵⁷⁷.

All of the aforementioned indicate that the Committee functioned and is still functioning on many activities related to human rights in the Arab World and it has been noticed that its activities were more in numbers and vary in types in the early years of its formation. This achievement has gradually decreased in light of the human rights status of the region since the beginning of the decade, leading to the shrinkage of the Committee's role beside its drawbacks. To be more precise, although the Charter adopted the Committee as the Arab human rights protection mechanism, its scope of functioning is limited and, centred on monitoring member states implementation of the Charter's provisions and supervising them in the preparation and the submission of their human rights reports. However, the Committee faced by a number of barriers when trying to fulfil its duty, resulting in the delay of some members to adopt the Charter and/or to submit their human rights reports.

Apart from the reporting process, the Committee is also specialised in interpreting the Charter. The second section of Article 2 of the Committee's internal regulation authorises the Charter's Committee to interpret the Charter in a way that ensures an idealistic implementation of its provisions⁵⁷⁸. Arab member states have followed their neighbouring regional organisation here, as the Banjul Charter states that the African Commission on Human and Peoples' Rights shall "[i]nterpret all the provisions of the present Charter at the request of a State party, an institution of the OAU or an African Organisation recognized by the OAU"⁵⁷⁹. Whereas the Charter did not include anything that indicates the Committee is authorised to interpret the Charters' provisions, and this can be considered as one of the Charter's gaps.

However, another important matter that must not be ignored here is the absence of a complaint's mechanism. The Charter did not mention anything to empower the

⁵⁷⁷ All of the Arab Human Rights Committee events (workshops, symposiums, conferences, visits & meetings) can be found at the Committees activities webpage at <<https://bit.ly/2NF4RZT>> accessed 4th Nov 2020 (translated by author).

⁵⁷⁸ The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10th October 2020 (in Arabic translated by author) Article 2 section 2.

⁵⁷⁹ 'The African Charter on Human and Peoples' Rights' (ACHPR) (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) Article 45 section 1 subsection C subsubsection 3.

Committee to undertake accepting complaints regarding human rights violations from individuals, groups or even countries although it is the only mechanism of protecting Arab human rights. This will lead to the isolation of Arab people from the Committee and banning them from its advantages. Regional human rights commissions play the initial vital role in settling the disputes resulting from complaints except the Arab's Committee and this is due to lack of such mechanism in the Arab human rights system as well and can be clearly seen when compared with others⁵⁸⁰.

On a final note, none of the Arab human rights instruments that are related to the Charter's Committee have referred to the importance of any type of cooperation with the Commission. Rather, the Committee's statute contented with the possibility of requesting information from any of the LAS bodies⁵⁸¹. Although this will include the Commission who is one of the League's bodies, the referral should have been frank and literal. This is because the experience gained by the Commission and all of the initiatives in the field of human rights since its formation in 1968.

Overall, however, what can be deduced is that the fragility in performance shown by the Committee reflects a defect or weakness in relevant provisions of the Charter's, particularly the one causing curtailment in the scope of the Committee's tasks and duties such as exchanging human rights reports. In addition, the Arab human rights system did not adopt an effective mechanism to protect human rights in the region or allocate sanctions in case of member states noncompliance to implement the Charter's provisions. Moreover, the Charter did not include the Committee's role in undertaking interpreting its provisions, rather this has been stipulated in the Committee's statute notwithstanding it is the official, approved and recognised mechanism of protecting and promoting human rights in the Arab World⁵⁸².

⁵⁸⁰ The American and the African Commissions on human rights have already adopted provisions that organise individuals, groups and states compliance. As for the European system this authority transferred to the European Court of Human Rights since the abolishment of the European Commission on Human Rights; The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author).

⁵⁸¹ The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) Article 2 section 4.

⁵⁸² The Arab League, 'Internal Statute of the Arab Human Rights Committee' (24 November 2014) <<https://bit.ly/2KMqB4Q>> accessed 10 October 2020 (in Arabic translated by author) Article 2 section 2.

It is also worth noting that history has shown that the Arab human rights movement is tardy in terms of both adopting the required treaties or the mechanisms of their enforcement, although the LAS is the oldest among other regional organisations. For instance, the adoption of the Charter who prolonged for more than half a century and, the projected Arab Court on Human Rights which has been approved since late 2014 and have a single ratification till date⁵⁸³. This makes the Committee behind amongst its counterparts especially due to the absence of a specialised Arab judicial institution to protect Arab human rights by enforcing member states to implement the Charter's provisions.

6.4. The Arab Court of Human Rights (the Court)

Since Arab ideology has tended to the adoption of the Charter in 1994 which was amended and adopted in 2004, the Charter lacks the human rights protection on the institutional scope. The fact that the Charter is not binding on contracted states is useless. The nonadopting of a judicial body to address human rights violations in the Arab region may undermine the Charter and reduce member state determination and seriousness towards the protection and the promotion of the human rights therein.

It is submitted that human rights protection is underpinned by a number of human rights systems such as the United Nations and its relevant subsidiaries (Human Rights Council and the High Commissioner of Human Rights), the European, American and African human rights systems, human rights in Islam and the Arab human rights system. Apart from the Arab human rights system, most of the aforementioned have their own judicial entities by which member states commit to fulfil their contractual obligations on international agreements, including treaties and conventions, will be followed up, addressed and enforced. This contradiction leads to the realisation that a human rights court is inevitable and to this end they agreed on creating an Arab Court of Human Rights. It is important to mention here that none of the relevant Arab instruments stipulate the creation of a human rights court to serve the Arab region⁵⁸⁴.

⁵⁸³ The Charter was adopted in 2004 and entered into force in 2008, this is 59 years since the establishment of the Arab League in 1945; the projected Court was approved in late 2014 and its basic statute has been issued, yet only Saudi Arabia ratified it, beside Bahrain who has signed it.

⁵⁸⁴ The Council of the Arab League at the Summit Level 'the Arab Charter on Human Rights' (Res) 270/16 (23 May 2004) the Charter of the Arab League most notably, Article 53 of the Arab Charter on Human Rights gives the capacity for member states to impose reservations on its provisions, this probably means it's also applicable in case of the existence of a provision regarding the creation of a human rights court.

The idea was suggested by Bahrain in late 2011 and officially approved by member states in 2013, during the 24th LAS meeting Doha-Qatar⁵⁸⁵. This initiative came during significant a period for the Arab World at a time where many Arabs were exposed to human rights violations, namely: the Arab Spring. Moreover, the proposal of the Court is also supported by Article 52 of the Charter which affirms that any member state “may propose additional optional protocols to the present Charter and they shall be adopted in accordance with the procedures used for the adoption of amendments to the Charter”⁵⁸⁶. This implies that the mentioned Article authorises to optionally add supportive provisions or amendments that may include the establishment of a human rights court.

One year later, however, the Court’s Statute⁵⁸⁷ was presented during the 142nd meeting of the Arab Ministers of Foreign Affairs⁵⁸⁸. This instrument is deemed to be the foundation upon which the Court will be built. According to Article 33 of the Court Statute, the Court will enter into force after the ratification of seven-member states and will constitute “an independent Arab judicial body that aims at consolidating the state parties’ will in implementing their obligations regarding human rights” as per Article 2 of the court statute⁵⁸⁹. Article 3 of the Court Statute also confirms that the Court headquarters will be located in the Kingdom of Bahrain; although it may also be held in any other member state, with its consent, under exceptional situations⁵⁹⁰. The author of this research believes that emphasis on the criteria upon which the location of the Court will be chosen instead of determining the Court’s location in Article 3 of the Statute is much logical. The history shows that the Arab Nation is coherent and it is grateful for the Bahraini proposal of establishing the Court. Yet, the fact that its’ potential location is almost 2000 km from the LAS, the Committee and the Commission

⁵⁸⁵ LAS, ‘Decisions of the 23rd Arab Summit at Its Ordinary Session’ Resolution: 573 O.S (24)- 26 Mar 2013) available at <<https://bit.ly/2GoMS3t>> accessed 18th Jul 2019 (in Arabic translated by Author); the idea was proposed by the Bahraini King Hamad bin Isa Al Khalifa; further,

⁵⁸⁶ The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 52.

⁵⁸⁷ ACIHL, ‘English Version of the Basic Statute of the Arab Court of Human Rights’ available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 2nd Sep 2020.

⁵⁸⁸ LAS, ‘Decisions of the Arab League Council on the Ministerial Level 142’ Resolution: 7790, E.A (142) C 3, 7 Sep 2014) available at: <<https://bit.ly/3cTKEu2>> accessed 15th Apr 2019 (Arabic translated by Author).

⁵⁸⁹ ACIHL, ‘English Version of the Basic Statute of the Arab Court of Human Rights’ available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 2nd Sep 2020, Articles 2 and 33.

⁵⁹⁰ ACIHL, ‘English Version of the Basic Statute of the Arab Court of Human Rights’ available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 2nd Sep 2020, Articles 3.

might obstruct the Court's proceedings. According to the Courts' Statute, moreover, many of the Court's procedures are tied to either the approval or the demand by the Secretary General.

Two issues must be considered here; firstly, it would have been more rational and professional if the Court Statute has merely identified the regulations of choosing the country in which the Court will be located⁵⁹¹. Secondly, to follow the African system where both the Court and the commission are located in the same place, or the European system in which many bodies are located in the same place, including the ECtHR, Committee of Social Rights and Human Rights Commissioner Office. Most importantly, the Committee of Ministers of the Council of Europe who participate in the execution of the ECtHR's judgments is also located in the same place⁵⁹². Therefore, establishing the Court close to its subordinate entities will ensure a more harmonisation of the process.

However, although the proposed Court will flourish the Arab human rights system, its Statute has been criticised for incompatibility with a number of international human rights standards; for example, issues related to the right to a fair trial, non-discrimination and judges' affairs⁵⁹³. The intention of the following section is to assess the Court Statute as a main instrument that regulates the work of another potential Arab human rights protection mechanism, together with the determination of its defective provisions.

⁵⁹¹ 'The African Charter on Human and Peoples' Rights' (adopted 27 June 1981, entered into force 21 October 1986) OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982) Article 64 section 2; also see Article 25 of OAU, 'Protocol to the African Charter on Human and People's Rights on the Establishment of an African Court on Human and People's Rights' (10th Jun 1998) available from <<https://bit.ly/2Zgf8yd>> accessed 22nd Dec 2020; and Article 24 of OAU, 'Rules of Court' (1st Sep 2020) available at <<https://bit.ly/3tXpoJS>> accessed 22nd Dec 2020.

⁵⁹² COE, 'Human Rights' available at <<https://www.coe.int/en/web/portal/human-rights>> accessed 25th Dec 2020.

⁵⁹³ FIDH, 'Proposed Arab Court of Human Rights: Rewind the Process and Get it Right' (2014) available at: <<https://bit.ly/36Wjn6o>> accessed 20th Nov 2020; HRW, 'Proposed Arab Court of Human Rights: An Empty Vessel Without Substantial Changes to the Draft Statute' (2014) available at <<https://bit.ly/3a8JGIN>> accessed 8th Nov 2020; IBA, 'Bassiouni: New Arab Court for Human Rights is Fake 'Potemkin Tribunal'' (2014) available at <<https://bit.ly/2OoxISL>> accessed 3rd Dec 2020; ICJ, 'The League of Arab States Human Rights Standards and Mechanisms' (2015) available from <<https://bit.ly/3aJ48Pm>> accessed 9th Dec 2020 56; ADHRB, 'Assessing the Proposed Arab Court on Human Rights' (2015) available from <<https://bit.ly/3rBUkNU>> accessed 9th Dec 2020.

Several NGOs unanimously objected in the sessions that took place during the drafting and prior to the approval of the⁵⁹⁴ Court Statute, for their lack of transparency. By way of illustration, for the purpose of creating the Court Statute, the Arab League relied solely on experts nominated by member states rather than inviting representatives of other related bodies, e.g., NGOs. This was recalled in section two of the 24th Arab League Council at the Summit Level decision on the creation of the Court, which clearly instructs that “a high-level committee of legal experts to Member States...[must be assigned]...to prepare the system and to present the results of its work to the Council of the League of Arab States”⁵⁹⁵.

NGOs have also expressed their concerns about ignoring them for the drafting sessions and maintained that the Charter Statute must be approved with the involvement of NGOs, academics, institutions of civil society beside member states⁵⁹⁶. This ignorance resulted in the birth of a legally weak and inappropriate instrument because it contains a number of provisions incompatible with international standards⁵⁹⁷. It seems that the LAS is repeating the Charter’s mistakes, particularly ignoring the struggle of the human rights activists, including NGOs, over nearly half a century to be involved in adopting a regional mechanism to promote and protect Arabs’ human rights, as demonstrated earlier in this chapter. With all due respect, the lack of a broader group that functions to discuss, review, exchange opinion and raise arguments resulted in approving an ineffective instrument that has been criticised widely for failure to meet human rights standards, namely: The Charter.

The Author of this research believes that the court statute would have been much more comprehensive and have fewer flaws if experience and opinions had been shared during the preparatory work. This was described as “lack of consultation, participation and transparency in the Statute process”⁵⁹⁸. The issue of NGOs and other institutions of civil

⁵⁹⁴ FIDH, ‘Proposed Arab Court of Human Rights: Rewind the Process and Get it Right’ (2014) available at: <<https://bit.ly/36Wjn6o>> accessed 20th Nov 2020.

⁵⁹⁵ LAS, ‘Decisions of the 23rd Arab Summit at Its Ordinary Session’ Resolution: 573 O.S (24)- 26 Mar 2013) (*lasportal.org* 2013, 6) available at <<https://bit.ly/2GoMS3t>> accessed 26th Nov 2021 (in Arabic translated by Author).

⁵⁹⁶ FIDH, ‘Proposed Arab Court of Human Rights: Rewind the Process and Get it Right’ (*fidh* 2014) available from: <<https://bit.ly/36Wjn6o>> accessed 20th Nov 2020.

⁵⁹⁷ HRW, ‘Proposed Arab Court of Human Rights: An Empty Vessel Without Substantial Changes to the Draft Statute’ (*hrw.org* 2014) available from <<https://bit.ly/3a8JGIN>> accessed 8th Nov 2020.

⁵⁹⁸ ICJ, ‘The League of Arab States Human Rights Standards and Mechanisms’ (*cihrs.org* 2015, 56) available from <<https://bit.ly/3aJ48Pm>> accessed 9th Nov 2021.

society involvement in “the exercise of political power, in particular the exercise of legislative, executive and administrative powers...[has already addressed globally and it]...should be established by the constitution and other laws”⁵⁹⁹. Furthermore, the United Nations published an instrument that ensures the participation of individuals and associations in the protection of human rights⁶⁰⁰.

The LAS should have invited the relevant bodies that function to promote Arabs’ human rights, such as NGOs, civil society institutions, academics and others to participate in formulating the Charter Statute. This is because the nature of their profession in promoting human rights and also the practical experience obtained during their investigation of human rights abuses allows their minds to be broadened in the human rights domain. They are basically working hard to ensure the application of the international human rights standards.

As for the preamble of the Court Statute, however, Garner explained what is meant by a preamble, stating that it is the “introductory statement in a constitution, statute, or other document explaining the document’s basis and objective”⁶⁰¹. The Court Statute⁶⁰² begins with a good preamble that reflects Arabs’ “belief in human dignity as fortified by God, the realization of justice and equality, and the rule of law and its role in protecting human rights”. It asserts that “the purposes and objectives of the Charter of the League of Arab States,...[believed]...in the human right to a free, dignified life...[urged member states]...to continue to promote and protect human rights”. It also affirms member states’ “conviction that the establishment of an Arab Court of Human Rights will contribute to the realisation of the purposes and objectives of the Arab Charter on Human Rights”.

In addition, the preamble addresses some of the supportive and key principles of such documents, for instance the role of justice in promoting peace. This demonstrates that

⁵⁹⁹ UNCHR, ‘CCPR General Comment No. 25: Article 25 (Participation in Public Affairs and the Right to Vote) The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service’ (1996) UN Doc CCPR/C/21/Rev.1/Add.7 para 5.

⁶⁰⁰ UNGA, ‘Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms’ (1999) A/RES/53/144 article 8.

⁶⁰¹ Garner, ‘*Black’s Law Dictionary*’ (8th ed, Thomson West. U.S, 2004) 3726.

⁶⁰² The following is a brief revision of the preamble of the Court Statute; see ACIHL, ‘English Version of the Basic Statute of the Arab Court of Human Rights’ (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020 .

the preamble of the Court Statute has highlighted the reason for adopting a human rights court in the Arab region. The preamble of the Court Statute also confirms that “the Arab human rights conventions to which relevant States are party to including the Arab Charter on Rights, represents a legal framework for the individual in the Arab countries”. In other words, it is mentioned in the preamble that Arab human rights are underpinned by the regional human rights treaties, including the Charter. Thus, it seems that such a ‘saviour’ mechanism, which will be created to regulate the enforcement of human rights in the Arab World, is needed. Furthermore, the preamble of the Court Statute should not only be seen as an introduction or an opener, but also as a much clearer, expressive and more reflective in regards to the purpose of establishing a Court.

The Court comprises of 7 judges and can be increased to 11 upon a request from the Court, and with the approval of the Secretariat General. The Statute also mentioned that it is not permitted for the Court to join more than a judge of one nationality and he should be known for his good reputation, impartiality, neutrality, experience in the legal and judicial field, have expertise in human rights, and hold the required qualification of appointing judges in his/her own country⁶⁰³. The Court is headed by a judge and a deputy of the judges who have been elected for two years and may be re-elected for another period solely⁶⁰⁴. Further, the Court Statute also directed to the creation of an Assembly that consists of a representative of each member state and tasked in a judge’s election, adopting annual reports of the Court, prepare the Court’s budget and adopting the proper method of executing judgments⁶⁰⁵. Prior to starting his work, the judge must take the legal oath in a public session before the president of the association while considering elderly first⁶⁰⁶.

The election of judges based on Article 6 of the Court Statute in which the Assembly nominate the Court’s members through a secret ballot. At the request of the Secretary

⁶⁰³ ACIHL, ‘English Version of the Basic Statute of the Arab Court of Human Rights’ (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 5 & 7.

⁶⁰⁴ ACIHL, ‘English Version of the Basic Statute of the Arab Court of Human Rights’ (*acihl.org*) available at <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 11 section 1.

⁶⁰⁵ ACIHL, ‘English Version of the Basic Statute of the Arab Court of Human Rights’ (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 4.

⁶⁰⁶ ACIHL, ‘English Version of the Basic Statute of the Arab Court of Human Rights’ (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 10; the oath formula will be as: “I swear by Almighty God to perform my duties with integrity, impartiality and independence and to respect the confidentiality of deliberations”.

General, each member state may nominate two candidates within 90 days after the entry into force of the Statute. Judges are selected upon votes as primary judges of the Court as well as reserve judges who must also be allocated⁶⁰⁷. They hold office for four years and may be re-elected for one more tenure. The service of three primary judges that were elected in the first period comes to end in two years, and they are then replaced by lot either by the head of the Assembly or his deputy⁶⁰⁸. The head of the Court and his deputy must continue undertaking their duties until new candidates are nominated to replace them, and they may also be replaced if they stopped their duty prior to their tenure ended upon a secret ballot⁶⁰⁹.

Due to the nature and importance of their profession, judges and other members of the Court are granted the same privileges of the LAS employees and exempted from all sorts of taxes. The Government in which the Court will be located in must protect its building, members and documents upon the Secretary General request. Further, the Court's budget such as members' salaries, allowances, compensations and other expenses, is prepared by the Assembly and will be undertaken by the LAS⁶¹⁰. The Court Statute also determined the status in which judges' terms of office ends: when they completed their tenure unless it has been renewed, in case of resignation, if the judge passed away and if the judge suffers from a disability that prevents him from performing his task. In all cases, a judge membership ends with the consent of two-thirds of the Court's judges⁶¹¹.

The Statute also enshrined Articles 16, 19 and 20 to illustrate the Court's jurisdiction, which has been divided into three categories: namely, judicial, consultative and personal. According to Article 16 the Court is entitled to undertake the complaints of member state disputes by virtue of being a member to the Court and the Charter. This will make all of its judiciary to be applicable on member states. This is conditional on the

⁶⁰⁷ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 6.

⁶⁰⁸ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 8.

⁶⁰⁹ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 11 sections 3 & 4.

⁶¹⁰ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available at <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 14, 30 & 31.

⁶¹¹ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 8 section 2, 9 sections 1 & 2, and 15 section 5.

end of the period of time determined by the Court's internal regulation regarding an attempt at reconciliation. The Court also monitors member states implications of the Charter and other Arab human rights treaties in which disputing states is a member. The lack of clarification regarding the Arab human rights treaties in question is to some extent vague; will it include the 1998 Arab Convention for the Suppression of Terrorism or the 1994 Arab Convention on Regulating Status of Refugees in the Arab Countries. Article 16 also indicates that the Court shall verify the extent to which member states domestic legislations are consistent with the Charter besides monitoring whether member states Courts respect and consider human rights while operating or not⁶¹².

Another relevant issue to the Court's jurisdiction is the possibility of individual, groups and NGOs to bring cases before the Court upon several conditions, such as the exhaustion of all domestic remedies, submitting the complaint within a reasonable period and the complaints must be based on the Charter⁶¹³. Al-Midani added that member states of the Charter must be allowed to complain against each other's in the event that the Charter is violated as well as to adopt an amicable settlement between victims of human rights violations and their states with an emphasis on adopting a compensation method⁶¹⁴. In addition, the Court may cooperate with the disputed parties and, attempt to reconcile between them on human rights and justice basis, and subsequently striking the case by the court⁶¹⁵. However, just like Article 36 of the Statute of the International Court of Justices, the Court Statute indicated that it is entitled to undertakes any dispute regarding its jurisdiction⁶¹⁶.

⁶¹² ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 16 & 17.

⁶¹³ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 18 & 19 section 1.

⁶¹⁴ Al-Midani, '*The Arab Charter on Human Rights: Studies and Documents*' (Dar Al-Muna Publications, 2012) 171 (in Arabic translated by Author).

⁶¹⁵ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Article 22 sections 1 & 2.

⁶¹⁶ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 16 section 1; ICJ, 'Statute of the International Court of Justice' (18 April 1946) available from <<https://www.icj-cij.org/en/statute>> accessed 22nd Dec 2020.

States party who are not a member in the Court Statute may declare at any time their acceptance of the Court's jurisdiction, either due to a specific case or in general⁶¹⁷. Member states must submit their complaints on a written form, and may appoint a representative who will be granted legal and all the required support to perform before the court⁶¹⁸. It is noticed that the Court do not accept direct individual petitions, which counted as one of the crucial rights that enables such courts to achieve the main purpose of their establishment, namely, protecting human rights. The Statute also stipulated that the Court shall undertake providing legal consultations or advisory opinions related to the Charter and other Arab treaties upon a request from the Arab League's Council or any of its subordinates. All rendered opinions must be justified by the Court, who also allow judges to express their opinions individually and independently⁶¹⁹. This means that the Court may provide consultants on issues related to interpreting the Charter and may be provided to the League's Council, the Committee and the Commission if necessary⁶²⁰. The Court's rulings have enforceability power on disputed parties who have already accepted its jurisdiction as if they were issued by their national courts⁶²¹. Moreover, its specialisations complement national judiciary yet limited on cases resulted from violating and misinterpreting the Charter or other Arab human rights instrument. In fact, this provision is mostly referring to the Charter as the main Arab human rights instrument, whereas other regional systems have widened the scope of its jurisdictions to include international human rights treaties beside theirs. For example, Article 7 of the optional protocol of establishing the African Court of Human and People's Rights, which states that the "Court shall apply the provisions of the Charter and any other relevant

⁶¹⁷ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available at <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 20 section 1.

⁶¹⁸ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 23 sections 3, 4 & 5.

⁶¹⁹ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 21 sections 2; consultation works by providing individual opinions by judges, and to be independent from the Court's opinion.

⁶²⁰ M Al-Midani, 'The Arab Charter on Human Rights: Studies and Documents' (*Dar Al-Muna Publications*, 2012) 171 (in Arabic translated by Author).

⁶²¹ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Articles 26.

human rights instruments ratified by the States concerned”⁶²². Therefore, it is suggested that the scope of the Court’s jurisdiction should follow suit others, and be expanded to cover violations of treaties in which member states are parties.

The need for an independent, judicial and regional institution that functions to protect human rights in the Arab World led to the adoption of the potential Court, which will be mostly underpinned by the Charter as per the Court’s Statute. This may affect the Court performance, because it will mostly be relying on an instrument that has been criticised for being inconsistent with international human rights standards. Moreover, the lack of transparency and limiting the participation in the preparatory sessions of creating the Court Statute on member states representatives may be problematic in terms of civil society activist access to Court. Further, the Court’s Statute also contains provisions that are likely to impact the Court’s performance negatively as a mechanism of protecting human rights, knowing that they were been highlighted by NGOs prior to the adoption of the final draft⁶²³.

As for judge’s independence, it is important to ensure that the Court’s judges met the values and ethical requirements by which such profession succeeds e.g. high level of credibility, experience and integrity. The Court Statute must persistently include the suitable guarantees of judge’s representation on bases of justice and non-discrimination. This can be achieved initially by adopting a transparent and fair, nomination and designation mechanisms for judges. Secondly, to demonstrate judges’ affairs in the Court while considering the international standards such as criteria of choosing judges, terms and conditions of office and the situations in which judges may be exposed to dismissal.

Another matter of criticism in the Court Statute is individual accessibility to the Court. The Courts’ Statute has frankly illustrated that complaints can be brought before the Court through two occasions; namely: member states are entitled to access the Court

⁶²² OAU, ‘Protocol to the African Charter on Human and People’s Rights on the Establishment of an African Court on Human and People’s Rights’ (10th Jun 1998) available at <<https://bit.ly/2Zgf8yd>> accessed 22nd Dec 2020, Article 7.

⁶²³ J Stork, ‘New Arab Human Rights Court is Doomed from the Start’ (*hrw.org* 2014) available from <<https://bit.ly/2ZmLZ4D>> accessed 25th Dec 2020; HRW have the chance to review one of the initial drafts of the Court Statute early 2014 and they noticed that a direct individual accessibility to the Court is guaranteed, but not in the final draft.

and defend their people who claim exposing to human rights violations committed by another member state. Secondly, the Court accessibility is limited on member states who have been granted the authority of allowing accredited human rights NGOs to access the Court as a representative of human rights violations victims⁶²⁴.

The Court Statute has also undermined individuals direct petition. Individual who have been exposed to human rights violations do not have the abilities to directly bring a complaint before the Court, rather this should be through NGOs and upon the consent of his/her own state. This will likely prevent achieving the main target of such courts and the effectiveness of its' performance. Furthermore, member states complaints to human rights courts on another member states are to a considerable degree rare; hence the Court Statute would have been much efficacious if it has organised the issue of individuals direct petitions to the Court. As an attempt to ensure direct individual accessibility to the Court, however, Almutawaa concluded that this can be achieved by urging member states to ratify and get the Court operational in the first place, and then to amend relevant provisions of Court Statute. Meanwhile, the available legitimate options provided that there is a possibility to adopt alternative methods such as giving NGOs more capacity to be involved in Arab human rights protection, particularly to represent individuals claiming their violated rights. Secondly, to adopt the locus standi in judicio. This will ensure that the Court will have an adequate time to amend relevant articles and simultaneously protect individuals right to access the Court⁶²⁵.

Last but not least, Article 18 of the Statute which requires the exhausted of all domestic judicial remedies must not be strict and unjustifiably prevent victims to demand their rights through the Court. There should be flexibility in undertaking the possibility of accepting individual direct petitions as well as to monitor domestic remedies to ensure the effective protection of human rights. Individual's accessibility to the Court for the purpose of reporting violations of human rights committed by member states on persons must be legitimised and managed upon specific rules. It can be deduced, therefore, that operating the Court after the ratifications of the seventh member state

⁶²⁴ ACIHL, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*) available from <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 22nd Nov 2020, Article 19.

⁶²⁵ A Almutawa, 'The Arab Court of Human Rights and the Enforcement of the Arab Charter on Human Rights' (2021) 21(3) *Human Rights Law Review* 506.

as per Article 34 of the Court Statute, will lead to seriously consider amending and improving the Charter. This is because the Charter will be inactive in protecting human rights without judicial mechanism that function to enforce its provisions.

6.5. Reflections and Concluding Remarks

In referencing Middle Age authors, it's appropriate to mention here Geoffrey Chaucer, a then one of the remarkable English poets. In 1386, he wrote, "For better than never is late; never to succeed would be too long a period"⁶²⁶. The LAS is considered as the oldest regional organisation as it has been established in 1945, yet it was late in framing and organising human rights. It delayed in adopting its own human rights system in comparison with other regional systems. After more than half a century the Charter has been adopted in 2004 and entered into force in 2008. However, the Arab human rights system enforcement mechanisms are weak. It is underpinned by two mechanisms and a potential judicial institution; namely, the Commission, the Charter Committee and the Court, all of which are distinctly fragile.

The Commission who falls under the jurisdiction of the LAS is a political body not experts and comprises member states representatives who are being nominated by their states. Therefore, neutrality and independence will likely be challenging and mostly absent for the Commission. While its haziness specialisations were limited on promoting Arab human rights and not to provide the required protection. Moreover, its recommendations are not binding for the LAS member states. The Commission also has not been given any role by the Charter or an indication that identifies its relationship with the Committee. The violations during Arab revolutions can be a good example for the inefficiency of the Commission in protecting human rights in the region.

Whereas the Committee is considered as the contractual mechanism in the Arab human rights system, who has been activated by the entry into force of the Charter. Although it is the only mechanism of protecting human rights that mentioned in the Charter, it is ineffective in terms of fulfilling the main role of its kind, namely: supervising and monitoring member states human rights statute. The Committee is mainly tasked to review periodic reports and provide its recommendations accordingly. The analysis

⁶²⁶ G Chaucer, 'The Canterbury Tales: The Canon's Yeoman's Tale' (*theidioms.com* 1386) available from <<https://www.theidioms.com/better-late-than-never/>> accessed 26th Nov 2021.

showed that this process is ineffective because there is no recorded action explained what will happen then. Further, the Committee is not authorised to interfere to protect human rights and, do not accept individuals or member states complaints of human rights violations and have no prompt measures to protect victims from violations.

This chapter also indicated that a judicial institution that function to enforce Arab countries to implement the Charter provisions is an important demand and hence the idea of the Court has come to reality. The Court activation is still in progress but its statute has already been adopted. The analysis showed that the Court consist of seven judges who do not acquire of independence and neutrality; this is due to the criteria and conditions of their designation. As for the jurisdiction of the Court, it is narrowed on applying and interpreting the Charter and any other Arab human rights treaty in which one of the member states is part of. It restricted individual direct accessibility (petition) to submit complaints of violations unless through his own country in case of exposed to human rights violations by another member state or through an accredited NGOs upon the consent of his country. An issue that must not be ignored here is whether the Court will succeed in practice or not. It was not possible to assess the effectiveness of the Court by merely analysing its statute therefore, its effectiveness will likely remain unknown until it is entered into force and operate. Notwithstanding this limitation, analysing the Court Statute has provided an understanding of the value of adopting such Court in the protection of the human rights in the Arab region.

Overall, this chapter was undertaken to analyse the LAS human rights protection mechanisms in order to specify the extent of their efficiency. The findings of this chapter showed that the LAS must employ further effort to get the mechanisms to be effective and so Arab human rights protection will be enhanced. Since the mechanisms have been mostly harnessed to propose, adopt, implement and protect the Charter and since the analysis of chapter five showed that the Charter is relatively ineffective, the idea of this research regarding amending the Charter has been strengthened. However, these amendments should be with reference to the Neo-Relativist approach which will be addressed in the next part of this thesis.

**PART 3: TOWARDS A NEW STANDARD FOR ARAB HUMAN RIGHTS
[CONCEPTUALISING A NEO-RELATIVIST APPROACH]**

The concept of Human rights has been given global attention especially with the increase of arm conflicts, spread of repression, intolerance and racial discrimination. Mankind has strived to ensure the required rights by which a human being can live a decent life regardless of his/her sex, religion, colour or any other form of discrimination. The attention on human rights is increasing day by day to the extent that the principles of respecting them have become a priority and one of the essential criteria under which international relations and transactions between nations are determined. This has led many international organisations and other relevant human rights institutions to function in unifying the language of human rights to all humanity, until it became universal and indivisible. Currently, human rights are part of the international law and underpinned by more than 100 agreements that function as a part of the legal basis for the international human rights law and have been adopted or approved by most of the world.

In this sense, universal human rights can be considered as a representative of this global system that consist of many human rights agreements. Moreover, the United Nations have established a treaty body that functions as mechanisms of monitoring the agreements implementation by contracted parties who will be accordingly committed to submit an annual or periodic report regarding the human rights status within their territories in general, and their effort in promoting human rights therein in particular. Nonetheless, at a time where territorial and geographical boundaries have been neglected, in which the power and the interests have prevailed, as well as the concepts of universality and globalisation have been mingled, relativists sought for an alternative model of human rights. There has been a remarkable focus on cultural relativism, its impacts, role and its' relationship with universality in the field of human rights which resulted in the rise of an emphasis on reconciling the two theories.

However, the Arab regional human rights instruments particularly those released by the LAS can play an important role in addressing the issue of protecting Arabs rights and ensuring their dignity. The past thirty years have seen an increasingly rapid advance in the field of human rights in the Arab World. As illustrated previously in chapter 5 and after several attempts since the early 80s, the Charter was eventually drafted in 1994, amended in 2001 and entered into force in 2008, yet it faced by a number of

criticisms⁶²⁷. On the one hand, believers in universal human rights have maintained that the Charter is not wholly compatible with international human rights standards. On the other hand, cultural relativists have held the position that the majority of the Charter's contents should be derived from the Arab culture, particularly religious norms and values.

In order to fulfil the main argument of this research, this chapter will seek to address the possibility of creating a mutual human rights framework based on combining the universal human rights standards and the Arab cultural relativistic beliefs, especially those that are linked to or inspired by religions. It will then attempt to apply the potential framework on the Charter and the Court's Statute⁶²⁸. To be more precise, it will develop an approach through contextualising the existing endeavours of reconciling the two theories, on the Arab model. The approach will therefore be utilised for the purpose of enhancing the Arab human rights protection in general, and amending the aforementioned Arab human rights instruments in particular. It will attempt to provide a vision of a better human rights protection instruments to be adopted in the Arab World.

However, due to the relevance and involvement of both theories (universality and cultural relativism) in the context of this research and in order to indicate the used approach, the term Neo-Relativist has been employed. The term has been mostly used in the fields of education and pedagogy. Simpson, for example, adopted the neo-relativist term to value the more pragmatic field of education through accepting others opinions while considering the society understanding of the concept, and then helps in improving knowledge and understanding accordingly⁶²⁹. It has been also referred to in the conclusion of 'The Joy of Teaching', stating that "there are some absolutes and

⁶²⁷ see part1 (chapter 5).

⁶²⁸ It is important here to clarify that Arab countries have involved in many human rights agreements, for example, international (UDHR, CDHRI which has changed to the Organization of Islamic Cooperation Declaration on Human Rights), regional (the Charter) and sub-regional (The Gulf Cooperation Council Human Rights Declaration). However, this research will merely focus on the main human rights instruments that were released by the Arab League, namely: the Arab Charter on Human Rights and the Basic Statute of the potential Arab Court of Human Rights.

⁶²⁹ G Simpson, 'Critical Constructivism, Neo-Relativism, and the Place of Value in Science Education' (2004) 3(1) *The Science Education Review* 23; G Simpson, 'Transforming Your Practice: Hero or Heretic' (2005) 4(4) *The Science Education Review* 111

universals in this ever-shifting age of neo-relativism”⁶³⁰. Moreover, it is widely used in comparative education works⁶³¹. Another field embraces the term Neo-Relativism would be anthropology and gender studies⁶³².

It is important here to clarify that all of the aforementioned works have highlighted the tension between general (global or universal) and particular (local or relative) despite the fact that they differ in topics. Even more, the term Neo-relativism has been used in the mentioned articles to describe sort of strictness in holding a relative (cultural, particular or local) position or trend e.g. view, idea, decision, legislation or norm. It is believed, therefore, that this strictness has led to the rise of a developed version of relativism, namely: neo-relativism. Since the main argument of this research centered on this tension, and the scope of the research will be focusing on a specific region and culture (the Arab World), the term Neo-relativism has been chosen to express the adopted approach.

However, there will be an attempt to find a satisfactory solution to bridge the gap and not to disrespect or ignore the views of either relativists or universalists. This will likely give rise to the protection of Arab human rights provided by Arab mechanisms as they will be functioned according to reliable instruments. This part will be divided into three chapters, as follows:

- the first will highlight the two concepts (universalism and cultural relativism) and the tension between them;

⁶³⁰ TTC, ‘Author Achieve: Todd Siefker/ The Joy of Teaching’ (*Theteachercommunity.wordpress.com* 2018) available at <<https://bit.ly/3A051yV>> accessed 3rd May 2021.

⁶³¹ G P Kelly and P G Altbach, ‘Comparative Education: Challenge and Response’ (1986) 3(1) *Comparative Education Review* 89; E H Epstein, ‘Against the Currents: a critique of critiques of ‘ideology in comparative education’’ (1987) 17(1) *Compare* 17; R H Beck, ‘Reflections on Comparative Education’ (1986) 12(4) *The Review of Education/Pedagogy/Cultural Studies* 273; E H Epstein, ‘Currents Left and Right: Ideology in Comparative Education’ (1983) 27 (1) *Comparative Education Review* 3; G Psacharopoulos, ‘Comparative Education: From Theory to Practice, or Are You A: \neo.* or B:*. ist?’ (1990) 34(3) *Comparative Education Review* 369; W Gibson, ‘Constructing Knowledge through Social Research Debates in Epistemology and Ontology’ in J Swain (eds) *Designing Research in Education: Concepts and Methodologies* (Sage, London, 2017); W Feinberg, ‘Critical Pragmatist and the Reconnection of Science and Values in Educational Research’ (2012) 4(1) *European Journal of Pragmatism and American Philosophy* 222

⁶³² W Shapiro, ‘The Place of Cognitive Extensionism in the History of Anthropological Thought’ (1982) 91(2) *The Journal of the Polynesian Society* 257; W Shapiro, ‘Introduction’ in W Shapiro and U Linke (eds) *Denying Biology: Essays on Gender and Pseud-Procreation* (University Press of America, U.S, 1996); R Frankenberg & L Mani, ‘Crosscurrents, crosstalk: Race, ‘Postcoloniality’ and the politics of location’ (1993) 7(2) *Cultural Studies* 292.

- the second will endeavour the possibility of reconciling the two theories and creating the required approach accordingly;
- in the third chapter of this part, an attempt to apply the neo-relativist approach on the Charter and the Court Statute will be conducted.

CHAPTER 7: HUMAN RIGHTS IN LIGHT OF UNIVERSALISM AND CULTURAL-RELATIVISM

7.1. Introduction

A much-debated question in the literature is whether it would be better to adopt the human rights that are inspired by cultural norms and values or the universal one. The conflict between the two theories has been widely addressed. Some commentators have merely referred to the existence of the conflict and others have suggested possible solutions. Universalism and relativism are considered one of the problematic theories that scholars have faced, especially in case of the confrontation between an Arab Islamic fact on the one hand and against a foreign or occidental power that targets economic and political interest, besides its advanced intellectual and technological abilities, on the other.

The relation between the two theories indicates controversy that requires further review, clarification and analysis in order to slough relevant ambiguity. It has been stated that the existence of common factors between universality and relativism in some concepts does not undermine some cultural particularities that would probably be imposed and hence required serious attention. This is because the right of a human or a group of people to feel that they are distinguished from others albeit limitedly, is one of the basics whereby human rights underpinned⁶³³.

The tension between the two theories is sensitive, because human rights are universal in the first place, as they stick to humans just because they are human regardless of any type of peculiarities or ideologies they follow. Moreover, defending universal human rights is usually launched from the consent of cultural differences, whether in terms of their concept, content or their ability in interaction with others⁶³⁴. It can, therefore, be inferred that since the universality is a fact that cannot be denied and cultural relativism is a reality that must be dealt with, then an attempt of reconciling them is required. In doing so, however, this chapter will highlight the two theories and the tension between them.

⁶³³ A Alrasheedi, *The Universal Declaration of Human Rights: Implications, Successes, Failures and Human Rights Cases* (Dar Almostakbl Publications, Egypt, 1999) 125. (in Arabic, translated by Author)

⁶³⁴ H Mana'a, *Focusing on Human Rights: General Concise Encyclopedia* (Part 2, Alahali Publisher & Distributor, 2003) 162. (in Arabic, translated by Author)

7.2. The Universality of Human Rights

Human rights concept and scope has caused wide controversy, as much as scholar's disagreement in confirming a uniform definition to human rights or determining the general principles of human rights. The question that arises here is whether the human rights principles are universal, humane, moral and accepted to all societies and civilisations, or relative in their nature and changeable, as what is considered valuable in certain society and, has spiritual and moral values might not be so for others because every society has its own interpretation to these principles.

This research supports the fact that religious and cultural differences prevailed over peoples and nations, and actually exists and cannot be denied. Universal human rights have been impacted by globalisation which has imposed domination and provoked concerns. It spreads out to the world without any consideration to political and geographical boundaries or the affiliation to a particular country. It simply flows among nations, ignoring their particularities, which assumptively ought to be protected within their own borders, although these particularities (politics, culture, religion, etc) are of importance in supporting the development of globalisation⁶³⁵. Therefore, "Universalism...suggests an intellectual and spiritual phenomenon, globalisation; on the other hand, a political, economic and civilizational process (implying material rather than spiritual culture)"⁶³⁶.

7.2.1 Elucidating and Defining Universalism

Just like many theories and concepts, there is no specific definition for universalism although there have been several attempts⁶³⁷. The diverse contributions on the universality of human rights including international human rights and academic works, showed various of definitions. The Oxford English Dictionary's definition of the term 'universal' as used: "[e]xtending over or including the whole of something specified or implied,...the whole of a particular group or the whole world; comprehensive, complete; widely occurring or existing, prevalent over all"⁶³⁸. In addition, the former United

⁶³⁵ S Fischer, 'Globalization and its challenges' (2003) 93(2) *American Economic Review* 33.

⁶³⁶ J Assmann, 'Globalization, universalism, and the erosion of cultural memory' in A Assmann & S Conrad (ed), *Memory in a Global Age: Discourses, Practices and Trajectories* (Palgrave Macmillan, London, 2010) 121.

⁶³⁷ In virtue of this research theme, most of the chosen definitions of universality will be in light of human rights.

⁶³⁸ 'Universal, adj', (Oxford English Dictionary Online, Oxford University Press, June 2020) available from <www.oed.com/view/Entry/214783> accessed 13th May 2021.

Nations High Commissioner for Human Rights, Prince Zeid bin Ra'ad Al-Hussein, clarified the universality of human rights in his 2014 Human Rights Day message, stating that:

human rights are not country-specific, or particular to a certain...social group. They are the inalienable entitlements of all people,...in all places, people of every colour, from every race and ethnic group; whether or not they are disabled; citizens or migrants; no matter their sex, their class, their caste, their creed, their age or sexual orientation⁶³⁹.

Kamenka similarly reflected on the meaning of universality when he clarified those human rights:

are claims that are often, perhaps usually, presented as having a special kind of importance, urgency, universality or endorsement that makes them more than disparate or simply subjective demands. Their success is dependent on such endorsement - by a government or a legal system that has power to grant and protect such rights, by a tradition or institution whose authority is accepted in those circles that recognise these claims as rights, by widespread social sentiment, regionally, nationally or internationally⁶⁴⁰.

In his clarifications of the human rights concept, Donnelly has also referred to universalism, clarifying that human rights are the minimum rights that human must enjoy anywhere in the world and without any form of discrimination, as they are essential to preserve dignity, freedom, peace and security, as well as providing them the required protection and promotion is a universal duty⁶⁴¹. In general, universalism means openness to others and the desire to interchange, as it is a legitimate ambitious that seeks to advance the cultural particularities to the universal level.

⁶³⁹ UnitedNationsHumanRights, '*Human Rights Day Message*' (2014) available from <<https://bit.ly/3jORbcM>> accessed 24th Sep 2017.

⁶⁴⁰ E Kamenka, 'Human Rights, Peoples' Rights' (1985) 9 *Bulletin Australian Society of Legal Philosophy* 148.

⁶⁴¹ J Donnelly, '*Universal Human Rights in Theory and Practice*' (3rd ed, Cornell University Press, U.S, 2013).

7.2.2 Philosophical Basis of Universalism

Universalism has its early philosophical roots. The literature highlights three fundamental jurisprudential theories that are considered as the basics of universalism: natural law, rationalism and legal positivism. Philosophers such as Socrates, Plato and Aristotle were enthusiastic about the principle of natural law which implies that certain values and rights are inherent in the nature of man and can be observed and recognised globally through the human mind.

Natural law refers to the use of reason in the analysis of both the human nature of social and personality to arrive at binding rules of moral conduct⁶⁴². Despite the fact that several philosophers embraced their own view on clarifying the notion of natural law, they all adhered to the principle of universality⁶⁴³. Thomas Aquinas presented a developed version of natural law, maintaining that it confirms the moral dimensions of law and affirms that all humans have their own inalienable rights granted by God. He added that human-made laws, also known by Positive Laws, are valid only if they do not confront universal natural laws⁶⁴⁴. Thus, it seems that the idea of natural law justifies the universality of human rights. At the beginning of the Age of Enlightenment (also known as the Age of Reasons), the philosopher John Locke (1632–1704) claimed that every human in a natural state should be “equal and independent, and everyone had a natural right to defend his ‘Life, health, Liberty, or Possessions’”⁶⁴⁵. He visualised all humans in the state of nature enjoying their freedom, able to determine their actions and living equally without any conflict between them.

Another related and significant theory that is considered as one of the universality’s bases would be rationalism. In his definition of the natural law, Hugo Grotius indicates that natural law “is a dictate of right reason, which points out that an act, according as it is or is not in conformity with rational nature, has in it a quality of moral baseness or

⁶⁴² Aristotle, ‘Rhetoric’ (*Bocc.ubi.pt*, Trans by W. Rhys Roberts, 1858-1929) available at <<https://bit.ly/3xBWCjq>> accessed 3rd Oct 2017; W Durant, ‘*The Story of Philosophy*’ (2nd ed, Garden City Publishing Co. Inc, 1927).

⁶⁴³ T Aquinas, ‘The Summa Theologica’ (*Ccel.org*, 1265-1274) available from <<https://bit.ly/36xCAL7>> accessed 20th Oct 2017, 2270-2278; S Cunningham, ‘Albertus Magnus on Natural Law’ (1967) 28(4) *Journal of the History of Ideas* 479.

⁶⁴⁴ T Aquinas, ‘The Summa Theologica’ (*Ccel.org*, 1265-1274) available from <<https://bit.ly/36xCAL7>> accessed 20 Oct 2017, 2270-2278; L Weinreb, ‘*Natural Law and Justice*’ (Harvard University Press, U.S, 1987).

⁶⁴⁵ Rosenfels, ‘*The Age of Enlightenment: An Anthology Prepared for the Enlightenment Book Club*’ (*Rosenfels.org*, 2011) available from <<https://goo.gl/HCAzJa>> accessed 22nd Oct 2017, 125.

moral necessity; and that, in consequence, such an act is either forbidden or enjoined by...God”⁶⁴⁶. Accordingly, by relying on reason and rational thinking, individuals all over the world will obtain human rights. The fact that every human has the ability to think rationally was a justification in the natural law theory for replacing the universal human rights granted by God with individual rational thinking⁶⁴⁷. The 1776 United States Declaration of Independence is a good example of this as it has been stated in at the beginning of the declaration that independence requires “a decent respect to the opinions of mankind. [Americans should]...hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness”⁶⁴⁸. However, the Declaration of Independence has been criticised and accused of being racist in that it was approved in a period of slavery as it was directed specifically to the Americans of the white race, and this is an explicit contradiction with the principles of universality⁶⁴⁹. Universality is also supported by the theory of Legal Positivism, in which laws and regulations are developed by man, and has nothing to do with God-given rules. These regulations work to govern human life and facilitate the treatment of human beings. They rely on objectivity in considering laws’ viability, and separate law from morals⁶⁵⁰. John Austin, who was influenced by the work of Jeremy Bentham (1748-1832), is considered as one of legal positivism’s founders. Austin’s Command Theory implies that laws are the orders issued from sovereign human beings that are man-made, and the legal norms must comply with these orders, and be supported by sanctions⁶⁵¹. Moreover, Austin’s view came in response to the English jurist Sir William Blackstone who supported natural law and rejected man-made laws, such as positive law or any others that are not derived from natural law⁶⁵². Although legal positivism has been

⁶⁴⁶ H Grotius, ‘On the Law of War and Peace’ in J B Scott (eds) *The Classics of International Law* (Book1, Clarendon, U.S, 1925) 39.

⁶⁴⁷ E Zechenter, ‘In the Name of Culture: Cultural Relativism and the Abuse of the Individual’ (1997) 53(3) *Journal of Anthropological Research* 319.

⁶⁴⁸ T Jefferson. et al, ‘*The Declaration of Independence*’ adopted in the 4th July 1776, available from <<https://bit.ly/3wMlInf>> accessed 3rd Jun 2017.

⁶⁴⁹ B Norton, ‘Declaration of Independence discussion - Part 1’ (*Constitutionfacts.com*, 27th May 2016) <<https://bit.ly/3B0zKw4>> accessed 14th Oct 2017.

⁶⁵⁰ R Wacks, ‘*Philosophy of Law: A Very Short Introduction*’ (Oxford University Press, UK, 2006).

⁶⁵¹ SEP, ‘John Austin’ (*Plato.stanford.edu*, 2018) available at: <<https://bit.ly/3yKH2Cm>> accessed 20th Oct 2017; J Austin, ‘*Province of Jurisprudence Determined*’ (John Murray, London, 1832).

⁶⁵² W Blackstone, ‘*Commentaries on the Laws of England*’ (1893) vol. 1, available from <<https://bit.ly/36FoO97>> accessed 22nd Oct 2017, 47; B Bix, ‘Legal Positivism’ in M Golding and W

developed by a number of thinkers, such as Hans Kelsen (1881-1973) and Herbert Lionel Adolphus Hart (1907-1992), it is important to maintain the main topic of universality and avoid drifting beyond the scope of this chapter. Legal positivists confirm that human rights norms are represented in the international treaties created by men⁶⁵³. Legal positivists believe that the universality of human rights exists only through the acceptance and ratification of relevant international instruments by sovereign states regardless of any other aspect that might be influential, such as their cultural background.

7.2.3 Universalism in Contemporary World

In the period following World War II, the world witnessed a radical transformation concerning the preservation of dignity, fairness, equality and respect for all human beings as a result of the large-scale violations which occurred during the war. Human rights constitute a focal point in the ideological conflict between the Eastern Bloc (communists) and the Western Bloc (capitalists) which continued even after the proclaiming of resolution 217 A (III) by the United Nation General Assembly regarding the Universal Declaration of Human Rights (UDHR)⁶⁵⁴ on 10 Dec 1948. Yet after the collapse of the Communist camp in the late 80s, the world showed interest in the universality of human rights in which the belief that universality must be attached with human rights as an essential and inherent characteristic has prevailed⁶⁵⁵. The Author of this research believes that universality has been a significant element in the development of the human rights culture since the emergence of the UDHR. States all over the world have been inspired by the UDHR when drafting their own constitutions, laws, instructions and many other relevant national, regional and international instruments.

As an international instrument that is dedicated to the rights and values which ought to be equally shared by all humans, the UDHR or many of its provisions have become the

Edmundson (ed.) *The Blackwell Guide to the Philosophy of Law and Legal Theory* (Blackwell Publishing Ltd, Oxford, UK, 2005) 29.

⁶⁵³ R Higgins, *Problems and Process: International Law and How We Use It* (Oxford University Press, UK, 1995).

⁶⁵⁴ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR).

⁶⁵⁵ A M Rieu, 'Deconstructive Globalization. Universalism, Globality, Diversity' (2009) *Institute of Advanced Studies in the Humanities and Social Sciences Newsletter*, hal-00701252 (Taiwan National University, 2009, URL: <<https://hal.archives-ouvertes.fr/hal-00701252/document>> 10-22.

most authoritative source of the Customary International Law. Moreover, it is considered as the foundation of the International Human Rights Law⁶⁵⁶. This instrument gathered a set of inalienable, indivisible and essential rights to which a person was innately entitled as a human being. Further, many regional and international human rights treaties were also heavily influenced by the UDHR⁶⁵⁷. It can be stated that over time universality helped in spreading the human rights culture by accepting the UDHR as an international norm for relevant legislation. However, this view has been criticised by relativists who do not believe in the universality of human rights on ground that human rights are culturally relative; this will be explained in more detail later in this chapter.

Universality can be also found in the very concept of human rights and its principles, as it is mostly a universal concept as they are fixed to human being just because they are humans', regardless of their nationalities, religion, origin, belonging or job. They are the natural rights in which human enjoyed even prior to become a member of certain society⁶⁵⁸. Human rights can be seen as a universal entitlement underpinned by international, regional and national laws and cannot be banned by any authority. They, therefore, must be enjoyed by human being and protected internationally. They can also be considered as a global phenomenon since their inception and their universality is emanated first and foremost from their concept. This makes the universality of human rights essential, albeit a divergence in its visions and concept, which probably would be due to the vagueness and differences that are followed by the world's ideological pluralities. Although different views of universality exist, they eventually settle at the same spot that characterised with universality.

Donnelly divided universality into three types; firstly, international legal universality, in which human rights are "accepted by almost all states as establishing obligations that are binding in...[and bounded by]...international law; that is, states agree that they have

⁶⁵⁶ United Nations, 'The International Bill of Human Rights' (New York: United Nations Dept. of Public Information, 1988) as cited in H Hannum, 'The UDHR in National and International Law' (1998) 3(2) *Health and Human Rights* 144.

⁶⁵⁷ W Schabas, *The Universal Declaration of Human Rights: The Travaux Préparatoires* (Cambridge University Press, UK, 2013); O De Schutter, *International Human Rights Law: Cases, Materials, Commentary* (Cambridge University Press, New York, 2010); UN.ORG, 'The Foundation of International Human Rights Law' (UN.org, n.d) available from <<https://bit.ly/3rdzV2D>> accessed 28th Sep 2017.

⁶⁵⁸ J Donnelly, *Universal Human Rights in Theory and Practice* (3rd ed, Cornell University Press, U.S, 2013).

obligations with respect to these rights”⁶⁵⁹. In addition, states are imposed to apply human rights on bases of international norms by which they will be implemented in practice and enforced by international laws⁶⁶⁰. Secondly, the overlapping consensus universality, which refers to the standards that are “backed by preponderant political power and reflecting deeper ethical, moral, or religious values...[As]...the moral equality of all human beings is strongly endorsed by most leading comprehensive doctrines in all regions of the world. This convergence, both within and between civilizations, provides the foundation for a convergence on the rights of the Universal Declaration”⁶⁶¹. Thirdly, the functional universality, which means the human rights version that relies on affording “attractive remedies for some of the most pressing systemic threats to human dignity...[and this is already applied]...for a growing number of people of all cultures in all regions”⁶⁶². He added that problems of market economies and bureaucratic states must be addressed and dealt with for the sake of enjoying equal, inalienable and universal human rights that provide the adequate protection from these threats, regardless of any religious, moral, legal and political resources⁶⁶³.

This palpable effort of partitioning universality into three types has indeed added knowledge, nonetheless the Author of this research believes that the value of this distinction is probably applicable in theory. The moral universal consensus can be counted as a loose slogan that is worthless for humans, who are constantly subjected to human rights violations. This is due to the fact that moral obligations often lack guarantees and punishments that function to ensure their protection. As it would be unlikely for tyrannical countries who breach contractual obligations of international human rights agreements by violating the rights of its own citizens, to be morally committed.

⁶⁵⁹ J Donnelly, *‘Universal Human Rights in Theory and Practice’* (3rd ed, Cornell University Press, U.S, 2013) 95.

⁶⁶⁰ J Donnelly, *‘Universal Human Rights in Theory and Practice’* (3rd ed, Cornell University Press, U.S, 2013) 95.

⁶⁶¹ J Donnelly, *‘Universal Human Rights in Theory and Practice’* (3rd ed, Cornell University Press, U.S 2013) 96.

⁶⁶² J Donnelly, *‘Universal Human Rights in Theory and Practice’* (3rd ed, Cornell University Press, U.S 2013) 97.

⁶⁶³ J Donnelly, *‘Universal Human Rights in Theory and Practice’* (3rd ed, Cornell University Press, U.S 2013) 97.

Universality, then, provides a combination of views that are being drafted by the international community; to achieve the agreements of the peoples' different civilisations and cultures, on a number of rights and freedoms. This satisfaction will not only reflect the recognition of these rights globally, but also provide them more universal guarantees and protection mechanisms. This is because they were created upon common moral and legal contractual basis that guarantees cooperation and mutual dependence between people of different cultures and civilizations. Secondly, the universality of human rights can be also seen as a vital principle in understanding the concept of human rights and basic freedoms. It is believed that the universality of human rights implies that all the rights mentioned in the UDHR, and other international human rights agreements exceeds political, geographical, linguistic, religious and cultural boundaries. Hence, the international community will become a fertile field for the implementation of these universal standards⁶⁶⁴.

The universality of human rights can be understood as everything that extends and expands, beyond obstacles and barriers, to cover the whole world without discrimination. It calls for the search of the one truth, that lies behind the multiple manifestations of various sectarian differences and becomes the way to bring people together into one sect by which their religious and racial disputes will be resolved for the sake of global peace and security.

7.3. Human Rights Cultural Relativism

Cultural relativism is the principle by which individual actions, beliefs and values must be understood by others within the context of their own culture, the one in which they were born. This has been established as a fundamental principle in applied anthropology, in particular ethnographic and ethnocentrism research. It is usually employed to provide social impact research, in which they determine how different developments, policies or practices will impact societies. Unlike universalism, cultural relativism relies on the "denial of reason and objective reality"⁶⁶⁵. A person may utilise cultural relativism to understand the world various societies by undertaken his/her own

⁶⁶⁴ S H Alfatalawi, '*Human Rights*' (Dar Al Thaqafa, Amman, 2007) 81 (in Arabic, translated by Author).

⁶⁶⁵ J Kanarek, 'Critiquing Cultural Relativism' (2013) 2(2) *The Intellectual Standards* 13.

cultural principles as an evaluation benchmarking⁶⁶⁶. It has been also believed that this will be better achieved by adopting the Emic approach, in which other cultures will be able to be interpreted and understood⁶⁶⁷.

7.3.1 Expounding and Defining the Concept of Cultural Relativism

Franz Uri Boas who is known as the father of American anthropology, believed that “the dissemination of the fact that civilization is not something absolute, but that it is relative, and that our ideas and conceptions are true only so far as our civilization goes”⁶⁶⁸. A good and simple example is tasting other countries food or drink and say it is either delicious or weird and outrageous. In this case the judgment was taken in accordance with cultural perspectives.

In an attempt to simplify the meaning of the concept, Melville Herskovits, who was one of Boas’ students, explained that cultural relativism denotes human experiences through which they gain knowledge about the world and can make their judgments according to these experiences⁶⁶⁹. Kanarek also stated that as long as “man’s judgments are culture-bound, so too are his methods of reasoning and knowledge”⁶⁷⁰. Furthermore, humans should not judge other cultures according to their own culture, as ethnocentrism may breach human rights, particularly the principle of equality⁶⁷¹ and this will also exceed cultural relativism scope and may give an impression of universal appearance. It has been claimed that cultural relativism does not favour any particular

⁶⁶⁶ R Scupin & C R DeCorse, ‘*Anthropology: A Global Perspective*’ (8th ed, Pearson, 2016) 615; Lumen, ‘Chapter1: What is Anthropology? Cultural Relativism’ (*Cources.lumenlearning.com*, n.d.) available from <<https://bit.ly/3Ek8M4b>> accessed 9th Jun 2021.

⁶⁶⁷ Emic and Etic are anthropological concepts that have been developed by Kenneth Pike and Marvin Harris (1950s- 1960s). The latter means understanding a culture from the outside; for instance, study the culture of certain society by a person who do not belong to this society; in this case, his judgment will be not only be foreign and intruder, but also will lack control on peoples under which the study lies, for the reason that they might act unnaturally, hence this limitation will likely lead to inaccuracy. Emic, on the other hand, is based on the view within the culture; as observer who is intended to study one’s culture must put himself in the shoes of this culture indigenous peoples; therefor the judgment is considered as domestic and not international; moreover, the data from emic studies are much deeper, intense and reliable than those of etic approach; see T N Headland, K L Pike & M Harris, ‘*Emics and Etics: The Insider/Outsider Debate*’ (Sage Publications, Inc, 1990); Lumen, ‘Chapter2: Culture/ Two Views of Culture: Etic & Emic’ (*Cources.lumenlearning.com*) available at <<https://bit.ly/3khfHUS>> accessed 9th Jun 2021.

⁶⁶⁸ G W Stocking, ‘*A Franz Boas Reader: The Shaping of American Anthropology: 1883-1911*’ (University of Chicago Press, U.S, 1989) 66.

⁶⁶⁹ P Schmidt, ‘Some Criticisms of Cultural Relativism’ (1955) 52(25) *The Journal of Philosophy* 780.

⁶⁷⁰ J Kanarek, ‘Critiquing Cultural Relativism’ (2013) 2(2) *The Intellectual Standard* 3.

⁶⁷¹ R Gordon, ‘*Going Abroad: Traveling Like an Anthropologist*’ (Routledge, U.S, 2015); J Omohundro, ‘*Thinking like an Anthropologist: A Practical Introduction to Cultural Anthropology*’ (McGraw-Hill Education. Boston, US, 2008).

culture over others in terms of morality, law and political beliefs. Ethics, religions, laws, aesthetics and other social practices are all equal and relative to the cultural beliefs of individuals in any given society⁶⁷². Moreover, tolerance and respect between cultures is considered as one of the key principles of cultural relativism⁶⁷³. Higgins published a paper in which she illustrated the main view of cultural relativists indicating that they believe in the fact “that knowledge and truth are culturally contingent, creating a barrier to cross cultural understanding; and that all cultures are equally valued...[. This]...lead to the conclusion that human rights norms do not transcend cultural location and cannot be readily translated across cultures”⁶⁷⁴.

Cultural relativism as a doctrine is not new, as it has been written by Greeks, in particular Herodotus (484-425 B.C) who referred to its core, indicating that:

For if one were to offer men to choose out of all the customs in the world such as seemed to them the best, they would examine the whole number, and end by preferring their own; so convinced are they that their own usages far surpass those of all others⁶⁷⁵.

Further, the notion has only since the drafting of the UDHR gained momentum as a term⁶⁷⁶. It has been stated that the UDHR drafting team favoured the universal characteristics of human rights, believing that the declaration would overcome cultural differences worldwide⁶⁷⁷. In 1947, the American Anthropological Association (AAA) submitted a statement on human rights to the United Nation Commission on Human Rights, containing three important principles reflecting dissatisfaction with the UDHR drafters’ stance of universalising human rights. The AAA’s third principle indicates that:

⁶⁷² S Danial, ‘Cultural Relativism vs. Universalism: Female Genital Mutilation, Pragmatic Remedies’ (2013) 2(1) *Prandium: The Journal of Historical Studies* 1; AAP, ‘Cultural Relativism’ (*Allaboutphilosophy.org*, n.d.) available from <<https://bit.ly/3loBJTZ>> accessed 9th Jun 2021.

⁶⁷³ S D Ross, ‘*Women’s Human Rights: The International and Comparative Law Casebook*’ (University of Pennsylvania Press, U.S, 2008).

⁶⁷⁴ T Higgins, ‘Anti-Essentialism, Relativism, and Human Rights’ (1996) 19 *Harvard Women’s Law Journal* 95.

⁶⁷⁵ A D Renteln, ‘International Human Rights: Universalism versus Relativism’ (Quid Pro Books, U.S, 2013) 62.

⁶⁷⁶ E Reichert, ‘Human Rights: An Examination of Universalism and Cultural Relativism’ (2006) 22(1) *Journal of Comparative Social Welfare* 25.

⁶⁷⁷ W Osiatyński, ‘*Human Rights and Their Limits*’ (Cambridge University Press, USA, 2009).

Standards and values are relative to the culture from which they derive so that any attempt to formulate postulates that grow out of the beliefs or moral codes of one culture must to that extent detract from the applicability of any Declaration of Human Rights to mankind as a whole⁶⁷⁸.

According to a definition provided by Teson, cultural relativism is “the position according to which local cultural traditions...[, including religious, political, and legal practices]...properly determine the existence and scope of civil and political rights enjoyed by individuals in a given society”⁶⁷⁹. A further illustration is given by Donnelly, who described cultural relativity as “a fact: cultures differ, often dramatically, across time and space. Cultural relativism is a set of doctrines that imbue cultural relativity with prescriptive force⁶⁸⁰. Bourke, moreover, stresses that cultures are heavily influenced by moral values and concluded that not all moral judgment imposed universally, yet some of them are undertaken by virtue of culture⁶⁸¹. This is because various “cultures have different moral standards... by which the action and conduct of any individual are...evaluated and measured...[as per]...the community to which...[he/she]... belongs”⁶⁸².

Cultural relativism means that principles, norms and values are immanence to cultures and derived from within societies. This implies that there will be no room to judge a certain culture as per international standards as cultural relativism is underpinned by the denial of Westernisation and the involvement of alien notions within their societies. This is because it fails in the management and the accommodation of the various norms and values of the different cultures in the world. It seems this justifies non-western countries denial to accept the international standards, which will eventually lead to the rejection of these standards and may affect their legitimacy in the internal level of a

⁶⁷⁸ AAA, ‘Statement on Human Rights’ (1947) 49(4) *American Anthropologist* 542; also see A B S Preis, ‘Human Rights as Cultural Practice: An Anthropological Critique’ (1996) 18(2) *Human Rights Quarterly* 286.

⁶⁷⁹ F Teson, ‘International Human Rights and Cultural Relativism’ (1984) 25(4) *Virginia Journal of International Law* 870.

⁶⁸⁰ J Donnelly, ‘The Relative Universality of Human Rights’ (2007) 29(2) *Human Rights Quarterly* 294.

⁶⁸¹ E Burke, ‘Reflections on the Revolution in France: and on the Proceedings in Certain Societies in London Relative to that Event: in a Letter Intended to Have Been Sent to a Gentleman in Paris’ (J. Dodsley, 1790) 87 & 89.

⁶⁸² V V Chokr, ‘Who is (not) afraid of (cultural) relativism?’ (2007) 12 *Tracés. Revue de Sciences Humaines* VII.

society⁶⁸³. By way of illustration, the right to freedom of religion and belief, in particular to change or chose a religion, is prohibited on Muslims⁶⁸⁴, yet it is permitted in many regions of the world.

Every human being has a personal social experience (happiness, burdens, suffering, success, etc.) that is gained during his/her life since birth and hence have the right to observe and judge things in pursuant to and within the scope of this experience. One limitation arises from the aforementioned is the fact that cultural relativism will be an obstacle to moderate peoples who believe in peace and have some tendencies to reconciliation between the two concepts, on account of it will likely undermines some universal norms that are considered as an absolute and cannot be derogated. Before considering or judging this, it is important to identify cultural relativism branches in order to understand the concept.

7.3.2 Types of Cultural Relativism

At the outset, cultural relativism may take a drastic path by which its advocates believe that the key principles distinguishing right from wrong are merely limited to a specific culture. It is called strict or radical cultural relativism (also known as epistemological or cognitive relativism) and maintains that “culture is the sole source of the validity of a moral right or rule”⁶⁸⁵. In his famous book *Critique of Pure Reason*, Immanuel Kant argued that humans’ behaviours and actions in fact represent their own knowledge and ideas, which are derived from their culture and have been acquired since birth⁶⁸⁶. Humans’ ability in understanding the world’s cultural facts through testing, observation and meditation is also confined to a particular culture. Furthermore, it asserts that the notion of rationality is a Western ethnocentrism, hence contradicting the concept of universal human rights⁶⁸⁷. In the attempt of highlighting the contours of the concept, radical cultural relativism has been divided into two main branches: weak and strong.

⁶⁸³ J Donnelly, ‘Human Rights as Natural Rights’ (1982) 4(3) *Human Rights Quarterly* 391; H Susetyo, ‘Human Rights Regime between Universality and Cultural Relativism: The Asian and Indonesian Experience’ (2019) 16(2) *Indonesian Journal of International Law* 201.

⁶⁸⁴ This is called apostasy, and considered as a crime in Islam that is punishable by death sentence.

⁶⁸⁵ J Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) 6 *Human Rights Quarterly* 400.

⁶⁸⁶ E Kant, *Critique of Pure Reason* (Translated by Guyer, P. & Wood, A. Cambridge University Press, U.S, 1998).

⁶⁸⁷ E Zechenter, ‘In the Name of Culture: Cultural Relativism and the Abuse of the Individual’ (1997) 53(3) *Journal of Anthropological Research* 319; K Schooley, ‘Cultural Sovereignty, Islam, and Human Rights-Toward a Communitarian Revision’ (1995) 25 *Cumberland Law Review* 651.

Initially, cultural relativism can be seen in its weak form simply when societies have a different understanding of the right and wrong. Zechenter pointed out that weak cultural relativism (also known as descriptive relativism) can be understood as “a common sense observation that cultures vary”⁶⁸⁸. Donnelly added that it “would recognize a comprehensive set of prima facie universal human rights and allow only relatively rare and strictly limited local variations and exceptions”⁶⁸⁹. It focuses on the observation of other cultures and neglects one of its main factors, namely: moral authenticity⁶⁹⁰. This means descriptive relativists holds the position that nothing can prevent applying their values in one particular society to another; hence it may lead to the existence of transcultural norms which are closer to universality on the one hand, and to the absence of fixed standards to judge the views of these various societies on the other.

However, strong cultural relativism (also known as normative relativism) is counted as the steadily obstinate form for its advocates, while others consider it vulgar and unregenerate cultural relativism⁶⁹¹. It refers to the social practices that occur in accordance with domestic cultural norms and which are not simply observed. It prevents the flow of cultural principles over societies, even if these principles function in enhancing the policies of one’s society, such as promoting human rights⁶⁹². It also presumed “that since all standards are culture-bound, there can be no transcultural moral or ethical standards”⁶⁹³.

Followers of this version of cultural relativism believe that achieving better human rights protection in a given culture can be achieved by the adoption of human rights standards that are merely based on cultural norms and values including the religion. This implies that each region, group of people, certain countries...etc, will act upon their own cultural particularities and will be not subjected to interference from other culture. This also

⁶⁸⁸ E Zechenter, ‘In the Name of Culture: Cultural Relativism and the Abuse of the Individual’ (1997) 53(3) *Journal of Anthropological Research* 323.

⁶⁸⁹ J Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) 6 *Human Rights Quarterly* 401.

⁶⁹⁰ C Galanos, ‘Universal Human Rights in the Face of Cultural Relativism and Moral Objectivity: Preaching or Teaching’ (2010) 16 *UCL Jurisprudence Review* 29.

⁶⁹¹ B Williams, ‘*Morality: An Introduction to Ethics*’ (Cambridge University Press, U.S, 2012) 20.

⁶⁹² C Galanos, ‘Universal Human Rights in the Face of Cultural Relativism and Moral Objectivity: Preaching or Teaching’ (2010) 16 *UCL Jurisprudence Review* 29.

⁶⁹³ E Zechenter, ‘In the Name of Culture: Cultural Relativism and the Abuse of the Individual’ (1997) 53(3) *Journal of Anthropological Research* 323.

indicates that human rights will be promoted because they will be influenced by culture and religion of one society and will be set out according to its people demands, which may be differs from region to another⁶⁹⁴. Female circumcision and insulting religions are good examples here; the former is permitted in some societies as per their values and traditions, while it considered torture in other societies; the latter is not only a legal offence in Islamic societies, but also a religious sin, while some other societies consider it freedom of expression.

Strong cultural relativism, then, underpinned by the fact that rights are confined by a given society and not universal, whereby they will be implemented accordingly, and hence judging other cultures of the world and interfering in their values is condemned. The key problem with this thesis is it seems contradictory, that is, strong cultural relativism advocates believe that morals and values must be cantered in one society, applied accordingly and should not be shared with others. This implies that it will be equally and separately applicable for all cultures in the world, that is, their relative values must be universalised; meaning they will indirectly undergo their rival, namely: universality⁶⁹⁵.

As mentioned in the introduction, however, the inconsistency between cultural relativism and universalism is widely debated matter; thus, relativist advocates have attempted of bringing the two theories together. Cultural relativism might imply some sort of reconciliation with universalism; this is called moderate cultural relativism⁶⁹⁶. It suggests that some moral values are universal, yet they are applicable merely by

⁶⁹⁴ K Engle, 'Female Subjects of Public International Law: Human Rights and the Exotic Other Female' (1992) 26 *New English Law Review* 1513-14.

⁶⁹⁵ B Williams, *'Morality: An Introduction to Ethics'* (Cambridge University Press, U.S, 2012) 20; F R Tesón, 'International Human Rights and Cultural Relativism' in M K Addo (eds) *International Law of Human Rights* (Routledge, U.S, 2016) 92.

⁶⁹⁶ In fact, moderate cultural relativism as a theory is limited by the lack of relevant information in the literature; the term has been frequently used either to refer to the process of reconciling cultural relativism with universalism or to describe the work of others in doing so. The Author of this research totally concurs that it is considered as one of the relativist theories; he also believes that the term is often used as a reference to the universal-cultural relativist reconciliation attempts, as it refers to the advocates tendency toward moderating the two theories. For example, Schooley and Morgan-Foster refers to An'Naim attempts of converging the two theories as "moderate cultural relativism" although An'Naim never mentioned it. see K Y Schooley, 'Cultural Sovereignty, Islam, and Human Rights - Toward a Communitarian Revision' (1995) 25 *Cumberland Law Review* 682; J Morgan-Foster, 'A New Perspectives on the Universality Debate: Reverse Moderate Relativism in the Islamic Context' (2003) 10 *ILSA Journal of International & Comparative Law* 36; also see M F Bendle, 'Beyond Eclecticism: The Case for a Moderate Form of Cultural Relativism' (1998) 8(1) *The International Journal for the Psychology of Religion* 21.

societies in which they are valid and recognised. Moderate cultural relativism also “accept a need for some form of minimal standard of protection that must be evaluated and legitimized through culture”⁶⁹⁷. Despite the tension between universalism and cultural relativism, moderate cultural relativism hold that some universal standards may be applicable. In doing so, the moral values that are supposed to be derived from a society will not be the sole source of its standards, as relativists believe, but rather the standards will be influenced by some universal values. These hybrid standards will be valid over some societies and for certain values, which may expose cultural relativism at risk; that is, it will be threatened by cross-cultural moral judgments, which contradict cultural relativism⁶⁹⁸.

In brief, the inconsistency between the two theories needs further investigation. Practicing human rights in specific geographical domains such as the Arab World, will require a type of enhancement measures; for example, an international neutral monitoring system on the status and the implementation of human rights, will make a tangible difference. This arrangement must also be logical. Again, this is the main concept of this research; that is, attempting to bridge the missing pieces between international and cultural standards for a better human rights protection in the Arab World. Having explain the concepts of universality and cultural relativism, the following section describes in greater detail the conflict between them.

7.4. The Tension Between Universalism and Cultural Relativism

As explained earlier, universality foster the fact that all human being must enjoy the set of human rights enshrined in the international law equally and the validity of moral rights is not related to cultures. While cultural relativism holds that culture is the central source of moral rights⁶⁹⁹ and vary in terms of what is ‘right’ and what is ‘wrong’, from culture to another⁷⁰⁰. This debate is very much like the global feminist movement in terms of dealing with societal structures and maintaining cultural practices. Universalists stated that cultural relativism undermined universal feminist goals or ambitions, and

⁶⁹⁷K Y Schooley, ‘Cultural Sovereignty, Islam, and Human Rights - Toward a Communitarian Revision’ (1995) 25 *Cumberland Law Review* 678-79.

⁶⁹⁸ D Gaskill, ‘Is Morality Relative to Culture?’ (*Csus.edu*, 2005) available from <<https://bit.ly/2XYKf3W>> accessed 7th Jun 2021.

⁶⁹⁹ J Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) 6 *Human Rights Quarterly* 400.

⁷⁰⁰ J J Tilley, ‘Cultural Relativism’ (2000)22(2) *Human Rights Quarterly* 501.

feminists were being accused of applying Western values to other societies, in the same way that they criticised men for imposing rules on women⁷⁰¹. However, since both theories have different and almost contradicting views and since they are firmly related to the methodological approach of this research the tension between them must be highlighted in order to identify the various views in the literature, through which the neo relativist framework will be enhanced.

The human rights concept is widely recognised over nations of the world, not only due to the significant violations occurred since the World War II⁷⁰², but also to maintain the status and stances of states within the international community. International human rights standards rely on states in their application⁷⁰³. This resulted in the affirmation of the human rights concept on the international level although this has not been totally accomplished, as the human rights debate has confirmed that universality is widely faced by cultural relativism⁷⁰⁴, that is, the unanimous acceptance is mostly based on politics and rejects morals, hence it is incomplete⁷⁰⁵. While settlement between the two theories is desired, the acknowledgment of the universal human rights values which are part of international human rights law, have been limited by cultural relativists, as they might be partly implemented. This failure in the full application of these human rights standards will likely affect their legitimacy within states, as they must be accepted, recognised and justified in order to be adopted⁷⁰⁶. Further, cultural relativism will enhance the right to self-determination by acknowledging moral autonomy of certain

⁷⁰¹ T E Higgins, 'Anti-Essentialism, Relativism, and Human Rights' (1996) 19 *Harvard Women's Law Journal* 89; C A Choudhury, 'Beyond Culture: Human Rights Universalisms Versus Religious and Cultural Relativism in the Activism for Gender Justice' (2015) 30 *Berkeley Journal of Gender, Law & Justice* 226.

⁷⁰² The consequences of war and genocide, from the Nazis Holocaust to the Vietnam War, led to the conclusion that justice is far from being achieved when moral values and domestic norms exist, and hence universal human rights will be likely weakened; see R Afshari, 'An Essay on Islamic Cultural Relativism in the Discourse of Human Rights' (1994) 16(2) *Human Rights Quarterly* 235; J R Pennock, 'Rights, Natural Rights, and Human Rights: A General View' (1981) 23 *Nomos: American Society for Political and Legal Philosophy* 1.

⁷⁰³ J Donnelly, 'The Relative Universality of Human Rights' (2007) 29 (2) *Human Rights Quarterly* 283.

⁷⁰⁴ M A Baderin, 'Dialogue Among Civilisations as a Paradigm for Achieving Universalism in International Human Rights: A Case Study with Islamic Law' (2001) 2(2) *Asia-Pacific Journal on Human Rights & Law* 2.

⁷⁰⁵ J Donnelly, 'The Relative Universality of Human Rights' (2007) 29 (2) *Human Rights Quarterly* 289.

⁷⁰⁶ J Donnelly, 'Human Rights: Both Universal and Relative (A reply to Michael Goodhart)' (2008) 30 *Human Rights Quarterly* 195.

culture and show recognition of the cultural diversity in the world; this will, however, raise the issue of self-interest in which arbitrary ruling will be reinforced⁷⁰⁷.

Cultural relativism has been able to show that most of the international human rights standards represent Western traditions. It has been claimed that international human rights instruments “are based on a liberal, democratic, western perspective and interpretation of priorities and rights list, which have evolved from a western tradition of human rights philosophy”⁷⁰⁸. Maududi also asserts that “people in the West have a habit of attributing every good thing to themselves and try to prove that it is because of them that the world got this blessing”⁷⁰⁹. Similarly, Welch and Meltzer remarked that the international human rights “frameworks brought by colonialism were based on western liberal assumptions...[This resulted in] weakening the effectiveness of indigenous standards and traditional institutions without firmly implanting new ideas”⁷¹⁰, yet it does not undermine any culture or religion⁷¹¹.

This research believes that universality is an important factor in promoting human rights over the world and it has been strengthened after the emergence of the UDHR. Many developing countries at that time had no choice in deciding their fate and so in participation, as they were still under colonial rules. Subsequently, it is axiomatic that the UDHR will be inspired by Western traditions since the majority of the countries involved in its deliberating and drafting sessions were Westerners. They have inserted universal human rights standards into their domestic legislation, disseminated them and influence other societies, “irrespective of region, religion, or culture”⁷¹².

⁷⁰⁷ J Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) 6 *Human Rights Quarterly* 410 & 412.

⁷⁰⁸ A H Robertson, ‘Human Rights in the World: An Introduction to the Study of the International Protection of Human Rights’ (Manchester University Press, UK, 1982) cited in D O’sullivan, ‘The History of Human Rights Across the Regions: Universalism vs Cultural Relativism’ (1998) 2(3) *The International Journal of Human Rights* 23.

⁷⁰⁹ S A Maududi, ‘*Human Rights in Islam*’ (2nd ed, New Era Pubns, 2007) 15.

⁷¹⁰ C E Welch & R I Meltzer, ‘Human Rights and Development in Africa’ (1984) cited in C R M Dlamini, ‘The Violation of Human Rights in Africa: A Lesson for South Africa?’ (1991) 7(3) *South African Journal on Human Rights* 302.

⁷¹¹ R Higgins, ‘*Problems and Process: International Law and How We Use It*’ (Oxford University Press UK, 1995).

⁷¹² J Donnelly, ‘The Relative Universality of Human Rights’ (2007) 29 (2) *Human Rights Quarterly* 292.

7.4.1 The UDHR in Light of the Universalist-Cultural Relativist Conflict

Despite adopting the UDHR with the approval of the majority of members⁷¹³, some countries objected on the basis of particularities, including religious, cultural and political. There were six Communist countries objected on not excluding Fascists and Nazis from Articles 19 regarding the freedom of expression, and Article 20 of the UDHR concerning the freedom of association. They claimed that the Articles need to be amended as they reflect inclusivity⁷¹⁴. South Africa has also abstained voting in favour of approving the UDHR on basis of protecting humans from apartheid and racism, which were systemically practiced therein, it has precisely objected on the social, cultural and economic rights enshrined in the UDHR⁷¹⁵. The deliberations of the UDHR confirms the extent to which some countries were prioritizing their cultural motives and morals with an obvious disregard to the unanimity on the universality of certain rights⁷¹⁶.

In his article concerning the challenges to the universality of human rights, Ignatieff reinforced by identifying three obstacles: Islamic communities, East Asia and the West itself. He stated that Islamic countries fought against some of the universal human rights because of incompatibility with Islamic norms and values. His research came up to conclude that representatives from different origins, such as Asian, Middle Eastern, Western and Latin American should be asked to reflect their cultures while drafting the UDHR; hence he reasserted that the basic ground of the UDHR would be not merely Western, but rather universal⁷¹⁷. This fact has created a problem in regions that are

⁷¹³There were 48 voters in favour out of 58 members of the United Nations back then; i.e., Afghanistan, Argentina, Australia, Belgium, Bolivia, Brazil, Burma, Canada, Chile, China, Colombia, Costa Rica, Cuba, Denmark, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Greece, Guatemala, Haiti, Iceland, India, Iran, Iraq, Lebanon, Liberia, Luxembourg, Mexico, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Siam, Sweden, Syria, Turkey, United Kingdom, United States and Uruguay; Honduras and Yemen have abstained on the voting to adopt the UDHR; Czechoslovakia, Poland, Saudi Arabia, Soviet Union, Byelorussian SSR, Ukrainian SSR, South Africa and Yugoslavia have voted against the adoption of the UDHR. See J M Neuhof, 'The Most Powerful Idea in the World' (2008) available at <<https://bit.ly/3xYurv7>> accessed 6th Jan 2020.

⁷¹⁴ Meaning, the UDHR did not literally mention the term 'Nazi' in these Articles; P G Danchin, 'Drafting History' (n.d.) available from <<https://bit.ly/3kZ4Qin>> accessed 12th Feb 2020.

⁷¹⁵ F Kuwunu, 'Africa's Freedom Struggles and the Universal Declaration of Human Rights: 70 Years Since its Adoption, the Declaration has Inspired Liberation Movements' (2019) available from <<https://bit.ly/2TNyGei>> accessed 22nd Feb 2020; The Universal Declaration of Human Rights (adopted on 10 December 1948) UNGA Res 217 A(III); P G Danchin, 'Drafting History' (n.d.) available from <<https://bit.ly/3kZ4Qin>> accessed 12th Feb 2020.

⁷¹⁶ Research.UN.ORG, 'Drafting of the Universal Declaration of Human Rights' available at <<https://bit.ly/3zmXOYA>> accessed 6th Jan 2020; W A Schabas, 'The Universal Declaration of Human Rights' (Cambridge University Press, UK, 2013); also see P G Danchin, 'Drafting History' (n.d.) available from <<https://bit.ly/3kZ4Qin>> accessed 12th Feb 2020.

⁷¹⁷ M Ignatieff, 'The Attack on Human Rights' (2001) 80(6) *Foreign Affairs* 102.

mainly inspired by their own culture and religion,⁷¹⁸ including the Middle East. Saudi Arabia, for example, abstained on Articles 18 which has granted the “freedom to change...[own’s]...religion or belief” and Article 16 which has entitled men and women “to equal rights as to marriage, during marriage and at its dissolution” of the UDHR⁷¹⁹.

Apart from the universalist-relativist tension in the Arab World, some Arab countries voted in favour of adopting the UDHR. The unanimous view indicates that their participations were weak, mostly due to political aspects. Only few African countries, including Arab countries, were members in the United Nations when the UDHR has been adopted; “their participation in the development of the various rules was zero”⁷²⁰. In other words, they “were grotesquely underrepresented”⁷²¹. This research believes that other Arab countries experienced the same fate in term of weak representation; this is likely because they were either newly independent and hence deteriorated and exhausted, or under pressure from colonial countries. According to the Sykes-Picot Agreement in 1916 half of the Arab countries were under the British mandate, while France was entitled to handle others⁷²². This domination had affected Arab countries since then and they never become liberated until they had gained their complete independent.

There were six Arab members in the United Nations when the adoption of the UDHR in 1948 occurred; Egypt, Iraq, Lebanon, Saudi Arabia, Syria and Yemen. Iraq obtained independence in 1932 from Britain and the Iraqi government maintained its economic and military relations with Britain. This causes a number of revolutions against Britain and had led the country to instability, until 1958 when the Hashemite monarchy was overthrown, and Iraq became free from colonialism⁷²³. Ostensibly, moreover, Egypt

⁷¹⁸ R Brown & L Bjawi-Levine, ‘Cultural Relativism and Universal Human Rights: Contributions from Social Science of the Middle East’ (2002) 14(7) *The Anthropologist* 163.

⁷¹⁹ see section 5.6 in Chapter Five.

⁷²⁰ Kéba M’baye, ‘*Les Droits De L’homme En Afrique*’ (Pedone, Paris, 1992) 41 (in French, translated by Author); these countries are Egypt, Ethiopia, Liberia and South Africa.

⁷²¹ W A Schabas, ‘*The Universal Declaration of Human Rights*’ (Cambridge University Press, UK, 2013) cxx.

⁷²² See chapter three for more details about the history and struggle of the Arab countries towards colonialism.

⁷²³ M Walker, ‘The Making of Modern Iraq’ (2003) 27(2) *The Wilson Quarterly* 29; P Sluglett, ‘*Britain in Iraq: Contriving King and Country, 1914-1932*’ (Columbia University Press, New York, 2007) 1; see K Deeb, ‘*Brief History of Iraq: From the Twentieth Revolution to the American wars, resistance, liberation, and the establishment of the Second Republic*’ (Dar Alfarabi, Beirut, 2013) 32 (in Arabic, translated by Author); also see G Najeeb, ‘British Policy Towards Iraq 1918-1945’ (2011) available at <<https://bit.ly/3kQcPhr>> accessed 17th Jan 2020 (in Arabic, translated by Author).

gained independence from Britain in 1922, yet it remains under British mandate until 1952. This led to the rise Arab nationalism, especially after the Palestinian cause. The struggle against colonialism and its nominal ruling continued until the Free Officers revolution on 23 July 1956, because of which the monarchy ended, and the republican system had been proclaimed⁷²⁴.

Among the mentioned above Arab countries, the French share was on Lebanon and Syria. The Lebanese Republic became independent in 1943, while Syria in 1945. The French troops eventually withdrawn from both countries in 1946⁷²⁵. This brief historical background suggests that the decisions that were taken by the mentioned above Arab member states of the United Nations on approving the UDHR were rather not trustworthy and lack full conviction. This would be probably due to the fact that they were influenced by matters related to their destiny, autonomy and self-determination. Their participation in these sessions could have had provided them the chance to negotiate, discuss or to establish a dialogue as a minimum appreciation to their entities; and hence they would probably be able to provide something that reflects their culture and struggle, and may be valuable and counted as the answer for this contemporary debate⁷²⁶.

⁷²⁴ S Zunes & J Laird, 'Egyptian Independence: 1919-22' (2009) available from <<https://bit.ly/3iGUfWf>> accessed 17th Jan 2020; H J Carman, 'England and the Egyptian Problem' (1921) 36(1) *Political Science Quarterly* 51.

⁷²⁵ J M Dostal, 'Syria and the great powers (1946-1958): How Western Power Politics Pushed the Country Toward the Soviet Union' (2015) 7(4) *Syria Studies* 7; F Traboulsi, 'A History of Modern Lebanon' (2nd eds, Pluto Press, London, 2012) 88; F A Zuegar, 'The General Situation in Lebanon and its Repercussions on Siriya 1918-1943' (2013) 37(63) *Mustansiriyah Journal of Arts* 2 (in Arabic, translated by Author); Y Olmert, 'A False Dilemma? Syria and Lebanon's Independence during the Mandatory Period' (1996) 32(3) *Middle Eastern Studies* 41.

⁷²⁶ Two points can be extracted from this: 1) unless the aforementioned countries were under colonialism, they would be independent and, have had the chance to participate in the drafting sessions of the UDHR and, share their cultural morals, norms and values with other members, 2) developed countries, such as the Middle East, succeeded in merging the international human rights standards with the cultural norms and morals, although it has been faced by criticism. Unlike the UDHR, regional human rights instruments emphasise on the necessity for maintaining aspects of that region's culture, in addition to the universal principles, in application of their provisions by member states. A good and explicit example is Article 29(7) of the African Charter on Human and People's Rights, which states that every individual must "preserve and strengthen positive African cultural values in his relations with other members of the society, in the spirit of tolerance, dialogue and consultation and, in general, to contribute to the promotion of the moral wellbeing of society". Another relevant example is the preamble of the Arab Charter on Human Rights, which emphasises adherence to the "faith of the Arab nation in the dignity of the human person whom God has exalted ever since the beginning of creation...[, and the] principles of fraternity, equality and tolerance among human beings consecrated by the noble Islamic religion and the other divinely-revealed religions".

The world situation post-World War II, precisely due to winning the war, the Allies become empowered and capable of leading the world. This domination reduced the possibility of sharing other than their culture within the UDHR, since many countries were either under colonialism and cannot be involved, or their participations are insufficient and/or inactive. Arab countries have two views with regard to adopting the UDHR: oppositions, due to conflicting their particularities and supporters but hesitant and in doubt. They have later unified their views when adopting the ICCPR and the ICESCR, but this was still with reservations and cautions⁷²⁷. This gradual acceptance might be due to the sources of the UDHR, which mainly based on man-made laws rather than divine instructions, such as Islamic Sharia, in which Arab countries have been following long ago, as previously mentioned.

7.4.2 Undermining Universality by Culture

Three main questions must be considered here: “what a culture “should” be and what it “should” promote and what it “should” reject”⁷²⁸. This is likely the reason behind Arab countries adherence to their culture, and their refusal to any foreign, alien or obtrusive notion that contradicts the principles of Islam as “human rights advocates in the Muslim world must work within the framework of Islam to be effective”⁷²⁹. A good example would be Arab countries divergent stances within the process of adopting international agreements, as they tend to act morally and impose some reservations on the provisions that contradict Islam, but at the same time they have concerns about prejudicing their position within the international community. It is obvious from the reservations that Arab countries oppose some provisions within the international human rights agreements for contradicting Islam, such as the death penalty⁷³⁰. This has been reinforced by cultural relativism which is seen as a normative power that function in ensuring respect for, and adherence to cultures; hence human rights will be implemented upon the cultural norms, values and morals⁷³¹.

⁷²⁷ See Chapter 5 for more details.

⁷²⁸ D J Boudreaux, *‘Globalization’* (Greenwood Press, London, 2008) 87; see chapter 2 for more details.

⁷²⁹ A A An-Na’im, ‘Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives-A Preliminary Inquiry’ (1990) 3 *Harvard Human Rights Journal* 15.

⁷³⁰ See chapter 5, sub-heading ‘Members of the Arab Human Rights System and the International Human Rights Instruments’.

⁷³¹ A D Renteln, ‘Relativism and the Search for Human Rights’ (1988) at 56, cited in J Donnelly, ‘The Relative Universality of Human Rights’ (2007) 29 (2) *Human Rights Quarterly* 294.

Another Islamic perspective on this issue is based on the universality of the Islamic Sharia, as it is an immortal doctrine valid everywhere and every time and has been devoted to all humans irrespective of their divergence origins, sex or colour etc. Islamic Sharia is underpinned by basis and principles that address human rights of all time. It endorsed human rights not only for Muslims, but also for all humans, all over the world, since more than 14 centuries⁷³². Over and above, the implementation of the Islamic Sharia provisions, requirements and principles bend humans to respect universal human rights. Claiming that universal human rights are Western and must be resisted in order to preserve the Islamic identity is rather tenuous. Islam has dignified humans and protected their rights since its emergence, it achieved uniqueness in imposes freedoms and equality without any type of discriminations⁷³³.

The Author of this research contemplates and wonders how could Islam oppose the concept of human rights in spite of their penetration within its instructions, norms and values. Este'lami maintains that "the first references to the universality and pluralism quoted in Islamic philosophical...sources are taken from the Qur'an itself"⁷³⁴, which counted as the fundamental source of Islam. The invocation of defending Islamic identity in such context is rather irrational, because opposing universality will hinder the message of the Qur'an, which aims "to guide people, make them aware about good and evil, so that they could live peacefully on this earth and here after"⁷³⁵. Islamic guides and instructions reinforce Islam's position towards human rights and negates the view that its concept centralised on the West.

However, it has been observed that the UDHR lack or probably compelled to exclude any reference to cultural particularities, including these in relation to civilisations and influence by religion. This is mostly due to the strict discussions and deliberations during the preparatory work of the UDHR, that expectedly included members attempts of

⁷³² A N Turan, 'Civil Human Rights in the Islamic Law and the International Law: Personal Rights as a Model/ A Comparative Study' (Master, Institute of Arab Research and Studies, League of Arab States, Cairo, 2012) 81 (in Arabic, translated by Author).

⁷³³ S Allughmani and others, '*The Concept and Fundamentals of Human Rights*' (Arab Institute for Human Rights, Tunis, 2003) 33 (in Arabic, translated by Authod).

⁷³⁴ M Este'lami, 'Rumi and the Universality of his Message' (2003) 14(4) *Islam and Christian-Muslim Relations* 429.

⁷³⁵ T Haider, 'Universality in the Message of Quran' (2016) 4(2) *Journal of South Asian Studies* 61.

weighting their views, which express their cultures. Hence, considering universal human rights as representing the whole world's cultural characteristics is feeble⁷³⁶.

This research also believes that the world situation post-World War II era, precisely due to winning the war, empowered the Allies and led them to be capable of leading the world⁷³⁷. This resulted in neglecting the inclusion of cultures in the UDHR, since many countries were either under colonialism and cannot be involved, or their participations are insufficiently and/or inactive⁷³⁸. In addition, other countries showed hesitation and concerns about embracing the universality of human rights on ground of culture notwithstanding they have adopted the UDHR, as mentioned in the previous section.

In 1993, the United Nations hosted the World Conference on Human Rights (WCHR II) and urged states to do some preparatory arrangements, including regional meetings in Tunis, San Jose and Bangkok. The purpose of these preparation meetings was to discuss member states progression, obstacles, achievements and failures in human rights in order to be presented later in the Conference. Apart from other regions, the Bangkok conference gathered representatives from Asia in which they have had the opportunity to unify their thoughts, opinions and probably decisions. As an outcome of the Asian preparatory sessions in Bangkok, the Bangkok Declaration has been released⁷³⁹. The Bangkok Declaration reflects the Asian member states interest in human rights and their preference to cultural particularities by undermining the universality of human rights, stating that it "must be considered in the context of a dynamic and evolving process of international norm-setting, bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds"⁷⁴⁰. Following

⁷³⁶ P Dubinsky et al., 'What is a Human Right? Universal and the Challenge of Cultural Relativism' (1999) 11 *Pace International Law Review* 107.

⁷³⁷ For example, the Yalta Conference, which was held after the surrender of the Axis in early February 1945 between the Allies leaders, in order to organize the post-WW2 world in a way that preserve the world peace and security; see DOS, 'The Crimea (Yalta) Conference' In: *A Decade of American Foreign Policy: Basic Documents 1941-49* (Department of State, Washington, U.S, 1985) 23.

⁷³⁸ J Donnelly, 'Cultural Relativism and Universal Human Rights' (1984) 6 *Human Rights Quarterly* 403

⁷³⁹ In 1993, the United Nations hosted the second World Conference on Human Rights and had urged states to do some preparatory arrangements, including regional meetings in Tunis, San Jose and Bangkok. The purpose of these preparations was to discuss human rights progression, obstacles, achievements and failures, to be presented later in the Conference. Apart from other regions, the Bangkok conference gathered representatives from Asia in which they had have the opportunity to unify their thoughts and opinion.

⁷⁴⁰ L M Singhvi, 'Bangkok Declaration' in the UN Rapporteur Report of the Regional Meeting for Asia of the World Conference on Human Rights, Bangkok, 29 March- 2 April 1993, A/CONF.157/ASRM/8 or

these regional preparatory meetings, particularly within the sessions of the WCHR II, the Chinese delegation also supported this by emphasising in the speech of its representor Mr Liu Huaqiu that:

human rights is a product of historical development. It is closely associated with specific social, political, and economic conditions and the specific history, culture, and values of a particular country. Different historical development stages have different human rights requirements. Countries at different development stages or with different historical traditions and cultural backgrounds also have different understanding and practice of human rights. Thus, one should not and cannot think of the human rights standard and model of certain countries as the only proper ones and demand all countries to comply with them⁷⁴¹.

Despite the fact that the Asian representatives justified their alleged point of view with what were so-called the 'Asian Values' or the Asian cultural "traditional" values⁷⁴², due to which they believe that they are more appropriate to be applied in their region than Western standards⁷⁴³ some of their following actions may give dissenting and illogical impression. As one of the Asian set of values emphasised that "racial and religious tolerance and harmony"⁷⁴⁴ is respected, protected and promoted. On 24 June 1993 the Deputy Chairman of the delegation of China sent a letter to the President of the WCHR

A/CONF.157/PC/59, available from <<https://digitallibrary.un.org/record/167021?ln=en>> accessed 21st Feb 2020 (Article 8) 5.

⁷⁴¹ L Huaqiu, 'Vienna Conference Statement (1993)' in S C Angle & M Svensson (eds), *The Chinese Human Rights Reader: Documents and Commentary 1900-2000* (Routledge, New York, 2015) 392; also see 'Selected Documents on Human Rights: Chinese and Asian Perspectives' (2002) 1(2) *Chinese Journal of International Law* 737.

⁷⁴² The Asian Values is an ideology that mostly centralised in People's Republic of China, Singapore, Malaysia, and Indonesia. They based on familism, communalism, authority orientations and work ethics. They have been faced by criticism for opposing the principles of universality and modernity; see S Y Kim, 'Do Asian Values Exist? Empirical Tests of the Four Dimensions of Asian Values' (2010) 10(2) *Journal of East Asian Studies* 315; J Bauer, 'The Bangkok Declaration three years after: Reflections on the state of the Asia-West dialogue on human rights' (1996) *Human Rights Dialogue* 1.4, available from <<https://bit.ly/3zDXlf4>> accessed 21st Feb 2020.

⁷⁴³ M R Thompson, 'Pacific Asia after 'Asian Values': Authoritarianism, Democracy, and 'Good Governance'' (2004) 25(6) *Third World Quarterly* 1079.

⁷⁴⁴ Shared Values, 'White Paper' (Singapore: Singapore National Printers, 1991) 1; B H Chua, 'Communitarian Ideology and Democracy in Singapore' (Routledge, London, 1995) 32; also see L Jenco, 'Revisiting Asian Values' (2013) 74(2) *Journal of History of Ideas* 237.

II, objecting on the Austrian delegates for their invitation to the Dalai Lama⁷⁴⁵ to attend the conference. They claimed that Dali Lama has previous attempts of destabilising the security of China with the aim of dividing the country, so he has no business in such conference. Moreover, the Austrian authorities should not invite him, and this is against the principles of the Charter of the United Nations. They added that he has been trying to revive the servitude system practiced in Tibet⁷⁴⁶. On that account, the Author of this research believes that regardless to any ambitious or visions the Dalai Lama wished to achieve, distorting his image with such allegations can only be translated as an encroachment not only on his right and dignity as a human being but also on his thoughts and beliefs (Buddhism). This is also an obvious contradiction to the Asian Values.

This problematic issue can be summarised by the consequences resulted from the Cold War, in which the third world country's economic and politics have been widely affected, beside the impacts of the globalisation dimensions. This attracted the Western Bloc to impose some domination on the Eastern Bloc and other neutral countries⁷⁴⁷. China used to believe that "some Western nations, under the banner of protecting universal human rights, were seeking instead to interfere in the internal affairs of other countries and to impose their own ideology and version of democracy on such countries"⁷⁴⁸.

Over and above, China was visualising this as "a form of power politics"⁷⁴⁹. This was, however, not convincing for the WCHR II who unanimously affirmed that member states must show their respect for human rights by accepting international human rights agreements and the human rights enforcement mechanisms, in order to ensure the

⁷⁴⁵ The title given to the Buddhist priests of Mongolia and the Tibetan territories of southwestern China; see 'Lama, n', (Oxford English Dictionary Online, Oxford University Press, June 2020) available from <<https://www.oed.com/view/Entry/105207?rkey=qiQvO4&result=1#eid>> accessed 21st Feb 2020.

⁷⁴⁶ Digitallibrary.UN.org, 'Letter Dated 93/06/24 from the Deputy Chairman of the Delegation of China to the President of the World Conference on Human Rights' (1993) available from <<https://bit.ly/2V6KUyZ>> accessed 21st Feb 2020.

⁷⁴⁷ M C Davis, S Hom & A D'Amato, 'Chinese Perspectives on the Bangkok Declaration and the Development of Human Rights in Asia' (1995) 89 *Proceedings of Annual Meeting (American Society of International Law)* 157; N Jiang, 'China and International Human Rights: Harsh Punishments in the Context of the International Covenant on Civil and Political Rights' (Springer-Verlag, Berlin, 2014) 5.

⁷⁴⁸ M D Kirby, 'International Legal Notes: Second World Conference on Human Rights, Vienna' (1993) available from <<https://bit.ly/3l1TmdO>> accessed 19th Feb 2020, 3.

⁷⁴⁹ 'Selected Documents on Human Rights: Chinese and Asian Perspectives' (2002) 1(2) *Chinese Journal of International Law* 738.

theoretical and practical implementation of these agreements⁷⁵⁰. This has been later confirmed in Article 5 of and the Vienna Declaration and Programme of Action (VDPA), which indicates that:

human rights are universal, indivisible and interdependent and interrelated. The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms⁷⁵¹.

Claiming that human rights is Western, is rather an inaccurate idea because the concept is a shared legacy that derived from civilisations and nations through the history of human beings. Universality affirms that wherever there is human, they must be enjoying the whole required rights that ensures their humanity in anywhere. It has been stated that the French Declaration of the Rights of the Man and of the Citizen of 1789 was not merely targeting Frenchs, rather it was formulated for the benefit of every human regardless to his nationality, origin or geographic spot⁷⁵². René Cassin also maintained that the rights enshrined in the UDHR are universal in term of revelation, range, content, scope of application and strength, as they look after human being who lives in any society⁷⁵³.

⁷⁵⁰ Meeting of Chairpersons of International and Regional Human Rights Treaty-based bodies, 'Recommendations for Enhancing the Effectiveness of United Nations Activities and Mechanisms: Vienna Statement of the International Human Rights Treaty Bodies 15-16 June 1993' (1993) UN Doc. A/CONF.157/TBB/4 (2).

⁷⁵¹ 'Vienna Declaration and Programme of Action' adopted on 25 June 1993, UN Doc. A/CONF.157/23 Article 5.

⁷⁵² F Sudre, *International and European Human Rights Law* (4th ed, University Presses of France, 1999) 41 (in French, translated by Author).

⁷⁵³ R Cassin, 'International Law and the Universal Protection of Human' in C Rousseau (eds.) *Techniques and Principles of Public Law: Studies in Honor of Georges Scelle* (vol. 1, General Library of Law and Jurisprudence, Paris, 1950) 77 (in French, translated by Author); René Samuel Cassin is a French jurist, humanitarian and academic who played a major role in the Drafting process of the UDHR, and received a Noble Peace Prize in 1968 accordingly; see Nobleprize.org, 'René Cassin Biographical' available from <<https://bit.ly/3i9Jsoz>> accessed 19th Feb 2020.

In this regard, the message behind Article 1 of the UDHR⁷⁵⁴ is to demonstrate that the declaration is a shared global paradigm that entitles all human beings for the purpose of enhancing human rights and its universality. Furthermore, the preamble of the Vienna Convention on the Law of Treaties of 1969 (VCLT) also confirmed that member states must regard the principles of the international law enshrined in the Charter of the United Nation, including the “universal respect for, and observance of, human rights and fundamental freedoms for all”⁷⁵⁵. It can be, therefore, deduced that human rights must be enjoyed universally with the consideration of cultural particularities in order to ensure humanity to every person. The universality of human rights guarantees that every human in the world, since their birth, will benefit from the inalienable rights that enshrined in the international human rights agreements, without any type of discriminations. States must take the responsibility of the harmonisation between these universal human rights standards and their particularities. This will create solid standards that would probably halt the cultural invasion by which powerful countries are attempting to imposed in a globalised era.

7.5. Concluding Remarks

So far, this chapter was undertaken to highlight the theories of universalism and cultural relativism, and to demonstrate the tension between them. It began with an explanatory overview of the theories, including their definitions, types, strengths and weaknesses. The tension between them seems to be ‘chronic’ and its destiny is ‘unpredictable’. It is appearing from the literature that the term universality is more dominant and has deeper historical roots than cultural relativism, which is newer and was established in the last century. This makes it widely acceptable and hence gained legitimacy by creating solid ground in international law. Nonetheless, it has been confronted by cultural relativism in which morals and values counted as the main source of human rights, and since morals differs from culture to culture, one’s cannot judge other cultures on ground of his/her own morals and values.

⁷⁵⁴ “All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood”; Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) Article 1.

⁷⁵⁵ Vienna Convention on the Law of Treaties (adopted 23 May 1969, entered into force 27 Jan 1980) 1155 U.N.T.S. 331, 8 I.L.M. 679 (VCLT).

There are three jurisprudential theories underpinned by universalism. The first is natural law, meaning that all humans are granted inalienable rights equally by God. The discussion of this chapter indicates that this is impossible, since the various cultures and religions in the world have several moral codes; none of them are superior to the others, hence it cannot be accepted and/or adopted. The second theory assumes that universal human rights are based on merely rational thinking and reasoning; cultural morals, norms and values has nothing to do with human rights. This theory known as rationalism and it has been criticised by relativism for representing Western traditions, hence it will not be able to represent the various cultures in the world. The third theory is positivism, which means that human rights are only those enshrined in international agreements and just like other theories, it does not bear any concern to cultural norms.

However, the chapter has also shown that diverse cultures have different moral codes and hence different interpretation of human rights; hence international standards are far from being implemented accordingly. Additionally, this will likely enhance states sovereignty and, promote people's right to self-determination, on the one hand, and boost tyranny and abuse of power, on the other.

The main objective in this conclusion is to clarify universalism and cultural relativism in order to answer the question of which of the two theories would be best applied in the Arab World? Is it the former, the later or perhaps both of them? Answering these questions required penetration into historical, philosophical, theoretical and normative views due which the argument of this research will be enhanced; namely, figure the suitable path to promote and protect human rights in the Arab World. This will be explored when applying the neo-relativist approach in which one of the existences attempts of reconciling the two theories will be chosen, developed and applied on the Arab human rights instruments. Therefore, the chapter that follows will highlight a number of former attempts of reconciling the two theories for the sake of protecting human rights; in order to choose the best applicable model in the Arab world.

CHAPTER 8: FROM UNIVERSALISM TO CULTURAL RELATIVISM TO NEO-RELATIVISM

8.1. Introduction

In light of the previously demonstrated tension between universalism and cultural relativism, this chapter will seek to address the proper attempts of reconciling the two theories them, followed by contextualisation on the Arab human rights paradigm; that is, applying it on their human rights instruments. Universalism and cultural relativism, as presented through the course of the previous chapter, have shown a deep conflicting basis. The Arab World will then need feasible standards in order to enhance the human rights therein. Vitkauskaite-Meurice holds that regional human rights instruments, which are relative to a certain ideology or culture, are more likely to be comprehensive than the universal one⁷⁵⁶. It is believed that this is right because regional instruments must be assigned in accordance with the regional culture in which they will function, in order to provide as much human rights protection as possible to the people of that region⁷⁵⁷. For instance, including Article 14 concerning the right to reply to injurious statements released by the media and Article 21 regarding the right to property, in the American Convention on Human Rights⁷⁵⁸.

In fact, human rights on the regional or local level complement the international one and enhance the understanding and embracement of the human rights concept. Regional human rights systems, which are mostly based on universal standards⁷⁵⁹, and

⁷⁵⁶ D Vitkauskaite-Meurice, 'The Arab Charter on Human Rights: The Naissance of New Regional Human Rights System or a Challenge to the Universality of Human Rights?' (2010) 1(119) *Jurisprudencija* 165.

⁷⁵⁷ An important issue must be kept in mind here, creating a regional human rights standard will not undermine International standard, on the contrary it will complement the international standards. The common factors prevailed in a certain region, including geographical, cultural political and the economy, will likely ensure the acceptance of the human rights concept or agreements by member states. This is because the foundations of these agreements were considered on ground of the cultural essences of the region, such as morals, values and religion. Moreover, the international enforcement mechanisms of human rights must keep into consideration the human rights regional systems, and this will facilitate their missions on the domestic level. To this end, international human rights standards must be interpreted internally as per state's culture so individual daily life will be regarded. Most importantly, the regional system will indirectly enhance in the legitimization of the international human rights standards; see F S Kroetz, 'Between Global Consensus and Local Deviation: A Critical Approach on the Universality of Human Rights, Regional Human Rights Systems and Cultural Diversity' (2016) 3(1) *Revista de Investigações Constitucionais* 43.

⁷⁵⁸ 'The American Convention on Human Rights' O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992).

⁷⁵⁹ C Schreuer, 'Regionalism v. Universalism' (1995) 6(3) *European Journal of International Law* 477.

tasked to serve specific region are supporting international human rights treaties.

Paragraph 37 of the first section of the VDPA emphasises that:

Regional arrangements play a fundamental role in promoting and protecting human rights. They should reinforce universal human rights standards, as contained in international human rights instruments, and their protection. The World Conference on Human Rights endorses efforts under way to strengthen these arrangements and to increase their effectiveness, while at the same time stressing the importance of cooperation with the United Nations human rights activities.

The World Conference on Human Rights reiterates the need to consider the possibility of establishing regional and sub-regional arrangements for the promotion and protection of human rights where they do not already exist⁷⁶⁰.

Regional human rights systems, accordingly, have another duty beside protecting their member states' human rights; supporting international human rights and hence they complement each other to an extent. As they must consider both international and cultural standards; this can be seen in the Arab paradigm. It has been argued that the Charter should be the best attempt to address the tension between universality and cultural relativism, because it is derived from the Charter of the United Nations, the International Bill of Human Rights and the Cairo Declaration of the Organization of Islamic Cooperation on Human Rights (previously known as the Cairo Declaration on Human Rights in Islam)⁷⁶¹. However, it failed to do so due to incompatibility with international human rights standards. In other words, the influence of the Cairo Declaration on Human Rights in Islam has negatively affected the Charter's provisions, for instance imposing restrictions on the rights of women to freedom of movement⁷⁶².

⁷⁶⁰ 'Vienna Declaration and Programme of Action' adopted on 25 June 1993, UN Doc. A/CONF.157/23.

⁷⁶¹ Cairo Declaration on Human Rights in Islam, 5 August 1990, Organization of the Islamic Conference (OIC), adopted at the Islamic Conference of Foreign Ministers, Cairo, 1990; Y A A-Othaimeen, 'OIC Adopts A Contemporary Declaration on Human Rights' (*oic-oci.org* 2020) available from <<https://bit.ly/2Z805dc>> accessed 20 Sep 2021; T Kayaoglu, 'The Organization of Islamic Cooperation's Declaration on Human Rights: Promises and Pitfalls' (*brookings.edu* 2020) available from <<https://rb.gv/drqljt>> accessed 4th June 2022.

⁷⁶² D Vitkauskaitė-Meurice, 'The Arab Charter on Human Rights: The Naissance of New Regional Human Rights System or a Challenge to the Universality of Human Rights?' (2010) 1(119) *Jurisprudencija* 172.

Although this indicates that the Charter is based on universal and cultural standards of human rights, it also indicates that it failed in reconciling them. Chapters 5 & 6 of this research shows that the Charter and the Court Statute are relatively defective and need to be advanced in spite of their inclusion of a frank statement referring to their adherence to both international human rights standards and the Arab cultural norms⁷⁶³. The potential approach of this research must involve or be inspired by both universal human rights standards and cultural norms, values and morals; and hence the processes of reformatting the Arab human rights instruments will be on ground of the premise of this research, namely: the neo-relativist approach.

In doing so, the chapter will provide a discussion of previous noteworthy attempts of reconciling the two theories; it will then move on to identify the suitable one in terms of meeting the Arab World human rights theoretical requirements. An approach based on the mentioned steps will be adopted as a requirement to fulfil the main objective of this research; that is, applying the neo-relativist in order to enhance the human rights protection in the Arab World. The chapter will consist of two sections, the first will address the notable initiatives of reconciling universality and cultural relativism; while the second will be entitled to develop the required approach through which the neo-relativist will be applied.

8.2. Attempts of Bridging the Gap Between Universalism and Cultural Relativism
The tension between the two theories began just after the adoption of the UDHR and, it then gained more seriousness and had received attention when the International Bill of Human Rights was approved and released. Since then, a number of remarkable published studies have enriched the literature as they have called for a satisfactory path by which the universal human rights standards can be applied without conflicting cultural values. Before proceeding, it is important to note that most of the examined work relates the discourse to Islam; this might be due to Islam's sensitive stance about human rights which made it a fertile paradigm for research. Three main brilliant theories will be discussed within the following pages and will then be followed by a brief about other various attempts.

⁷⁶³ A summary of these outcomes can be found in the conclusion of Chapter Five and Six.

8.2.1 The Relative Universality of Human Rights

Jack Donnelly is an international human rights and international relations theorist, who published several articles with regards to universality and cultural relativism of human rights. He asserted on the importance of adopting an approach that reconciles the theories of relativism and universalism⁷⁶⁴. In his attempt to do so, Donnelly insists “on some form of weak cultural relativism; that is, on a fundamental universality of basic human rights, tempered by a recognition of possible need for limited cultural variation. Basic human rights are, to use as appropriately paradoxical phrase, relatively universal”⁷⁶⁵.

He maintains that the rights that reflect human dignity constitute general values and are defensible, including the right to life, liberty, security of person, legal personality, protection against slavery, arbitrary arrest, detention, exile and torture, must be recognised. These rights are more likely to be considered as universal human rights. Secondly, civil rights are classified as universal or culturally relativist, according to the community in question. Another set of human rights tends to be organised by cultures, for example, the conditions of marriage. Strong cultural relativism may encounter the problem of transformation and modern groups who do not wholly believe in cultural and traditional values. Consequently, would it be better for communities to act upon their right of self-determination against these radicals or should individuals call for universal human rights standards against the traditional values? Later, he argued the possibility of limiting the universal human rights standards, by adopting ‘the relative universality’, a term he employed to describe a common ground between universalism and cultural relativism⁷⁶⁶.

The theory of relative universality implies that the idea of human rights is universal but its interpretation and implementation is culturally relative⁷⁶⁷. If we get back to the previous chapter, we will find that this is much similar to weak cultural relativism. It has been argued that cultural relativism must be involved in the essence of the human rights lists, within the interpretations and implementations of individual rights⁷⁶⁸; that is,

⁷⁶⁴ J Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) 6 *Human Rights Quarterly* 400

⁷⁶⁵ J Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) 6 *Human Rights Quarterly* 419.

⁷⁶⁶ J Donnelly, ‘The Relative Universality of Human Rights’ (2007) 29(2) *Human Rights Quarterly* 281.

⁷⁶⁷ J Donnelly, ‘Cultural Relativism and Universal Human Rights’ (1984) 6 *Human Rights Quarterly* 402.

⁷⁶⁸ J Donnelly, ‘The Relative Universality of Human Rights’ (2007) 29(2) *Human Rights Quarterly* 281.

specific and narrow rights will provide capacity for various interpretation of the world societies as per cultural beliefs. Assuming the ““interpretations” of a right are logically limited by the substance of a right. Even the range of variation in substance is set by the notions of human nature and dignity from which the list of rights derives”⁷⁶⁹.

Relative universality is underpinned by the outcomes of investigating several theories; four of them are likely counted as the basic of relative universality. Firstly, the overlapping consensus universality. on top of what have been mentioned in the previous chapter, it refers to the unanimous acceptance on the idea that human rights are universally recognised and adhered by the various societies of the world. The second is the international legal universality, which presume that countries all over the world agreed on the universal human rights standards, and hence are committed to adopt them. Thirdly, functional universalism. It means that universal human rights are entitled to equally provide humans all over the world with the all the requirements to preserve and protect dignity from possible threats. The last theory is ontological universality which implies that the complete enjoyment of human rights is challenging as almost all doctrines showed noticeable ignorance, to the contemporary understanding of human rights, through history⁷⁷⁰.

Donnelly’s defensive view on “functional, international legal, and overlapping consensus universality...[, and his counter argument]...that...anthropological and ontological universality are empirically, philosophically, or politically indefensible”⁷⁷¹, came to an end that human rights must be relatively universal. In other words, the universal set of human rights will be accepted and recognised all over the world; cultural beliefs will also be considered while interpreting and implementing these universal rights. This means states will be able to determine to appropriate methods to promote human rights in accordance with their interpretation of this right which mostly is influenced by cultural norms and values, including religion. This will also enhance states sovereignty, autonomy and people’s self-determination.

⁷⁶⁹ P G Danchin, ‘Drafting History’ (n.d.) available from <<https://bit.ly/3aLPLdj>> accessed 12th Sep 2020.

⁷⁷⁰ J Donnelly, ‘The Relative Universality of Human Rights’ (2007) 29(2) *Human Rights Quarterly* 281; J Donnelly, ‘Universal Human Rights in Theory and Practice’ (3rd ed., Cornell University Press, U.S, 2013) 94 & 96.

⁷⁷¹ J Donnelly, ‘The Relative Universality of Human Rights’ (2007) 29(2) *Human Rights Quarterly* 281.

For example, lesbian, gay, bisexual, and transgender (LGBT)⁷⁷² rights. Apart from what they are or what they became, they are human at the end and entitled to enjoy the set of human rights just like others. It has been stated that cultural and ethnic diversity differences are essentials in LGBT matters and must be taken into consideration⁷⁷³. The author of this research denies LGBT practices on the grounds of religion and morals, yet believes that every human must enjoy the set of rights provided and protected by the states; otherwise, discrimination will be existing. However, in case of state that relies on religious foundations that oppose the ideologies of LGBT in forming their laws, then LGBT enjoyment of human rights will depend on the cultural beliefs and religion more than international relevant standards. In short, although such thoughts are condemned in Arab societies and the person who practiced them will mostly treated as pariah not only by the government, but also the people, this person will not be banned from practicing other human rights.

Another relevant example would be Article 19 of the UDHR which grants every person the freedom of opinion, speech and expression, and it is accepted and widely recognised over the world, yet in theory. As applying this right by the various societies and cultures in the world draw different limitation on ground of their culture context, values or religion...etc, such as the possibility of providing different definition and interpretation for hate speech from culture to another⁷⁷⁴.

Furthermore, Article 18 of the UDHR⁷⁷⁵ ensures the right to freedom of thought, conscience and religion. Muslim's countries generally endorsed this right, yet opposed the part that indicates human have the right to change their religion. This is because it contradicts Islamic values and instructions. This is called in Islam Apostasy. A person who committed apostasy must face death penalty, as per Islam. Instead, relative universality suggests the promotion to states with the authority to decrease "certain benefits to

⁷⁷² LGBT is an abbreviation of lesbian, gay, bisexual and transgender; 'LGBT, adj & n.', (Oxford English Dictionary Online, Oxford University Press, June 2020) available from <<https://bit.ly/3FKVE99>> accessed 13th May 2021.

⁷⁷³ S M Gallor & R E Fassinger, 'Social Support, Ethnic Identity, and Sexual Identity of Lesbians and Gay Men' (2010) 22(3) *Journal of Gay & Lesbian Social Services* 288

⁷⁷⁴ J Donnelly, 'The Relative Universality of Human Rights' (2007) 29(2) *Human Rights Quarterly* 302.

⁷⁷⁵ Article 18 of the UDHR states that "Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance".

apostates, as long as those benefits are not guaranteed by human rights”⁷⁷⁶. This means, Arab countries will adopt this right as presented universally, yet will object on granting Muslims the ability to change their religion, as per Islam.

However, relative universality has been faced by criticism⁷⁷⁷. In his comment on relative universality, Michael Goodhart indicates that human rights are neither universal nor relative, human rights are legitimate. He argued that human rights inclusiveness and uniformity must replace conceptual universality, and functional universalism must be replaced with the generality of the threats that human rights are ought to respond at. Further, the issue of various views in the world that interpret and implement human rights must also be replaced with international legal universality, beside the concurrence of the human rights concept. Moreover, human rights legitimacy might be enhanced when universal human rights are rejected, this is because they acquire this treat for merely being global. Even more, stating that human rights are simultaneously universal and relative is confusing⁷⁷⁸.

Apart from other responses, Donnelly defend relative universality by claiming that, in short, if human rights are neither universal nor relative “then abandoning the language of universality (and relativity) would indeed be called for...[, and the]...proposed alternatives, when they are not themselves clumsy and confusing, are neither unusually clear nor particularly penetrating”⁷⁷⁹. Having those human rights are accepted all over the world is in itself a positive impression and counted as an achievement for advocates, even though states are responsible of their interpretation and implementation. A first impression would reflect consent and the assumption that the relative universality would make difference if adopted to amend the Arab human rights instruments. However, since the intention of this section is to examine previous works of reconciling

⁷⁷⁶ J Donnelly, ‘The Relative Universality of Human Rights’ (2007) 29(2) *Human Rights Quarterly* 302.

⁷⁷⁷ M Goodhart, ‘Neither Relative nor Universal: A Response to Donnelly’ (2008) 30 *Human Right Quarterly* 183; S On, ‘The “Relative Universality” of Human Rights: An Assessment’ (2005) 4(3 & 4) *Perspectives on Global Development and Technology* 577; R Afshari, ‘Relativity in Universality: Jack Donnelly's Grand Theory in Need of Specific Illustrations’ (2015) 37 *Human Right Quarterly* 854.

⁷⁷⁸ These are few criticisms of relative universality; M Goodhart, ‘Neither Relative nor Universal: A Response to Donnelly’ (2008) 30 *Human Right Quarterly* 183

⁷⁷⁹ J Donnelly, ‘Human Rights: Both Universal and Relative (a Reply to Michael Goodhart)’ (2008) 30 *Human Right Quarterly* 200.

universalism and cultural relativism, the following pages will cover another attempt of reconciling universalism and cultural relativism.

8.2.2 Moderate Cultural Relativism

The second idea is the outcome of a hard work that last for nearly three decades and it mainly focuses on reconciling the universal human rights standards with cultural beliefs, in particular religions. It is considered as an embodiment of moderate cultural relativism and was presented by Abdullahi Ahmed An-Na'im⁷⁸⁰, who is renowned for his scholarship on Islam and human rights, constitutionalism in the Arab world, Islam and the secular state, and human rights cross-cultural settings. He proposed an integrated framework that functions in remedying the curious matter of applying international human rights within Islamic societies. The developed version of his thesis indicates that the framework will be relying on:

the principles of constitutionalism, human rights, and citizenship, which can work only when they enjoy sufficient cultural and religious legitimacy to inspire and motivate people to participate in organized and sustained political and legal action. An Islamic discourse is essential for legitimizing the necessary strategies for regulating the public role of Islam. At the same time, that discourse cannot emerge or be effective without the security and stability provided by the secular state⁷⁸¹.

The theory began with suggesting an approach in which the universality of human rights will be underpinned through the unanimous consent resulting from cross-cultural dialogues, which functions on empowering norms to be globally accepted. However, this has been faced by Islamic Sharia. An-Na'im argues that solving this issue is probably attainable; all it requires is a faithful open-minded honest intention and belief in change. He proposed liberal interpretation for the main sources of Islam, namely: the Qur'an

⁷⁸⁰ A great work done by Masoud Badrein has briefly articulated the process of An-Na'im theory, which has been explained and reinforced in nearly 20 articles; see M A Baderin, 'Abdullahi An-Na'im's Philosophy on Islam and Human Rights' in A A An-Na'im & M A Badrin (eds) *'Islam and Human Rights: Selected Essays of Abdullahi An-Na'im'* (Routledge, New York, 2016); An-Na'im has also published a book that describes in more details the processes of his theory. He states in the Preface that the "book is the culmination of my life's work, the final statement I wish to make on issues I have been struggling with since I was a student at the University of Khartoum, Sudan, in the late 1960s". see A A An-Na'im, *'Islam and the Secular State: Negotiating the Future of Shari'a'* (Harvard University Press, U.S, 2008).

⁷⁸¹ see A A An-Na'im, *'Islam and the Secular State: Negotiating the Future of Shari'a'* (Harvard University Press, U.S, 2008) 44.

and the Sunna. This is because he (An-Na'im) maintains that liberalism is recognised in Islam and Islamic history, as per the Qur'an and the Sunnah. He then added that a liberal interpretation of the Qur'an and the Sunnah, which will be undertaken to bridge the gap between Islam and international human rights standards, must be approved by Muslims themselves⁷⁸². An-Na'im assumption of adopting universal human rights through cross-cultural dialogue is considered as the first pillar of his framework, also known as the principles of human rights.

He then continues to focus on the nature of interpreting the cultural beliefs as a part of his theory and again, he has been faced by Islamic Sharia. Accordingly, he argues that since Muslims accepted the normative of postcolonial, including establishing states and the rule of law, it is likely they will accept liberal interpretation for the main sources of Sharia Law. He added that, by reforming Islamic Sharia on ground of the Qur'an and the Sunnah in order to cope with contemporary international norms, such as human rights, Muslims will enjoy the human rights that were assigned to humanity in accordance with the requirements of the time they live in. An-Na'im knew that this is sensitive and crucial issue; the Islamic Sharia, its rules and instructions, and what it means for Muslims. Therefore, he set the scene for the sake of his premise by repeatedly emphasizing in most of his relevant work on what can be called immanent interpretation; that is, reinterpreting the Qur'an and the Sunnah. As a result, a unanimous consent due to which his potential framework will gain legitimacy. Moreover, Muslims must distinguish Sharia Law from Islam, he claimed, as the former is part of the latter. Therefore, he analysed specific area in the historical Sharia Law and argued that Islamic jurists must not enclose Islam on historical Sharia; because by doing so they will open the space for criticising Islam on basis of incapable to cope with environmental and social changes urged by God⁷⁸³.

An-Na'im advocated the adoption of his mentor's (Mahmoud Mohamed Taha) idea, who claim that the Sharia has not cover the whole Islam and Islamic jurists mainly rely on their understanding of the Qur'an and the Sunnah, which is mostly impacted by

⁷⁸² A A An-Na'im, 'What do we mean by universal?' (1994) 23(4 & 5) *Index on Censorship* 120.

⁷⁸³ A A An-Na'im, 'Islamic Law, International Relations, and Human Rights: Challenge and Response' (1987) 20(2) *Cornell International Law Journal* 317.

historical Sharia⁷⁸⁴. Therefore, a developed version of Sharia Law on ground of reforming the historical version within Islam (based on the Qur'an and Sunnah) is required to amenable international human rights⁷⁸⁵.

The final pillar of An-Na'im framework is the institutional protection of human rights; it focuses on Islam and secularism. In other words, employing the principles of secularism to protect the human rights in Islamic states. He believes that "secularism should be understood in terms of the type of relationship between religion and the state, rather than a specific way in which that relationship has evolved in one society or another"⁷⁸⁶. Consequently, he argues that Muslims and non-Muslim's humans will enjoy their human rights, including freedom of religion, with the protection provided by secularism. Further, they will be exposed to human rights violation under the authority of a state that follow certain religion than neutral state, or secular states as he maintains. This is because the former will be biased as it will be acting with the influences of its religion; while the latter will ensure the equality of humans from shared ideologies and beliefs in enjoying the right to freedom of religion as per international human rights standards. This means secularism will be connected to the state as a trend that provide more human rights guarantees and, has nothing to do with the society and religion. Again, in order to achieve this form of protection, Muslims must be convinced and have the intention to change⁷⁸⁷.

In short, An-Na'im theory assumes the enjoyment of the universal human rights in Islamic societies (human rights) if Muslims accepted a liberal reinterpretation of the Sharia Law in virtue of the Qur'an and the Sunnah, as required to cope with present time and living requirements (citizenship); secular states will neutrally guarantee the protection and promotion of human rights (constitutionalism). This has been reinforced by Bielefeldt, who contends that Islamic culture is the main barrier to the domination of

⁷⁸⁴ for more information about Taha thesis, see A A An-Na'im, 'Translator's Introduction' in M M Taha, 'The second Message of Islam' (Syracusa University Press, New York, 1987)21; M A Haleem, 'Understanding the Qur'an: Themes and Style' (I.B.Tauris & Co Ltd, New York, 2011)5; O Leaman, 'The Qur'an: an Encyclopaedia' (Routledge, U.S, 2006)398.

⁷⁸⁵ A A An-Na'im, 'Islamic Law, International Relations, and Human Rights: Challenge and Response' (1987) 20(2) *Cornell International Law Journal* 317; A A An-Na'im, 'A Kinder, Gentler Islam?' (1991) 52 *Transition* 4.

⁷⁸⁶ A A An-Naim, 'Re-affirming Secularism for Islamic Societies' (2003) 20(3) *New perspectives quarterly* 37.

⁷⁸⁷ A A An-Naim, 'Re-affirming Secularism for Islamic Societies' (2003) 20(3) *New perspectives quarterly* 36.

universal human rights, who do not contradict the intrinsic sense of Islam, but rather they conflict some of the traditionalist fundamentals through a misinterpretation of Sharia Law. He added that most of the problematic provisions between UDHR and Sharia Law are related to gender issues and religious liberty. Consequently, he addresses four main issues: human rights Islamisation, pragmatic approaches, liberal reconceptualization of the Sharia and finally the secular positions⁷⁸⁸.

Other scholars did not accept An-Na'im theory, although it seems an appropriate solution. This is because, they claim, it will lead to reduce commitment to the core human rights standards, therefore depriving the legitimacy of international human rights law⁷⁸⁹. Although this problematic issue has been addressed by An-Na'im through the unanimous consent of Muslims on undertaken reinterpreting Sharia Law to create another developed version of Sharia, this will undermine the stance of other religions in the state. This is because the potential legitimacy of An-Na'im theory will be based on the approval of the majority (Muslims), hence it will be based on Islamic fundamentals and likely exposes minority (non-Muslims) to discrimination⁷⁹⁰.

In his critical analysis of the Iranian Islamic paradigm, Afshari argued that reconciling the International Bill of Human Rights and the Islamic Sharia Law is possible, although there is a need to determine which Islamic norms must be considered. His debate centred on the division between Islamists of the old tradition, characterised by conservatism and a belief that human rights are merely from Sharia Law; and the new thinkers who are better educated, and are more aware of contemporary socio-economic matters. Most importantly, he concluded that the new school can partly reinterpret the Islamic norms as inherent human rights standards inspired by Islam in creating a dependable set of human rights. Regrettably, they (An-Na'im) have moved beyond the textual interpretation and have directed their concern towards the reconstruction of the Islamic

⁷⁸⁸ H Bielefeldt, "'Western' versus 'Islamic' Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights' (2000) 28(1) *Political Theory* 90; also see J Rawls, 'The Idea of an Overlapping Consensus' (1987) 7(1) *Oxford Journal of Legal Studies* 1.

⁷⁸⁹ F Lenzerini, *The Culturalization of Human Rights Law* (Oxford University Press, UK, 2014); F Teson, 'International Human Rights and Cultural Relativism' (1984) 25(4) *Virginia Journal of International Law* 869.

⁷⁹⁰ B Koch, 'Religious Freedom and Majority Rule: Marsilius of Padua "on" Abdullahi Ahmed an-Na'im and the "Secular" Islamic State' (2013) 6 *Politics and Religion* 140; B Ibhawoh, 'Between Culture and Constitution: Evaluating the Cultural Legitimacy of Human Rights in the African State' (2000) 22 *Human Rights Quarterly* 854

Sharia Law⁷⁹¹. An-Na'im approach was straightforward regarding reinterpreting the Sharia Law to produce a modern version consistent with universal human rights standards; and this was, as explained earlier, one of his theory pillars. To this end, some Sharia provisions will likely be amended to be in line with universal standards as a process to create a developed Sharia Law, as An-Na'im theory suggested.

8.2.3 Reverse Moderate Cultural Relativism

Combining universality with cultural relativism in such context is the strict stance of the former towards the latter; that is, imposing reinterpretation and modifications on culture rather than international standards. This may justify the inequality in the deliberation of adopting international human rights standards between Western and non-Western countries⁷⁹². Jason Morgan-Foster added that such approach (moderate cultural relativism) shares a similar universalism goal, namely: strengthening the Western standpoint. Accordingly, he proposed a well-structured model known as reverse moderate cultural relativism, which focuses on reversing moderate cultural relativism by considering cultural norms and values first rather than international human rights standards⁷⁹³.

The reverse moderate cultural relativism approach implies an integration of moderate cultural relativism and strict cultural relativism and constitute a universal human rights framework that emphasises on cultural norms rather than universal standards⁷⁹⁴. The strength of cultural relativism rests on its concern for the local contexts, while its weaknesses can be seen in the belief that it is not possible for one culture to outweigh another⁷⁹⁵. This potential model relies on the strength of cultural relativism and, is expected to overcome its weaknesses by admitting that the cultural contexts can be superior and non-Western⁷⁹⁶.

⁷⁹¹ R Afshari, 'An Essay on Islamic Cultural Relativism in the Discourse of Human Rights' (1994) 16(2) *Human Rights Quarterly* 235.

⁷⁹² K Schooley, 'Cultural Sovereignty, Islam, and Human Rights-Toward a Communitarian Revision' (1995) 25 *Cumberland Law Review* 658, 659.

⁷⁹³ J Morgan-Foster, 'A New Perspective on the Universality Debate: Reverse Moderate Relativism in the Islamic Context' (2003) 10 *ILSA Journal of International & Comparative Law* 35.

⁷⁹⁴ J Morgan-Foster, 'A New Perspective on the Universality Debate: Reverse Moderate Relativism in the Islamic Context' (2003) 10 *ILSA Journal of International & Comparative Law* 35.

⁷⁹⁵ K Schooley, 'Cultural Sovereignty, Islam, and Human Rights-Toward a Communitarian Revision' (1995) 25 *Cumberland Law Review* 651.

⁷⁹⁶ J Morgan-Foster, 'A New Perspective on the Universality Debate: Reverse Moderate Relativism in the Islamic Context' (2003) 10 *ILSA Journal of International & Comparative Law* 35.

In essence, both moderate and reverse moderate cultural relativism share the same objective; that is, reforming a substantial right that is recognised by the world societies. Whilst moderate cultural relativism considers the human rights standards that are heavily influence by Western tradition as a benchmark to measure cultural legal systems, and requires an interpretation to their core provision to be amenable with the Western or international standards; reverse moderate cultural relativism, on the other hand, figures out the provisions from the cultural legal systems first and consider them as the benchmark upon which international human right standards must be measured.

One of the rights that was employed through the process of developing An-Naim theory was discrimination against non-Muslims. It has been analysed from an Islamic perspective in order to figure whether it is in line with international human rights standards or not⁷⁹⁷. However, reverse moderate cultural relativism will shift the emphasis to begin with identifying the right within Islam, and then to analyse the international relevant provision to prove wither it is accepted locally (in the Islamic societies) or not. For example, the duty of individual towards group which is one of the core commitments in Islam; reverse moderate cultural relativism will investigate within the international standards to determine the provision in question and then analyse it to see wither it is compatible with the local legal system (Islamic) or not. In this example, individual duties will be equivalent to the right of solidarity and the analysis indicates that it is compatible with Islamic individual duty⁷⁹⁸.

This led to infer that the different views of the world diverse cultures will offer a rational and precise image of the international human rights status quo, thus they must be fostered. This is because “the existence of the ‘universal’ normative ethical principles...[is]...more likely to vary across cultural space and time. [Although these]...values are bound to cultural context in their expression...they also have a universal aspect based on considerations of common humanity”⁷⁹⁹.

⁷⁹⁷ A A An-Na'im, 'Human Rights in the Muslim World: Socio-Political Conditions and Scriptural Imperatives' (1990) 3 *Harvard Human Rights Journal* 24.

⁷⁹⁸ J Morgan-Foster, 'A New Perspective on the Universality Debate: Reverse Moderate Relativism in the Islamic Context' (2003) 10 *ILSA Journal of International & Comparative Law* 54.

⁷⁹⁹ S Oppong, 'When the Ethical is Unethical and the Unethical is Ethical: Cultural Relativism in Ethical Decision-Making' (2019) 50(1) *Polish Psychological Bulletin* 27.

So far, the chapter has focused on three of the main previous works of reconciling universal human rights with cultural relativistic norms, values and belief; it will now move on to highlight other relevant perspectives.

8.2.4 Other Attempts of Reconciling Universality and Cultural Relativism

Sundaramoorthy called for a grey area of human rights between universalism and cultural relativism by applying the overlapping consensus to the Islamic paradigm. Her analysis indicates that the grey area is the idea of human rights that has been supported by the Rawlsian political conception of justice, which focuses on interpreting the basic principles of the latent political culture of society. In other words, every nation will share the target of achieving justice within their own territory, although they have different meanings of justice. The outcome demonstrates that the Islamic Sharia Law has partly succeeded in adopting the overlapping consensus. Sharia Law does not completely oppose the universal standards of human rights; as they are aligned in freedom, fairness and tolerance. On the other hand, there is a wider commitment than the man-made human rights instruments, namely divine justice in which morals may be punishable in accordance with the Quran⁸⁰⁰ such as flogging and the amputation of limbs. From a normative view, the adherence of Muslims to their religion rests on the very concept of being a Muslim; that is, their submission to God and faith in Islamic tenet make them prioritising Islam on any other doctrine⁸⁰¹.

Even more, in a study investigating the conflict between universal and culturally relativistic human rights in order to propose meaningful standards, Donoho reported that in spite of the fact that a wide incompatibility between the two theories, relativism has been obliged to the universal human rights standards, in particularly monitoring and interpretive capacity. As relativists believe that abstract rights, such as people's right to life, liberty and security, are fundamentally incompatible with universal human rights standards, and they should be refused if they contravene cultural, political and social values. On the other hand, abstract rights are acceptable universally because they are prevalent in all parts of the world. Accordingly, universal human rights will compel states to adopt the abstract rights as seen universally; otherwise, they will be granted the right

⁸⁰⁰ L Sundaramoorthy, 'Is the Idea of Human Rights a Universal Concept?' (2016) 2 *Merici-Ursula Hall Academic Journal* 23.

⁸⁰¹ see chapter two for more details.

to opt out from the treaty in the case of a universal right opposing a certain cultural value⁸⁰².

Donoho proposed three approaches with this regard; first is adopting a set of rights that are commonly approved by either states' domestic legislations or international treaties, even if they undermine the states' freedom to choose culturally appropriate human rights provisions. States who intended to adopt this approach need to initially interpret their general principles, although international systems lack this service. The second approach is to create a minimum level of elements such as detailed guidelines, protocols to existing treaties, or new single topic treaties derived from the European-American human rights systems because these are based on experience, work well and are organised. However, this approach is rarely considered because both the Europe and American share similar cultures and other traditional values. The final approach would be to urge the United Nations to continue issuing treaties with specific aims, such as women's rights or rejection of torture. In this case, the international community will be focusing on addressing the minimum requirements of these specific aims human rights agreements in order to be consistent with all cultures. The United Nations must tightly interpret the rights enshrined in these agreements without being distracted by the detail of certain cultures⁸⁰³.

Another recent theoretical work that aims to determine a ground for universal human rights standards through employing critical realist approach. It argues that since ontology failed to provide "basis of human rights, without which disagreements over the universality/relativity ...will persist... [c]ritical realism provides the metatheoretical framework to correct for this by proposing a stratified and open ontology"⁸⁰⁴. It implies that a cross-cultural emotion on a specific right would likely lead to an overlapping consensus and therefore universalisation of this rights. To clarify, if peoples of certain cultures showed some sympathy to the violation of, say, gender equality, then the

⁸⁰² D L Donoho, 'Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards' (1991) 27 *Stanford Journal of International Law* 345.

⁸⁰³ D L Donoho, 'Relativism Versus Universalism in Human Rights: The Search for Meaningful Standards' (1990) 27 *Stanford Journal of International Law* 386.

⁸⁰⁴ B Luongo, 'Critical Realism, Human Rights, and Emotion: How an Emotive Ontology Can Resolve the Tensions Between Universalism and Relativism' (2021) *Human Rights Review* 235

protection of this right will be enhanced over these cultures on bases of the emotional overlapping consensus resulted upon its violation.

This research supports the proposed approach in terms of undertaking one of the fundamentals underpinned by cultural morals in articulating the argument, namely: emotions. However, one drawback of this approach is that it did not pay attention to another factor that is not only significant in shaping cultures, but also has deep influence in directed human morals and emotions; namely: religion. Taking the same example from an Islamic perspective, a woman who inherits less than a man or the contrary, or in case of polygamy, Muslims (male and female) will not object on God will and consider this a violation of rights, because they are aware that these provisions are justified and enacted in the Qur'an and Sunnah. Although the critical realism approach shows improvement in tackling the tension between universality and cultural relativism through emotional overlapping consensus cross-cultures, it will likely be challenged on ground of religious affiliations. However, having illustrated a number of previous theoretical works that address the attempts of overcoming the tension between universal human rights standards and, cultural relativistic norms and values, the next section introduces the theory that underpinned by the neo-relativist approach.

8.3. Developing the Neo-Relativist Approach

The main aim behind this section of the chapter is to determine one of the main afore mentioned theories to be applied on the Arab human rights instruments. It is important to note that the theory must be based on reconciling universality and cultural relativism. As it will be considered as the tool against which the Charter and the Court Statute will be analysed; this process will be called the Neo-Relativist approach.

8.3.1 The Role of Sharia in Shaping the Arab Culture

Before proceeding to examine the previously mentioned theories it is necessary to have a thorough understanding of Islamic Sharia Law given that Islam is a fundamental aspect of Arab culture and the Arab World is strongly influenced by Islam in regulating most of lives matters, including shaping culture and enacting legislations. This is known as the divine Islamic Aqidah (creed). It functions in interpreting Muslim's inquiries in the life and guide them towards success⁸⁰⁵. It can be also seen as the judgment that refuses any

⁸⁰⁵ M J Zainuo, *'Islamic A'qeda from the Qur'an and Sunna'* (12th eds, KSA, 2015)25, (Arabic, translated by Author).

doubt in the belief, that is the convictions that entrenched deeply in human heart, such as believing in the existence of the universe creator before knowing the proofs of it. Human always in need for answers about life, protection, a power that makes up what he/she might lose, feeds him if hungry, heals him if sick and calms him down if confused and terrified; this power can be found within the religion and the creed⁸⁰⁶. In short, Aqidah is the strict faith of Muslims in Allah (SWT) oneness, attributes of perfection, transcendence from imperfection, and the firm faith in the angels, the holy books, the messengers, doomsday, destiny, good and evil.

Islam means obedience and compliance of all, as stated by Allah (SWT) or brought by the Prophet Muhammad (SAW) from Allah (SWT). Muslims must implement these provisions with acquiescence, submission and contentment while avoiding polytheism⁸⁰⁷. These regulations constitute the Islamic Sharia Law and are divided into primary and secondary sources. The primary sources are the Quran and the Sunnah, while the secondary sources consist of *Ijmaa* or consensus and *Qyasar* estimation⁸⁰⁸. The Quran is one of the Holy Books that comprises the infallible words of Allah (SWT) in the form of rules and principles. It supports the Prophet Muhammad's (SAW) claims and guides faithful Muslims in dealing with issues related to their everyday lives⁸⁰⁹. Any sayings, Hadith, actions or reports transferred by the Prophet Muhammad (SAW) must be applied by Muslims, as it is necessary to understand the Quran and to implement its requirements. As previously mentioned, this is known as the Sunnah, and it is the second primary source on which Sharia Law depends⁸¹⁰. The combination of the Quran and the Sunnah is portrayed as the untouchable absolute sources of the Islamic Sharia Law because they represent the relationship between reason and revelation⁸¹¹.

⁸⁰⁶ A A Algeriany, '*Islamic Belief and Its Link to faith: Behaviour and Action*' (Alam Aladab Publications, Bairut, 2018)20, (in Arabic, translated by Author).

⁸⁰⁷ M S Al-Othaimeen, '*Explaining the Three Fundamentals*' (F N E Al-Sulayman, AL Thuraya Publications, 2003)68, (Arabic, translated by Author); M J Zainuo, '*Islamic A'qeda from the Qur'an and Sunna*' (12th eds, KSA, 2015)8, (Arabic, translated by Author).

⁸⁰⁸ M Ruthven, '*Islam: A very Short Introduction*' (Oxford University Press, New York, 2012) 82.

⁸⁰⁹ A H Al-Mahjobi & W Al-Radhi, 'The Sources of the Islamic Laws and its provisions' (alukah.net, 2013) available from <<https://www.alukah.net/sharia/0/53614/>> accessed 20th Nov 2021 (in Arabic, translated by Author).

⁸¹⁰ A H Al-Mahjobi & W Al-Radhi, 'The Sources of the Islamic Laws and its provisions' (alukah.net, 2013) available from <<https://www.alukah.net/sharia/0/53614/>> accessed 20th Nov 2021 (in Arabic, translated by Author); M Ruthven, '*Islam: A very Short Introduction*' (Oxford University Press, New York, 2012) 85.

⁸¹¹ W Hallaq, '*An Introduction to Islamic Law*' (Cambridge University Press, UK, 2009); A A Mawdudi, '*Human Rights in Islam*' (Islamic Publication LTD, Lahore: Pakistan, 1995).

Ijma, moreover, refers to the consensus of the Islamic jurists on an issue that might not be clarified in the Holy Quran or in the Sunnah. Islamic Jurists who intend to adopt *Ijma* must work within the boundaries of the Sharia primary sources. In other words, *Ijma* should be based on either the verses of the Holy Quran or the Sunnah. The last source of Sharia Law is *Qiyas*, which means allowing Islamic jurists or scholars to rely on estimating the provision of any questionable matter in the Quran, Sunnah and *Ijma*⁸¹².

For example, Allah (SWT) prohibited alcoholic beverages in the Holy Quran since it is a heady substance which may cause unconsciousness and involuntary behaviour. This may lead to crimes being committed under its influence. The Qur'an says:

O believers! Intoxicants, gambling, idols, and drawing lots for decisions are all evil of Satan's handiwork. So, shun them so you may be successful. Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of Allah and from prayer. So will you not desist?⁸¹³.

Accordingly, any material leading to these symptoms can be prohibited in accordance with the same verse of the Quran, although the material name has not been mentioned literally. Islamic Sharia Law can be therefore defined as the rules and principles that regulate Muslims' affairs and give a final judgment on any uncertain or controversial matters that appear in a Muslim's personal life.

8.3.2 Discussion on Relative Universality, Moderate Cultural Relativism and Reverse Moderate Cultural Relativism

However, the previous section has presented a number of much appreciated previous work that address reconciling the theories of universality and cultural relativism of human rights. The theory of relative universality preserved the universalist customary stance, that is, human rights are universal to human all over the world, in terms of providing states the authority to interpret and implement these rights in virtue of their cultural particularities. It suggests universal defensible rights must be adopted over the world, while other rights might be subjected to interpretation as per states culture to

⁸¹² A H Al-Mahjobi & W Al-Radhi, 'The Sources of the Islamic Laws and its provisions' (alukah.net, 2013) available from <<https://www.alukah.net/sharia/0/53614/>> accessed 20th Nov 2021 (in Arabic, translated by Author); M Ruthven, 'Islam: A very Short Introduction' (Oxford University Press, New York, 2012) 82.

⁸¹³ The Holy Quran, 'Alma'idah' (*Quran.com*, 5:90-91) available from <<https://bit.ly/3nt6ckO>> and <<https://bit.ly/2ZdcvR7>> accessed 10th Mar 2021.

be better practiced. The theory mainly relies on international legal universality through the world consent on the set of rights regardless of which category they represent, and then calls states to interpret and implement these rights in accordance to their cultures, as the weak cultural relativism suggested. If the intention of this chapter is to adopt the suitable theory to be applied on Arab human rights instruments, then relative universality would not be the best choice. This is because the premise of considering some human rights as universal and disregards cultural belief, as some of these rights may be of inconsistency with the cultural beliefs. Although this may achieve legitimacy for these rights and it will be weak and threatened.

The right to life, for example, which is one of the rights that deeply rooted in the dignity of human and also related to cultural beliefs, can be protected by states as per relative universality, yet not as predicted as the pretexts of the right to life differ in light of international and Arab human rights standards. In the international spectrum, the right to life may be derogated for reasons that are determined by the article 6 of the ICCPR⁸¹⁴, that is the death penalty. Many countries have abolished this punishment on basis of violating the rights of a human, while others halted it⁸¹⁵. As for Islamic countries, including the Arab World, it seems that it is challenging to abolish the death penalty or obviate its execution; this is because of the Islamic *Aqidah*.

An-Na'im theory, on the other hand has shown more appreciation to cultural relativism, particular the religion of Islam. For the Author of this research, a first glance indicates how ideal is his approach notwithstanding the concerns that arises later. It initially attempts to enhance the awareness of international human rights standards over the various society of the world, which totally belong to universalist thoughts. It then involves cultural beliefs by liberally reinterpreting the main two sources of Sharia Law, the Qur'an and Sunna, to be consistent with international human rights standards; here it relies on cultural relativism (the two sources) beside universalism (liberal interpretation). So far, this is to an extent impartial and equitable. The outcome of the

⁸¹⁴ Article 6(2) of the ICCPR states that "countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court".

⁸¹⁵ UN, 'Death Penalty' (OHCHR, nd.) available from <<https://bit.ly/3B3Zgzo>> accessed 29th Sep 2021.

interpreted standards is expected to be balanced between universalism and cultural relativism, and then is able to be adopted in Islamic societies. The implementation of these international human rights standards will require secular states in which religion will be separated, to be better and neutrally protected in the name of preserving human rights, which is mostly recognised as universal as well.

The theory, then, outweighs universalism over cultural relativism; this is not surprising since An-Na'im mostly advocates international human rights⁸¹⁶, and criticises Sharia Law⁸¹⁷, hence the theory "suffers a major flaw in its inherent international bias"⁸¹⁸. In undertaken cross-culture principle to promote his theory, An-Na'im selected a number of rights that constitute international norms although contradict Islam and then pursue to call for reinterpreting Sharia Law to be compatible with these rights⁸¹⁹ in a liberal manner. It must be taken into consideration that the normative rulings we are dealing with here are divine, which means they have not been released until they address and justify most of lives' matters and enquiries. The reinterpretation or the "backward reading" of the Qur'an is extremely controversial, as it stands diametrically opposed to the general and deeply-held belief that the later-revealed verses are the definitive ones and cancel any conflicting verses revealed previously"⁸²⁰.

This research wonders how could this happen? If for example, a certain spot regarding gender equality has been investigated in light of non-discrimination against women,

⁸¹⁶ An-Na'im story shows that he suffers a lot due to the prevailed Islamic Shari'a Law that was adopted by the Sudanese government, and which he believes that it needs to be reformed because its defective or it is unable to cope with the requirements of contemporary circumstances, pursuant to his mentor's (Taha) belief. His support to Taha's idea led him to face detention from 1983 to 1984, with no charge. Taha's was executed in 1985 and An-Na'im left the country to the U.S in exile. He dedicated his life to enhance human rights protection within Islamic societies since then; see A A An-Na'im, 'What do we mean by universal?' (1994) 23(4 & 5) *Index on Censorship* 120; Carnegie, '2020 Great Immigrants Recipient: Abdullahi Ahmed An-Na'im' (*Carnegie.org* 2020) available at <<https://bit.ly/3vCTinU>> accessed 9th Sep 2021.

⁸¹⁷ Shari'a Law as An-Na'im and his mentor believe 'the historical Shari'a version; see for example A A An-Na'im, 'Islamic Law, International Relations, and Human Rights: Challenge and Response' (1987) 20(2) *Cornell International Law Journal* 318.

⁸¹⁸ J Morgan-Foster, 'A New Perspectives on the Universality Debate: Reverse Moderate Relativism in the Islamic Context' (2003) 10 *ILSA Journal of International & Comparative Law* 46.

⁸¹⁹ An-Na'im has selected a number of human rights while developing his theory, such as non-discrimination, freedom of thought, conscience, and religion, the abolition of apostasy and the equality of sexes; see K Schooley, 'Cultural Sovereignty, Islam, and Human Rights-Toward a Communitarian Revision' (1995) 25 *Cumberland Law Review* 690; also see A A An-Na'im, 'Towards an Islamic Reformation: Civil Liberties, Human Rights and International Law' (Foreword by John O. Voll, Syracuse University Press, U.S, 1990) 43-49.

⁸²⁰ E Brems, 'Human Rights: Universality and Diversity' (Martinus Nijhoff Publisher, Netherland, 2001) 198.

such as inheritance, on what basis will it be reformed since it is one of the divine regulations? Allah (SWT) says “the share of the male will be twice that of the female”⁸²¹. Yet a book must not be judged by its cover; Islam has identified the conditions in which women inherit; they may earn half males share or equal to men’s share, and in other cases more than men⁸²². This implies that the responsibilities corresponded to the Islamic Sharia Law provisions must be taken into account, so their contours can be more clarified⁸²³. Consequentially, non-embracement of this theory for this research is suggested.

Unlike the mentioned theories, reverse moderate cultural relativism thesis is based on enhancing the cultural stance to reach the universal level. Cultural human rights norms differ from culture to another as they must be developed, unified and legitimised to be universally applicable. It has been demonstrated that human rights must be considered as an overlapping cross-cultural consensus⁸²⁴; that is, all cultures should adopt the human rights norm, each from its own perspective. In addition, applying reverse moderate cultural relativism will likely promote solidarity between cultures in facing the dominant international normative of human rights; their legal systems will accordingly be enriched and probably more effective. It will also gain cross-cultural satisfaction since it is mostly underpinned by cultural norms and beliefs.

This research supports that reverse moderate cultural relativism has made difference when examined on the Islamic context. It has been tested on several Islamic concepts that constitute commitments to Muslims⁸²⁵ all of which have been analysed and showed consistency with international standards. For example, the term Zakat which is one of

⁸²¹ Women inheritance regulations have been mentioned in the Qur’an; see The Holy Quran, ‘An-Nisa’ (*Quran.com*, 4:11) available from <<https://bit.ly/3mXfoxu>> accessed 10th Mar 2021.

⁸²² A Guichon, ‘Some Arguments on the Universality of Human Rights in Islam’ in J Rehman & S C Breau (eds) *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practices* (Martinus Nijhoff Publishers, 2007) 167; M S Islam, ‘Inheritance Rights of Women in Islamic Law: An Assessment’ (2013) 2(2) *International Journal of Islamic Thoughts* 45; Azhar, ‘The Conditions of Woman Inheritance in Islam’ (*Azhar.org*, 2018) available from <<https://bit.ly/3aL5Ekm>> accessed 1st Oct 2021 (in Arabic, translated by Author).

⁸²³ see chapter two, the misunderstanding that arises from interpreting the Qur’an regarding Jihad.

⁸²⁴ H Bielefeldt, ‘“Western” versus “Islamic” Human Rights Conceptions? A Critique of Cultural Essentialism in the Discussion on Human Rights’ (2000) 28(1) *Political Theory* 90.

⁸²⁵ J Morgan-Foster, ‘Reverse Moderate Relativism Applied: Third Generation International Human Rights from an Islamic Perspective’ (Bepress Legal Series, Paper No. 235, 2004) available from <<https://bit.ly/3jrftZl>> accessed 5th Nov 2021; J Morgan-Foster, ‘A New Perspectives on the Universality Debate: Reverse Moderate Relativism in the Islamic Context’ (2003) 10 *ILSA Journal of International & Comparative Law* 35.

Islam's five pillars and refers to the annual payment to help poor people and end poverty. Seeking for its match on the international standards, the investigation indicates that articles 9 regarding social insurance, 11(1) regarding adequate standard of living and 11(2) about the protection from hunger, of the ICESCR⁸²⁶.

The theory's structural process showed convincing outcome based on explaining cultural provisions and analysing relevant international standards in order to figure whether the latter is compatible with the former or not. If consistency exists, then the international standard is valid and able to be adopted, otherwise reporting incompatibility must be proclaimed and hence to recommend amending this international standard to become compatible with the local right. By doing so, the implementation of the universal human rights will occur on grounds of cultural interpretation in order to be applicable over cross-cultural scope. This will also impose the human rights culture on all of the world societies due to which the belief and the respect of human rights will be enhanced on the local (people) sphere beside states authorities' level. This is because the potential rights will be based on the cultural norms, values and belief. As previously mentioned, the theory has been applied on Islamic provisions and it showed positive outcomes; however, the question that arises here is will this be possible in case of the Arab human rights instruments.

Tackling the principles of the reverse moderate cultural relativism approach shows that the process must begin by determining the right in question. In the context of this research, this will be one of the listed provisions within the Charter or the Court Statute; it will be analysed to identify its validity justifications through the sources it underpinned. Secondly, determining its analogous in terms of values and merits, within the international human rights standards; this will include the Charter of the United Nations and the International Bill of Human Rights. Next, this international right will be examined and then compared with the Arab regional provision, which in this approach constitutes the standard through which the viability and efficiency of human rights will be measured.

⁸²⁶ J Morgan-Foster, 'Reverse Moderate Relativism Applied: Third Generation International Human Rights from an Islamic Perspective' (Bepress Legal Series, Paper No. 235, 2004) available at <<http://law.bepress.com/expresso/eps/235>> accessed 5th Nov 2021, 49.

However, despite the fact that reverse moderate cultural relativism has never been tested on a human rights agreement, applying it on the Arab human rights instruments is indeed worthwhile. Apart from the Charter and the Court Statute criticism in the literature, this research has been able to show that some of their provisions are defective or insufficient to achieve the purpose of their adoption. Consequentially, these rights will be spotlighted and subjected to the neo-relativist approach.

8.4. Concluding Remarks

This chapter set out to cover the main theories under which the approach of this research will be functioning. It began by examining three main theories, namely: relative universality, moderate cultural relativism and reverse moderate cultural relativism. The discourse moved on to illustrate other attempts of reconciling the theories of universality and cultural relativism. The chapter has provided an overview about each of the attempts and an analysis to determine the suitable one, in order to embrace the neo-relativist approach. The analysis helped in identifying areas of strength and weakness and showed that most of them has considered Islam in clarifying their premise.

Relative universality implies that international human rights standards must be recognised over the world, while their interpretation and implementation rest with the state, and pursuant to its culture. Nonetheless, the analysis showed that it is not the best choice for this research's approach as it suggests measures that are inconsistent with cultural belief.

Moderate cultural relativism, in particularly An-Na'im theory was well structured, it suggests that international human rights are ought to be accepted, interpreted within Islam (as per the Qur'an and the Sunna) and then implemented accordingly. He then emphasises that these rights must be protected under the jurisdiction of a secular state. Again, the theory has been widely criticised; as it targeted reforming Sharia Law, including fundamental provisions that Muslims adhered to on ground of their Aqidah. Therefore, it cannot be applied on the Arab human rights instruments, which to a high extent relies on Islamic norms and values. Unlike An-Na'im theory, reverse moderate cultural relativism aims at reforming international human rights standards to be compatible with cultural standards, which are seen as the benchmark in this context.

This will create cross-cultural universal standard of human rights based on cultural particularities; the potential standard will likely be acceptable over cultures of the societies that constitute the world.

The chapter has also shown that other works were mostly similar in principles to the three main mentioned attempts except one, the critical realism approach. Although the outcome of its examination indicates that it is not suitable for this research due to lack of appreciation to cultural belief, it embraced different path to solve the dispute; that is, employing emotions in shaping the human rights standard. However, the analysis, discussion and clarification in this chapter justify that the reverse moderate cultural relativism would be of a good choice for this research. To this end, and pursuant to the main argument of this research, the next chapter will address the application of the reverse moderate cultural relativism to the Arab human rights instruments, mainly the Charter, for the purpose of producing a new neo-relativist model/framework of human rights to be applied on the Arab regional system.

CHAPTER 9: THE CREATION OF THE NEO-RELATIVIST MODEL OF RIGHTS

9.1. Introduction Remarks

This part of the research has focused on identifying the appropriate approach in serving this research fulfilling its objectives, namely: enhancing human rights protection in the Arab World through the neo-relativist approach, which is mainly based on reconciling universality and cultural relativism. It began with examining some of main existing works of reconciling the two theories, including relative universality, moderate cultural relativism and reverse moderate cultural relativism. It then provided an analysis of these theories to remove any claims that may constitute barriers while applied on the Arab human rights instruments. The analysis showed that reverse moderate cultural relativism is a good choice to be utilised in this research.

Given that the Charter and the Court Statute have been already analysed in the second part of this research and the outcome indicates that some of their provisions are in need for reformation or advancement, the neo-relativist scope will be limited on some of these provisions. These provisions were arguably contrary to the established international standards of human rights and may raise tensions in the case of recognising them within a region that embraces Islam, such as Arab World. Therefore, it is important to clarify the Arab cultural perspectives with regards to these provisions. By embracing the reverse moderate cultural relativism, this chapter will apply the neo-relativist approach on provisions of the two Arab human rights instruments that need to be examined and/or amended.

9.2. The Neo-Relativist Approach in Practice: Applying the Reverse Moderate Cultural Relativism on the Arab Human Rights Instruments

The first problematic provision that arose from analysing the Charter in chapter 5 of this research is the inclusion of the term Zionism within the preamble of the Charter. It is difficult to explain the reason behind this, which to some is racist, in an instrument which aims to prevent all types of discrimination. Neo-relativist approach which is based on reverse moderate cultural relativism suggests analysing the Charter as an attempt to justify Arab's stance, and then to examine international instruments to figure whether they are in support or opposition to the provision.

In the case of the Charter, it is more about politics than religious. It is likely due to the harm caused by Israel, not only to Palestine, but also other Arab countries. Zionism is an

ideology that believes in the return of Jews to Palestine in order to establish a homeland called Israel. Furthermore, it contributes to recruiting, encouraging and safeguarding Jews for the sake of achieving this goal⁸²⁷. An implication of this is the possibility that Zionism can be considered “as the moral legatee of the victims of the Holocaust [when millions of] Jews...fell victim to the Nazi mass murder”⁸²⁸.

Mayamey remarks that Zionism is “an aggressive colonial movement relentless in its ambition for the development of a Jewish home in Palestine with disregard for the majority Arab population”⁸²⁹. Even more, in a study which set out to examine the birth of the Palestinian refugees, Morris found that one of the consequences of the Israel-Palestine conflict has been the exodus of nearly four million Arab Palestinians from their homes to other parts of Palestine and to neighbouring countries⁸³⁰. In fact, the number of Palestinian refugees and the displaced was estimated recently at 5,629,829 people⁸³¹. The Author of this research argues that the inclusion of the term Zionism in the Charter was because Arab countries were affected negatively by Zionist ambitions and goals.

The year 1948 is called by Israelis the Year of Independence and by the Palestinians and Arabs Al Nakba, which means the catastrophe, as it was the year in which the Arab Israeli war occurred, and Zionists announced the new land of the Jews in Palestine⁸³². In 1956 the Egypt-Israeli War of the Triple Aggression was mis-managed by Britain and France. Even worse, in 1967 Israel launched a war against three of its Arab neighbouring countries, which lasted six days and defeated the Arab parties. The Six Days War resulted in significant human and material losses, the occupation of large parts of Arab territories and the destruction of the majority of Arabs military equipment⁸³³.

⁸²⁷ M Ignatiev, ‘Zionism’ in J Moore (eds) *Encyclopedia of Race and Racism* (Vol 3. USA: The Gale Group 2008) 240-244; JVL, ‘Zionism: A Definition of Zionism’ (*Jewish Virtual Library*, nd.) <<https://www.jewishvirtuallibrary.org/a-definition-of-zionism>> accessed 2nd October 2016.

⁸²⁸ R Schoenman, *The Hidden History of Zionism* (Santa Barbara: Veritas Press, 1988) 2.

⁸²⁹ B Mayamey, ‘Zionism: A Critical Account 1897-1948 The Development of Israel and the Exodus of Palestine from A “New Historian” Perspective’ (2010) 4 *POLIS Journal* 30.

⁸³⁰ B Morris, *The Birth of the Palestinian Refugee: Problem Revisited* (New York: Cambridge University Press, 2004) 1

⁸³¹ UNRWA, ‘UNRWA in Figures 2019-2020’ (*United Nations Relief and Works Agency for Palestine Refugees in the Near East*, 2019) <<https://bit.ly/3kNDurN>> accessed 20th August 2020.

⁸³² D Caabu, ‘Israel-Palestine Conflicts’ (*Council for Arab-British Understanding*, nd.) available from <<https://goo.gl/3uWxgv>> accessed 17th March 2017.

⁸³³ G Gawrych, ‘Key to the Sinai: The Battles for Abu Agelia in the 1956 and 1967 Arab Israeli Wars’ (Pickle Partners Publishing, U.S 2014) 1, 87; Aljazeera, ‘1967 War: Introduction’ (*youtube.com* 4 June 2007) <<https://bit.ly/2G4yT5A>> accessed 14th March 2017.

Another form of human rights violation adopted by Israel against Palestinians is mass killing, such as the massacre of Deir Yassin in 1948 where the Zionists killed many of the village children, young people, women and the elderly. This incident is considered as an important factor in the Palestinian emigration to other parts of Palestine and neighbouring Arab countries⁸³⁴. Further, Sabra and Shatila were Lebanese families who rented out their land to the United Nations Relief and Works Agency in order to establish a camp for the Palestinian refugees in 1948. However, the name is more associated with the most brutal massacre in the history of Palestine-Israel conflict, in which thousands of Palestinian refugees were slaughtered by Israel Defence Forces, in 1982⁸³⁵. The United Nations General Assembly subsequently released a report condemning this incident is considered as “an act of genocide”⁸³⁶. The Zionists’ influence over Israelis continued; in 1954 the Israeli military intelligence which was dominated by Zionists, ordered a spy network of thirteen Egyptian Jews to bomb several strategic places such as post offices, cinemas, train stations and UK and US institutions in Cairo and Alexandria. Operation Suzana (known also as the Lavon Affair) was adopted in order to weaken relations between Egypt, the United Kingdom and the United States⁸³⁷.

Zionism was categorised as a “form of racism and racial discrimination” under resolution 3379 of the United Nations General Assembly in its 30th Session in 1975. Although this recognition by the international community came after publication of the European and the American regional Human Rights Instruments, they would still have had the opportunity to amend them if they had wished to. By supporting Zionists, some Western countries and Israel have prevented Palestinians from determining their own political status and freely pursuing their own social, economic and cultural development in accordance with the international law and the international human rights standards⁸³⁸.

⁸³⁴ M Hogan, ‘The 1948 massacre at Deir Yassin revisited’ (2001) 63(2) *The Historian* 309; B Morris, ‘The Historiography of Deir Yassin’ (2005) 24(1) *Journal of Israeli History* 79.

⁸³⁵ Z Al-Shaikh, ‘Sabra and Shatila 1982: Resisting the Massacre’ (1984) 14(1) *Journal of Palestine Studies* 57; L Shahid, ‘The Sabra and Shatila Massacres: Eye-Witness Report’ (2002) 32(1) *Journal of Palestine Studies* 36

⁸³⁶ UNGA ‘*The Situation in the Middle East*’ (1982) UN Doc A/RES/37/123 D.

⁸³⁷ J Beinin, ‘The Jews of Egypt: 1920-1970, in the midst of Zionism, anti-Semitism, and the Middle East conflict’ (1993) 25(1) *International Journal of Middle East Studies* 120; D Duke, ‘Israeli Terrorism Against America’ (20 March 2010) <<https://altcensored.com/watch?v=fvltZ2GS88A>> accessed 29th Mar 2017.

⁸³⁸ In addition to the presented historical review regarding supporting Israel in its conflicts against Arabs, see I Hosain, ‘Grass’s ‘What Must Be Said’: A Revolt Against Zionism and the Western Hypocrisy’ (2016) 4(1) *International Journal of Ethics in Social Sciences* 157; M Roberto, *Legacy of Empire: Britain, Zionism and the Creation of Israel* (2020) 55(3) *The International Spectator* 151; I Pappé, *The Bible in the service*

For example, Articles 1 and 55 of the Charter of the United Nations express the necessity of maintaining peace and security, and ensure that every human being can enjoy their political, civil, economic, social and cultural rights. Moreover, Article 21 of the UDHR stipulated that people can take part in their governments through fair elections. Furthermore, Article 1 of both the ICCPR and the ICESCR guaranteed the right to self-determination. Understandably, the support given to Israel by Western nations has led to several conflicts which continue to this day⁸³⁹. In short, almost the whole world sympathized with the Jews after World War II, but some of the Western countries did more, and paved the way for the occupation of Palestine for the purpose of establishing the homeland of Israel. At the same time, the assistance of these countries helped to fulfil the Zionists' vision, which mostly cantered in settling Jews in the first place.

By comparison with other regional human rights systems, the ACHR and the ECHR did not include the term Zionism, while the ACHPR did. This might be due to the fact that Africa has also been affected by Zionist movement through history⁸⁴⁰. The author of this research believes that the absence of the term Zionism in the European and the American Human Rights Instruments, which considered racism as stated previously, might be due to Zionism being irrelevant to their regional context, as Zionism has aimed on certain areas to be settled in and has no ambitions to settle in these regions⁸⁴¹. These are some of the reasons that pushed the Arab states to condemn Zionism and may justify its inclusion in such manner within the preamble of the Charter.

Now if we get back to chapter seven, precisely to the section that addresses the tension between universalism and cultural relativism; the discourse regarding the countries that imposed reservations on and/or refused to adopt the UDHR indicates that six

of Zionism: "we do not believe in God, but he nonetheless promised us Palestine" In I Hjelm and TL Thompson (eds) *History, Archaeology and the Bible Forty Years After Historicity* (Routledge: New York 2016) 205-215; W Martin, 'Britain, Zionism, and the Jewish Legion' (2019) *Journal of Modern Jewish Studies* 1; M Stanislawski, 'Zionism: A Very Short Introduction' (Oxford University Press 2017) 113.

⁸³⁹ B Weitzman, 'The Inter-Arab System and the Arab-Israeli Conflict: Ripening for Resolution' (2000) 5(1) *Journal of International Affairs* <<https://dergipark.org.tr/en/download/article-file/816909>> accessed 14th March 2017; J Beinin and L Hajjar, 'Palestine, Israel and the Arab-Israeli Conflict: A Primer' (*Middle East Research and Information Project* 2014) <<https://bit.ly/3i14pin>> accessed 30th May 2016.

⁸⁴⁰ D Cohn-Sherbok, 'Introduction to Zionism and Israel: From Ideology to History' (Continuum International Publishing Group 2012) 75; R Schoenman, 'The Hidden History of Zionism' (Veritas Press, Santa Barbara 1988); T Ataöv, 'The Philosophy of Zionism and its Implications to Africa' (2015) 37(1) *Ankara Üniversitesi SBF Dergisi* <<https://dergipark.org.tr/en/download/article-file/38366>> accessed 17th March 2017, 79.

⁸⁴¹ R Schoenman, 'The Hidden History of Zionism' (Veritas Press, Santa Barbara, 1988) 28 & 133.

communist countries abstained on the generalisation of Articles 19 and 20 regarding freedom of expression and the freedom of peaceful assembly, and not literally excluding Fascism and Nazism. Further, South Africa objected on ground of not supporting apartheid; meaning, the UDHR protected human from discrimination on bases of colour and race, while apartheid was systematically practiced and legally supported in South Africa back then⁸⁴². Although they approved the UDHR at the end these types of historical lessons must be taken into consideration. The mentioned countries acted upon their cultural requirements. The former was due to the evil Fascists and Nazis showed over decades, while the latter is due the prevailing ideology within their society notwithstanding it constitute a violation of human dignity. This can explain the condemnation of apartheid and Zionism in the preamble of the ACHPRS’.

Accordingly, the Charter included Zionism and expressed that it is a form of human rights violation is in fact a reflection of Arab cultural relativism. International human rights standards lack the sufficient appreciation for this point and hence in need to, at the least, to be enhanced by providing a capacity to literally condemn such ideologies. Then, neo-relativist approach suggest that this will indeed provide more protection of human rights not only for Arabs, but also other places in the world.

The second provision is the right to life. The neo-relativist approach suggests that it must first be examined from within the Arab human rights domain, followed by analysing its universal match and determine whether they are compatible to each other or not. This right is considered as one of the crucially sensitive rights granted to all humans and all the divine rules and/or man-made laws reaffirm the protection of life⁸⁴³. Arab countries have also followed suit and included the right to life in Articles 5, 6 and 7 of the Charter. Some of the right to life articles mentioned in the Charter are similar to the international human rights standards. Specifically, Article 5 of the Charter indicates that humans have “the inherent right to life...[, which]...shall be protected by law. No one shall be arbitrarily deprived of his life”.

⁸⁴² N L Clark & W H Worger, *‘South Africa: The Rise and Fall of Apartheid’* (2nd ed, Routledge, New York, 2011)

⁸⁴³ S M Akram, *‘Arab Charter on Human Rights 2004’* (2007) 24 *Boston University International Law Journal* 147.

Article 6 of the Charter states that capital punishment “may be imposed only for the most serious crimes in accordance with the laws in force at the time of commission of the crime and pursuant to a final judgment rendered by a competent court. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence”. The article implies that this right may be subject to derogation in certain situations, and simultaneously provides guarantees for one’s to seek pardon. Other limitations imposed by the Charter can be seen in Articles 6 and 7 within which the death penalty may be suspended, replaced or even abolished. The first paragraph of Article 6 states that no person under 18 years old shall be sentenced to the death penalty “unless otherwise stipulated in the laws in force at the time of the commission of the crime”. The second paragraph of the same Article mentions that no pregnant woman shall be executed before she delivers or within two years after the birth, until she provides the required care for her child, as “in all cases, the best interests of the infant shall be the primary consideration”.

The right to life is greatly protected on the international level and by the international human rights standards, as the “mere physical existence of mankind must be assured as a norm of jus cogens from which states may not derogate, even during periods of extreme emergency and open warfare”⁸⁴⁴. It has been enshrined in the core international agreements, as follows:

- Article 3 of the UDHR, which indicates that “Everyone has the right to life, liberty and the security of person”⁸⁴⁵;
- Article 6(1) of the ICCPR, further states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life”⁸⁴⁶;
- Article 6(1) of the CRC; “States Parties recognize that every child has the inherent right to life”⁸⁴⁷;

⁸⁴⁴ W P Gormley, ‘The Right to Life in International Law’ (1987) 16 *Denver Journal of International Law & Policy* 193.

⁸⁴⁵ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR), Article 3.

⁸⁴⁶ ‘International Covenant on Civil and Political Rights’ (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 6(1).

⁸⁴⁷ Convention on the Rights of the Child (CRC) (adopted 20 November 1989, entered into force 2 September 1990) United Nations, Treaty Series, vol. 1577, Article 6(1).

- and Article 9 of the ICRMW; “The right to life of migrant workers and members of their families shall be protected by law”⁸⁴⁸.

The ICCPR has also clarified the situations in which the right to life may be limited. Article 6(2,3) indicates that death penalty “may be imposed only for the most serious crimes...[and]...the crime of genocide”, in countries where this punishment exists; and Article 6(4) permits the offender to seek pardon. Article 6(5) of the ICCPR prevents states to sentence death penalty “for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women”⁸⁴⁹. As explained in chapter 5, the right to life is the ground humans relied on to enjoy the other human rights. Accordingly, the international community decided to enhance its protection by adopting a protocol to the ICCPR concerning the abolition of death penalty⁸⁵⁰.

In this regard, the neo-relativists approach suggests that the right to life is heavily protected at international level, and it is to a high extent in line with the Charter, including the conditions related to pregnant women. However, the provision of imposing the death penalty on a person under 18 years old which is mentioned in the Charter, has raised criticism. This is because it allows member states to determine a child's fate in terms of both sentencing and applying the death penalty. It is important to note here that the death penalty is counted as one of the rights to life's controversial issues⁸⁵¹, especially in the Arab world in which it is legitimate. This results in criticising not only the Charter, but also one of its main sources, namely: Islam. Therefore, the death penalty will be traced from an Islamic perspective with a particular emphasis on the age of the person sentenced to death.

Alruwaaf claims that the death penalty in the Islamic Sharia Law is based on distinct social, cultural and civilised foundations. He added that in terms of murder, Islam gives part of the responsibility for imposing the death penalty to the victims' relatives as they

⁸⁴⁸ International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW) (adopted 18 December 1990, entered into force 1 July 2003) United Nations General Assembly, A/RES/45/158, Article 9

⁸⁴⁹ ‘International Covenant on Civil and Political Rights’ (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Articles 6(2-5).

⁸⁵⁰ Second Optional Protocol to the International Covenant on Civil and Political Rights, Aiming at the Abolition of the Death Penalty (ICCPR-OP2) (adopted 15 December 1989, entered into force 11 Jul 1991) United Nations General Assembly 44/128.

⁸⁵¹ The right to life controversial issues are three; death penalty, euthanasia and apportion.

can adopt settlement measures. Both the victims' relatives and the authorities are involved in imposing the death penalty on murderers under Sharia Law. The authorities may replace the death penalty with life imprisonment if the victims' relatives agree⁸⁵². In some cases, the relatives of the victim can stop the execution in return for an amount; this is known as Diya in Islam. A good example of this would be the role of the UAE Supreme Court in dropping the death penalty on an accused, who committed a murder with premeditation in Ajman (one of the Emirates). The victim's relatives dropped the case, even though the Federal Supreme Court had supported retribution against the accused in a previous session⁸⁵³. This has been fulfilled by the international human rights standards through the provision that addressed offender right to demand amnesty.

The influence of Islam can be seen in Article 7 of the Charter which involves member states' internal laws to determine the age of the person who is subjected to death sentence. According to Sharia Law, a child is someone who has not reached *Bulugh* (puberty). However, the translation of the term puberty in Arabic also refers to a mature person who has special characteristics, mainly awareness⁸⁵⁴. Age is not specified within the primary sources of the Islamic Sharia Law in this scenario; rather, the person facing the death sentence must be fully cognisant, sane and aware. Some Islamic jurists agree that legal responsibility for committing crimes punishable by death will fall on a person above 15 years of age; they also consider this as the age by which a person gains the credibility of awareness, adulthood and perception. Other Islamic jurists' views are compatible with the international human rights standards, that a person becomes responsible for his behaviour after the age of 18, including criminal actions⁸⁵⁵.

As repeatedly explained, most of the Arab countries' legislations are influenced by Sharia Law, given that Muslim's adherence to Islamic *Aqidah* and submission to Allah (SWT). The Author of this research argues that accepting, ratifying and adopting the Charter

⁸⁵² O Alruwaf, 'Islamic Perspectives on the Death Penalty' (*archive.aawsat.com*, 2001) available from <<https://goo.gl/XAAMcD>> accessed 20th Jul 2018, (in Arabic, translated by Author).

⁸⁵³ E Salim, 'Parents Amnesty brings Life Back to an Accused who was Punished by Death Penalty' (*alittihad.ae*, 2013) available from <<https://goo.gl/Ujaq6B>> accessed 20th Jul 2018, (in Arabic, translated by Author).

⁸⁵⁴ K B Abu-Aqleh, 'Children Execution in the Sharia Law' (*alrakoba.net*, 2012) available from <<https://bit.ly/312tBCd>> accessed 17th Jul 2018, (in Arabic, translated by Author); H A Adegbi, 'Problematic of Puberty '18 Years Old' with Underaged Delinquent' (*rimnow.net*, 2016) available from <<https://rimnow.net/w/?q=node/5448>> accessed 16th Jul 2018 (in Arabic, translated by Author).

⁸⁵⁵ M E Al-Zulmi, 'Legal Responsibility in the Islamic Shari'a: A Comparative Study' (Nashrehsan, Iran, 2014) Nashrehsan. Iran. (in Arabic, translated by Author).

would probably be challenging if it has not reflected the influence of Islam within its texts. The focal point here is not the age, rather it is the mental status of the person. There is nothing in the religion of Islam that indicates that executing children is permitted, nor has there been what is in support to this allegation. In case of a child who did not reach 18 years old committed a crime that is punishable by death penalty or life sentence, the case will initially be addressed by the juvenile court and then the punishment must be replaced with rehabilitation from 5 to 15 years⁸⁵⁶.

All in all, this research believes in the suspension of death penalty in Arab World or to be for tis replacement with other punishment while considering the Qur'an and the Sunnah, not because it is inconsistent with international standards, but rather because of the belief that Islam is a flexible religion that revealed for all human in all time. Additionally, the terms and conditions of imposing the death penalty within the Islamic context, including punishably crimes (adultery, homicide and apostasy), and the concept of *deyah* (pardon in return of agreed amount) gives an impression of possible change; this does not mean undermining Islamic fundamentals but rather it suggests an improvement to cope with contemporary life. It is worth noting here that this impression came with Islam since the 7th century, given the mentioned ICCPR protocol.

This research, further, supports the international standards when they show appreciation to cultural particularities in terms of allocating provisions that regulate the limitation of the right to life. The neo-relativist approach then showed that the international protection of the right to life can be described as moderate, although it emphasised on the abolishment of the death penalty, fortunately this was optional. In fact, the Charter provisions regarding the right to life has considered cultural norms, belief and values, hence it showed appreciation by generalising the Islamic standards on member states; that is, permitting member states to regulate some of the relevant provisions in virtue of their legislations, which are heavily influenced by Islam. The right was greatly protected on the international level; nothing will be imposed on states in terms of abolishing the death penalty, as this has been suggested through an optional

⁸⁵⁶ M E Al-Zulmi, '*Legal Responsibility in the Islamic Shari'a: A Comparative Study*' (Nashrehsan, Iran, 2014) Nashrehsan. Iran. 199, (in Arabic, translated by Author).

protocol; the neo-relativist approach sees that it will provide sufficient protection in the Arab World.

Another problematic rights that must not be neglected, and relatively related to the right to life, is the freedom religion. As discussed above, apostasy is considered as one of the crimes punishable by death penalty in Islam. On the other hand, the international standard guarantee that every person has the right to change his/her religion. To this end, the neo-relativist model requires addressing the freedom of thought, conscience and religion as stated in the Charter and then compare it with its counterpart in the international standards of human rights, in order to find out wither they are compatible or not.

Just like other regional systems, the Charter has ensured the enjoyment of the right to freedom of religion by humans in the Arab region, yet differs from international standards. As explained earlier in this research, the Charter has been created while keeping into account preserving the balance between manmade standard and the divine rulings; this can be seen in article 30 of the Charter⁸⁵⁷. However, the influence of the Arab culture and the religion of Islam pushed the Arab League to excluded the freedom to choose or change Muslims religion and pare capacity to member states to regulate limitations to this right. In Islam, changing religion from Islam to another is a crime punished by death penalty. It is known as Al-Ruddah in Arabic (apostasy), meaning retreat or withdrawal⁸⁵⁸. According to the Islamic Sharia Law, apostasy occurs when a Muslim fall back and chooses to disbelieve in his religion either by saying, believing, acting or even doubting⁸⁵⁹. Allah (TA) says:

⁸⁵⁷ Article 30 states that “1. Everyone has the right to freedom of thought, conscience and religion and no restrictions may be imposed on the exercise of such freedoms except as provided for by law. 2. The freedom to manifest one’s religion or beliefs or to perform religious observances, either alone or in community with others, shall be subject only to such limitations as are prescribed by law and are necessary in a tolerant society that respects human rights and freedoms for the protection of public safety, public order, public health or morals or the fundamental rights and freedoms of others. 3. Parents or guardians have the freedom to provide for the religious and moral education of their children”; The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 30.

⁸⁵⁸ ROP, ‘Apostasy’ (*thereligionofpeace.com*, n.d.) available from <<https://goo.gl/VswScw>> accessed 20th Jul 2018; also see footnotes 655, 747 & 790.

⁸⁵⁹ A Al-Feraih, ‘Defining Islam’s Barriers: The Meaning and Types of Apostasy’ (*alukah.net*, 2013) available from <<https://bit.ly/3SXv9E5>> accessed 29th Oct 2018 (in Arabic translated by Author).

And they will not stop fighting you until they turn you away from your faith if they can. And whoever among you renounces their own faith and dies a disbeliever, their deeds will become void in this life and in the Hereafter”⁸⁶⁰. Allah added “But if they repent, perform prayers, and pay alms-tax, then set them free. Indeed, Allah is All-Forgiving, Most Merciful⁸⁶¹.

Additionally, Prophet Mohamed (SWA) also proclaimed that never killed anyone except in one of the following three situations: (1) A person who killed somebody unjustly, (2) a married person who committed illegal sexual intercourse (adultery) and (3) a man who fought against Allah and His Apostle and deserted Islam and became an apostate⁸⁶². The Prophet (SWA) added that “He who changes his religion (i.e. apostates) kill him”⁸⁶³. This indicates that the punishment of apostasy in Islam is inevitable and unquestionable. Many Arab countries found it challenging to avoid this fact, hence apostasy is prohibited within their territories, given the strict Islamic instructions.

There are a number of Arab countries referred to apostasy as a crime punishable by death penalty. Article 1 of the Saudi Law of Criminal Procedure states that the courts “shall apply Sharia principles to cases brought before them, as derived from the Quran and Sunnah as well as laws promulgated by the State that are not in conflict with the Quran and Sunnah, and shall adhere to procedures stipulated in this Law”⁸⁶⁴. In 2015, for example, the Palestinian poet Ashraf Fayadh who is living in Saudi Arabia, he was sentenced to death for committing apostasy. The penalty was reduced in 2016, as new evidences emerged⁸⁶⁵.

⁸⁶⁰ The Holy Quran, ‘Al-Baqarah’ (*Quran.com*, 2:217) available from <<https://quran.com/2/217>> accessed 10th Mar 2021.

⁸⁶¹ The Holy Quran, ‘At-Tawbah’ (*Quran.com*, 9:5) available from <<https://quran.com/9/5>> accessed 10th Mar 2021.

⁸⁶² Jami At-Tirmidhi, ‘The Book of Al Fitan no. 33- Chapter 1: What has been Related about the Blood Of A Muslim is Not Lawful Except for One of Three’ (*Sunnah.com*, 2158, vol 4, book 7) available from <<https://sunnah.com/tirmidhi:2158>> accessed 10th Mar 2021.

⁸⁶³ Bulugh Al-Maram, ‘The Book of Crimes: Qisas or Retaliation’ (*Sunnah.com*, 46 & 1242, book 9) available at <<https://sunnah.com/bulugh/9/46>> accessed 10th Mar 2021.

⁸⁶⁴ BOE, ‘Bureau of Experts at the Council of Ministers: Law of Criminal Procedure’ (*laws.boe.gov.sa*, 2013) available at <<https://bit.ly/3dMaJ0J>> accessed 8th Jul 2022.

⁸⁶⁵ BBC, ‘Ashraf Fayadh: Saudi Court Quashes Poet’s Death Sentence’ (*bbc.com*, 2016) available from <<https://bbc.in/3CAWWEH>> accessed 18th Jul 2022.

In Sudan, moreover, 15 out of nearly 155 convicted were being executed for committing apostasy between 1967 and 2017⁸⁶⁶. Article 126 of the Sudanese penal code of 1991 literally mentioned that an apostate is any “Moslem, who propagates for renunciation of the creed of Islam or publicly declares his renouncement thereof, by an express statement, or conclusive act...[Hence,] ...shall be given a chance to repent... [, otherwise] ...he shall be punished with death”⁸⁶⁷. Recent news tells that as one of Sudan’s plan towards liberalisation, death penalty for the crime of apostasy will be abolished⁸⁶⁸. A famous case with this regard is the case of Dr. Meriam Yahya Ibrahim, who was sentenced to death in Sudan in 2014 for changing her religion from Islam and follow the religion of her Christian husband. She was given a period of three days to rethink her decision, yet she remained defiant. Dr. Ibrahim was granted two years after giving birth, and then she seeks asylum in the US⁸⁶⁹.

Similarly, Article 12(2) of the Yemenis Criminal Penal Code of 1994⁸⁷⁰, Article 306 of the Mauritanian Penal Code of 1983⁸⁷¹, Article 1 of the Penal Code of Qatar⁸⁷². It can be therefore deduced that the Chart had no other option than to approve Article 30 as it is, in order to preserve the balance between universal and cultural human rights.

Moving on now to consider the freedom of religions from the international aspect. It can be clearly seen that the international sphere widened the scope of the right to freedom of thought, conscience and religion. Apart from other guarantees linked to this right, the main focus here is regarding changing one’s religion. The UDHR assured in Article 18 that humans “shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice”⁸⁷³. Similarly,

⁸⁶⁶ African Centre for Justice and Peace Studies, ‘Report on: Apostasy Punishment in Sudan 1968-2018’ (acjps.org, 2018, 3) available from <<https://bit.ly/3QBURpr>> accessed 13th Jul 2022.

⁸⁶⁷ ILO, ‘The Criminal Act 1991’ (ilo.org, 1991) available from <<https://bit.ly/3CkPQDO>> accessed 11th Jun 2022, Article 126.

⁸⁶⁸ MEE, ‘Sudan Abolishes Flogging and Decriminalises Apostasy’ (middleeasteye.net, 2020) available from <<https://bit.ly/3c71nfx>> accessed 11th Jun 2020.

⁸⁶⁹ BBC, ‘Sudan Apostasy Woman Meriam Ibrahim ‘to Campaign’ (bbc.co.uk, 2014) available from <<http://www.bbc.co.uk/news/world-us-canada-29399209>> accessed 25th Jul 2022.

⁸⁷⁰ Refworld, ‘Republican Decree for Law No 12 for the Year 1994 Concerning Crimes and Penalties’ (refworld.org, 1994) available from <<https://bit.ly/3KaKf4R>> accessed 7th Jun 2022, Article 12(2).

⁸⁷¹ LPS, ‘Mauritanian Penal Code’ (lerningpartnership.org, 1983) available from <<https://bit.ly/3A2XRe0>> accessed 7th Jun 2022, Article 306 (in French translated by Author).

⁸⁷² Almeezan, ‘The Penal Code 2004’ (almeezan.qa, 2004) available from <<https://bit.ly/3pYLExu>> accessed 7th Jun 2022.

⁸⁷³ Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A(III) (UDHR) Article 18.

Article 18(1) of the ICCPR ensured that all humans must enjoy this right and it “shall include freedom to have or to adopt a religion or belief of his choice”⁸⁷⁴.

Since this right has been included in two of the human right’s essential instruments, there is a need to provide more guarantees in order to ensure its full enjoyment by human beings. In case of the Arab paradigm, it has been argued that Article 30 of the Charter is inconsistent with the international standards, as it permits national laws to impose limitations on selecting one’s thoughts, beliefs and practicing the. Article 30 of the Charter violates Article 18(2) of the ICCPR, which indicates that “[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice”⁸⁷⁵.

This indicates that the Charter came arguably contrary to the established international standards of human rights in terms of protecting the right to freedom of religion, and may raises tensions in the case of recognising it within a region that embraces Islam, namely the Arab World. To be more precise, some of the international human rights standards are incompatible with the Islamic religion and cannot be applied in the Arab World, where Islam is mostly embraced. The neo-relativist model, then, suggest that this right must be considered internationally to become in line with the Charter and to be applicable in the Arab region. The ability to choose religion should not be imposed internationally, but rather states must be responsible for this task not only to fulfil their cultural and religious requirements, but also to preserve coexistence between other religions.

Another right that is challenging in practice, as it has been subjected to limitation and/or interference by state authorities as demonstrated in chapter 4, is the freedom of expression and opinion. The neo-relativist approach will suggest covering the mentioned right as it is, in addition to providing supportive arguments related to Arab cultural relativism. It will then move on to identify the right within the international human rights standards and compare it with former to determine whether its compatible or not.

⁸⁷⁴ ‘International Covenant on Civil and Political Rights’ (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 18(1).

⁸⁷⁵ ‘International Covenant on Civil and Political Rights’ (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Article 18(2).

As mentioned in chapter 5, this right is important because it is considered as the means by which a human expresses' thoughts and opinion. It has been protected by Article 32(1) of the Charter by which humans "right to information and to freedom of opinion and expression,...[and]...to seek, receive and impart information and ideas" will be ensured. It added in Article 32(2) that this provision must be practiced in virtue of social values and should not be limited unless in cases of preserving others' rights and maintaining security. This Article simultaneously combines the right to freedom of opinion and expression in the first section, and its limitations in the second section. Additionally, nothing in the Article literally implies that restriction should be made by states in cases of necessity or in accordance with their laws.

Islam has also protected these rights and consider them as an important type of freedom. The Islamic Sharia Law defines the right to freedom of opinion and expression as the right by which humans are allowed to think or meditate according to their beliefs in order to select a suitable method of life, and to express their point of view using any oral or written means in any context, such as cultural, economic or political for the benefit of the nation⁸⁷⁶. However, Sharia Law imposes limitation on how people express themselves and/or their opinions. By way of illustration, the expressed ideas must meet the divine standard and the opinions must be expressed for the sake of development; humans must consider one of the greatest Islamic principles, namely promoting virtue and preventing vice while expressing opinions and believing in divergence of opinion to get better results. Their opinions should not constitute any kind of abuse for others and the freedom of expression must not contain any abuse or sarcasm on others' beliefs, prophets or holy places of worship⁸⁷⁷.

Several controversial cases concern freedom of expression and opinion, clarifying the consequences of the tension between Islamic cultural relativism and the ICCPR's universal standards. The case of Salman Rushdie is a good example to clarify the Islamic view on freedom of expression and the consequences of abusing Islam, in particular the Prophet Mohammad (SAW), although others considered it as freedom of expressing

⁸⁷⁶ Islamway, 'Freedom of Expression in Islam: Its Truth and Regulations' (*ar.islamway.net*, 2012) available from <<https://goo.gl/i8nimq>> accessed 9th Aug 2018.

⁸⁷⁷ M Ahmed, 'Freedom of Opinion and Expression in the Islamic Legislation' (2009) 13 *Journal of Sharia and Islamic Studies* 35, (in Arabic, translated by Author).

intellectual opinion⁸⁷⁸. The Islamic view on the freedom of opinion and expression in the media field is further exemplified in the murder of the Dutch director Van Gogh in 2004, who produced a short film called 'The Submission', claiming that women are oppressed in Islam, and involving some Quranic verses⁸⁷⁹. These examples were presented to illustrate that the realisation, interpretation and the understanding of some rights can differ from culture to another.

A great job done when drafting the provision of freedom of expression and opinion in the international standards⁸⁸⁰. Article 19 (1&2) of the ICCPR ensures that every human being has the free will "to hold opinions without interference", as well as to express their own thoughts including the "freedom to seek, receive and impart information and ideas of all kinds", regardless of how this information was obtained. The third paragraph, which has well-structured format, specifies two situations in which freedom of expression may be subjected to limitation: violating others' privacy and reputation or to protect national security and maintain public order, public health, morals and values within states. In addition, limiting the right to freedom of expression must be in cases of necessity and supported by law.

In light of the neo-relativist approach, Article 19 of the ICCPR has similarities with Article 32 of the Charter, they both identify the right and explain its limitation. Although the formatting of the international standards looks much organised than the Charter, this does not matter since the latter has covered its foundations. Both articles impose limitation on this right; the ICCPR involves member states laws to limit the practice of this right on certain conditions while the Charter places emphasis on practicing this right "in conformity with the fundamental values of society". This means in both scenarios Islam will be involved because it shapes the Arab culture and has an influence on its legislations. Therefore, the neo-relativist approach suggests that the international right to freedom of expression and opinion is compatible with the Charter.

⁸⁷⁸ S Rushdie, 'The satanic verses' (Random House, UK, 2011); P Cliteur, 'Taylor and Dummett on the Rushdie Affair' (2016) 16 *Journal of Religion & Society* 1; J C Swan, 'The Satanic Verses, The Fatwa, And the Aftermath: A review Article' (1991) 61(4) *The Library Quarterly* 429.

⁸⁷⁹ J Snel, 'Freedom of Expression and the Media: A Case-Study from The Netherlands' (English edition, 2013) 6 *Journalism Research* 121.

⁸⁸⁰ See Article 19 of the UDHR and Article 19 of the ICCPR.

In this next section, however, the research will examine the right to equality and non-discrimination with a particular emphasis on women. This right claim that humans are born free and equal. It assumes that all people shall be treated equally, enjoy the same human rights, and deserve the same amount of respect and appreciation; states must guarantee that all people are treated equally, and without discrimination on grounds which may constitute inequality, such as race, colour, sex, language, religion, nationality and social origin. Although the Charter protected this right in Article 3⁸⁸¹, discrimination against women exist⁸⁸². Therefore, Article 3 of the Charter regarding the right to non-discrimination will be subjected to the neo-relativist approach to see wither it needs to be amended or not.

As indicated previously in this research, the Charter urged member states to take all the required action to protect this right. This means, member states shall take some of the responsibility to ensure that non-discrimination never occurs, given that it is essential within the human rights framework and it forms one of the bases through which other human rights can be practised. However, it is believed that non-discrimination against women may be affected by Arab culture, based on Islam. From an Arabic cultural view, the right to equality may have ethical reservations in some cases that prevail according to motives of humanity or moral obligation; for instance, helping women, elderly people or children by giving them priority in some situations, such as placing them first in queues and allocating seats in public transport. This what so called positive discrimination in favour of women, as presented in Islam. In it sample term, positive discrimination “It refers to the situation where individuals are accorded special

⁸⁸¹ Article 3 of the Charter states that “1. Each State party to the present Charter undertakes to ensure to all individuals subject to its jurisdiction the right to enjoy the rights and freedoms set forth herein, without distinction on grounds of race, colour, sex, language, religious belief, opinion, thought, national or social origin, wealth, birth or physical or mental disability. 2. The States parties to the present Charter shall take the requisite measures to guarantee effective equality in the enjoyment of all the rights and freedoms enshrined in the present Charter in order to ensure protection against all forms of discrimination based on any of the grounds mentioned in the preceding paragraph. 3. Men and women are equal in respect of human dignity, rights and obligations within the framework of the positive discrimination established in favour of women by the Islamic Shariah, other divine laws and by applicable laws and legal instruments. Accordingly, each State party pledges to take all the requisite measures to guarantee equal opportunities and effective equality between men and women in the enjoyment of all the rights set out in this Charter; The Council of the Arab League at the Summit Level ‘the Arab Charter on Human Rights’ (Res) 270/16 (23 May 2004) Article 3; also see section 5.5.1.4 in Chapter 5.

⁸⁸² Examples can be found in Chapter 4, regarding the human rights violations in the Arab World.

treatment...because of their membership in a disadvantaged group or groups, thus departing from strictly merit-based criteria”⁸⁸³ accordingly.

According to Islam, all people are equal in human value and if there is a difference in one’s appearance, Muslims must contemplate Allah’s (TA) wisdom and recognise that the reason behind creating different people with different attributes, such as sex, colour, belief and origin, is acquaintance and harmony. Even more, equality in Islam allows people to enjoy all of the rights evenly. However, Islam accepts favouritism in case of piety and sincere belief⁸⁸⁴. By adopting positive discrimination and including it the Charter, the Arab League is attempting to maintain the balance between international human rights standards and Islamic values. This is because Islamic principles constitute the essence of the Arab culture. Preserving women from discrimination in Islam is not a right, but rather it is a compulsory order that must be implemented.

The right to non-discrimination against women is also guaranteed by the international standards of human rights. The ICCPR protected this right in Articles 2, 3, 14(1&3), 23(4), 25(b&c) and 26⁸⁸⁵. In addition, equality and non-discrimination also enshrined in the ICESCR in Articles 2(2), 3, 7(a&c), 13(2)⁸⁸⁶. However, there are some circumstances in which member states are allowed to impose some exemptions regarding equality. To be more precise, the ICERD specifies in Article 1(4) situations in which states may withdraw their commitment by adopting special measures. These measures are usually applied for the reason “of securing adequate advancement of certain...groups or individuals requiring such protection as may be necessary in order to ensure...[their]...equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination”⁸⁸⁷.

However, all of the ethics and moral values enshrined in Article 3 of the Charter ostensibly reflect the Arab League’s commitment not only to international human rights

⁸⁸³ W Bee-Lan Chan, ‘Positive Discrimination in Education: A Comparative Investigation of Its Bases, Forms, and Outcomes’ (1983) 27(2) *Comparative Education Review* 191.

⁸⁸⁴ See footnote 152 and 155.

⁸⁸⁵ ‘International Covenant on Civil and Political Rights’ (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Articles 2, 3, 14(1&3), 23(4), 25(b&c) and 26.

⁸⁸⁶ ‘International Covenant on Economic, Social and Cultural Rights’ (adopted 16 December 1966, entered into force 3 January 1976) 993 UNTS 3, Articles 2(2), 3, 7(a&c), 13(2)

⁸⁸⁷ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 Dec 1965, entered into force 4 Jan 1969) 660 UNTS 195, Article 1(4).

standards, but also to Islamic norms and values. Taken together, this implies that the Charter has succeeded in preserving the cultural requirement, yet it failed to follow international standards of human rights in terms of non-discrimination against women. This discrepancy was on bases of following Islamic norms and including the phrase 'positive discrimination' in Article 3(3) of the Charter, which was intended to guarantee gender equality and has been used to justify one of the Islamic fundamentals. This also indicates that the international standards did not consider the fact that some cultures demand protecting women rights more than others; this has had been proven⁸⁸⁸. The neo-relativist approach, therefore, proposed that Article 3 of the Charter provided a suitable guarantee for the Arab region and does not need to be amended.

Having examined some of the problematic rights within the Charter, what is followed is an application of the neo-relativist approach on one of the most critical provisions within the Court Statute; namely, the right to individual petition. It is submitted that the Court Statute mentions that individuals are unable to bring a case before the court by themselves. Article 19 of the Court Statute clearly declares that a "State party, whose subject claims to be a victim of a human rights violation, has a right to access the Court on the condition that the claimant State and the respondent State are party to the Statute"⁸⁸⁹. It added that member states may permit "one or more NGOs that are accredited and working in the field of human rights in the State whose subject claims to be a victim of a human rights violation have access to the Court"⁸⁹⁰. This means cases involving the violation of individuals human rights can only be brought to the Court by their representative countries. Otherwise, individuals may approach the Court through any recognised non-governmental organisation that specialises in protecting and promoting human rights.

Apart from NGOs, member states are considered to be the founders of the potential court, i.e. complaints are likely to lack neutrality and honesty. The right to individual petition is essential to achieve justice. This right is also considered as one of the reasons

⁸⁸⁸ See N Pippa, 'Breaking the Barriers: Positive Discrimination Policies for Women' in Klausen J & M Charles S (ed) *Has Liberalism Failed Women? Assuring Equal Representation in Europe and the United States* (Palgrave Macmillan, London, 2001).

⁸⁸⁹ M A Al-Midani, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*, nd.) available at <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 2nd Sep 2020, Article 19(1).

⁸⁹⁰ M A Al-Midani, 'English Version of the Basic Statute of the Arab Court of Human Rights' (*acihl.org*, nd.) available at <https://acihl.org/texts.htm?article_id=44&lang=ar-SA> accessed 2nd Sep 2020, Article 19(1).

for establishing human rights courts. Almost all sources of human rights systems, both the divine rules and the man-made laws, guarantee justice. Hence, facilitating the procedures for people's access to courts must be promoted. However, Islam has also affirmed guarantees of justice for every person, including simplifying complaints procedures to bring cases before an independent judicial body characterised by integrity, objectivity and justice⁸⁹¹. Allah the Almighty says:

O you who have believed, be persistently standing firm for Allah, witnesses in justice, and do not let the hatred of a people prevent you from being just. Be just; that is nearer to righteousness. And fear Allah; indeed, Allah is Acquainted with what you do⁸⁹².

Despite the fact that this verse does not literally refer to the protection of individuals to ensure their right to access justice, its interpretation clearly confirms that justice must be provided to all humans⁸⁹³.

Moving on now to the international human rights standards we see that the closest provision within the international human rights standards concerning the right to individual petition is Article 12 of the ICCPR, which states that "All persons shall be equal before the courts and tribunals...[, and] shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law"⁸⁹⁴. Although there are no international judicial human rights standards, there are several treaty bodies functioning as an international enforcement mechanism. This research will depend on these treaty bodies in terms of individual petition. Under specific circumstances, eight UN treaty body accepted individual petition e.g., CCPR, CERD, CAT, CEDAW, CRPD, CED, CESC and CRC⁸⁹⁵. An individual whose country accept the jurisdiction of the committee

⁸⁹¹ H Abu-Zaid, 'Contemporary Jurisprudence in Shari'a Policy' (Dar Al-Kotob Al-Ilmiyah, Beirut, 2009) 160, (in Arabic, translated by Author).

⁸⁹² The Holy Quran, 'Alma'idah' (*Quran.com*, 5:49) available from <<https://bit.ly/3Bc9y0w>> accessed 10th Mar 2021.

⁸⁹³ R Al-Sarjani, 'Justice in Islam and its Importance' (*islamstory.com*, 2012) [Online] Available from <<https://goo.gl/k5ET1x>> accessed 27th Aug 2018, (in Arabic, translated by Author).

⁸⁹⁴ 'International Covenant on Civil and Political Rights' (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171, Articles 14(1).

⁸⁹⁵ The Human Rights Committee (CCPR) as per the 1st optional protocol; The Committee on Elimination of Discrimination against Women (CEDAW) as per optional protocol; The Committee against Torture (CAT) as per article 22; The Committee on the Elimination of Racial Discrimination (CERD) as per article 14; The Committee on the Rights of Persons with Disabilities (CRPD) as per optional protocol; The Committee on Enforced Disappearances (CED) as per article 31; The Committee on Economic, Social and Cultural Rights

will be able to either bring the complaints by him/herself, or someone else on behalf of him/herself or on some occasions, a complaint may be brought to the committee without the consent of the person exposed to violation⁸⁹⁶.

Taken together, this research believes that the right to Individual petition to human rights treaty bodies has been greatly ensured at the international level. However, the main purpose of the Court is to enhance the human rights protection in the Arab World; by permitting individuals to complain to the court, albeit not directly, there is a high possibility the Court will meet its target.

Thus far, the Chapter has examined a number of problematic rights and subjected them to the neo-relativist model. It can be concluded, therefore, that the neo-relativist model is an approach that provides a stronger moral and legal justification for human rights in the Arab region, rather than merely a moral theory or idea⁸⁹⁷. In other words, the focal point about neo-relativism model is the process of addressing a problematic right from the perspective of culture first and then the international sphere; this is followed by amending the international standards to become in line with the cultural and religious norms, in order to be applicable within the region that embraces that culture.

9.3. Concluding Remarks

The general purpose of the current chapter is to apply the neo-relativist approach on some of the Arab human rights provisions. Three problematic provisions of the Charter were chosen: condemnation of Zionism, the right to life and, the right to freedom of expression and opinion. Notwithstanding the relatively limited sample, this analysis offered valuable insights into the main purpose of this research, namely: protecting Arab human rights through neo-relativist approach.

By employing the reverse moderate cultural relativism, the neo-relativist approach entailed that the Arab human rights provision in question must be determined first, and this was already fulfilled in chapter 5 of this research. The neo-relativist process moves then to identify and examine the same provision in the international human rights

(CESCR) as per optional protocol and The Committee on the Rights of the Child (CRC) as per 3rd optional protocol; see UN, 'Human Rights Bodies - Complaints Procedures' (*ohchr.org*, nd.) available at <<https://bit.ly/3bbuKJo>> accessed 2nd Sep 2021.

⁸⁹⁶ UN, 'Human Rights Treaty Bodies - Individual Communications' (*ohchr.org*, nd.) available at <<https://bit.ly/2XONv2n>> accessed 2nd Sep 2021.

⁸⁹⁷ Such as universalism or cultural relativism.

standards that provides the right in question, in terms of providing an adequate protection to human. An analysis must be conducted then to clench whether this international provision is applicable in the Arab World or not. This will provide an international human rights standard based on cultural values. The outcomes indicate that most of the provisions are highly in line with the Arab human rights standards even though their relative contradiction with the culture. Accordingly, recommendations to reconsider an emphasis on the cultural norms, values and belief in the international human rights standards, have been made.

CHAPTER 10: CONCLUSION

10.1. Introduction

Through their regional organisation, Arab countries worked on promoting human rights and had embarked on forming an Arab human rights system through which agreements and mechanisms that aim at enhancing Arab solidarity towards promoting and protecting human rights were being adopted. Unfortunately, these agreements failed in meeting Arabs ambitions; this is likely due to the purpose of their existence, which was not targeting the enhancement and protection of Arab's human rights, but rather based on mutual diplomatic satisfactory. This can be justified by the lack of effective mechanisms to enforce the implementation of the Arab human rights agreements; beside the absence of a serious strive to adopt these agreements, resulting in their non-entry into force.

As for Arabs efforts in adopting their own instrument, the LAS has been heavily influenced by the 1968 United Nations declaration in Tehran and the 1993 Vienna conference. Accordingly, the LAS seriously considered the adoption of its own human rights instrument and follow suit with other international and regional organisations. It took more than half a century to adopt such an instrument for the LAS, and eventually the Charter was proclaimed in 1994. Sadly, this version of the Charter has never seen the light, as Arab countries did not ratify it, given their ratification on the Cairo Declaration of Human Rights in Islam, which to many Arab countries back then was adequate in protecting their human rights. The 1994 Charter was been amended and ratified in 2004 and entered into force in 2008; this was a crucial step for Arabs because it had embodied their interest in enhancing human rights therein.

LAS member states then realised that a mere human rights instrument will indeed require mechanisms to enforce its provisions. Consequently, they adopted the Arab Permanent Commission of Human Rights, which was established considering the LAS Charter as one of the technical commissions that entitle to address human rights matters; the Charter's Committee, which has been established as per the Charter and functioned to ensure the implementation of its provisions; the Court, which is the potential judicial body through which Arab human rights will be enforced and guaranteed.

While drafting the Charter, Arab countries kept in mind the balance between international standards and their cultural particularities; this has been reflected through the Charter's provisions. This must not be understood as undermining international human rights standards, on the contrary, this complements the international protection of human rights and function in providing more human rights guarantees, given that the Arab World is underpinned by wider and deeper principles, namely: Islam. This raised criticism on the system mostly due to incompatibility with international human rights standards. Accordingly, this research suggests the enhancement of the Arab initiatives in protecting human rights through re-examining these instruments while simultaneously considering the international human rights standards and the Arab cultural relativism. To be more precise, the intention of this research is to adopt a theory of reconciling universality and cultural relativism, and then apply it on the Arab human rights system; this is called the neo-relativist approach.

10.2. Narrative Summary of the Thesis

The research is summarized throughout this section of the conclusion, with all chapters outlined briefly. Chapter One provides an introduction for the research and includes a background on the human rights status and violations in the region, particularly within the Arab Spring. Moreover, it covers the research statement, aim and questions, research significance, methodology and the research structure. It consists of 10 chapters divided over an introduction, three parts and a conclusion.

Part one consists of three chapters and has been allocated to explore the Arab culture and their particularities. Chapter Two provides a general brief about Arabs, such as the region, population, economy and religion. It has also addressed Arab stereotypes, including uneducated, naivety and terrorism. It has also briefly explained the grounds on which they are adhered to Islam. Chapter Three reviews the history of Arabs, their struggle towards unity, the evolution of the Arab regional organisation (League of Arab States) and a summary regarding its organs. It then includes the formation of the Arab human rights system. Chapter Four examines cases during the Arab Spring in order to identify violations of the Charter and hence the failure of LAS in protecting Arab human rights. The spread of the Arab Spring revolution was considered from a theoretical viewpoint, including the violations of the Charter during this time and the resulting implications. The human rights violations in the chosen cases indicate member states'

non-commitment to the Charter provisions, this is probably due to the absence of an effective enforcement mechanism. Accordingly, a section concerning the effectiveness of the Charter has been added.

Considering the failure of LAS in protecting human rights, the second part of the research investigates the Arab human rights system to identify strengths and weaknesses. It consists of two chapters; Chapter Five covers the Arab human rights instruments (the Charter) and Chapter Six addresses the Arab human rights enforcement mechanisms (the Commission, the Committee and the Court).

Part three consists of three chapters and considered a different thematic model; it focuses on the activation of the neo-relativist approach. Chapter Seven initially explains and provides an analysis to the relevant theories, namely: universalism and cultural relativism; it then covers the tension between them. Chapter Eight explores existence and attempts to reconcile the universality and cultural relativism, including relative universality, moderate and reverse moderate cultural relativism. It moves on to provide an analysis in order to remove any claims to the potential theory. Chapter Nine is dedicated to examining the selected theory in practice by applying it on the Arab human rights instruments; this process called the neo-relativist approach.

10.3. Tackling the Research Aim and Questions

The purpose of the current research was to enhance the human rights protection in the Arab World through the neo-relativist approach. In so doing, the research has had to show that the existed component of the Arab human rights system is incapable to sufficiently protect human rights. Therefore, the Arab human rights system has been examined and its components have been analysed. Chapter four shows that although most of the Arab countries are part of the LAS and the Charter, various human rights violations occurred within their territories. The Arab Spring can be seen as a test for the effectiveness of international human rights in general, and the Arab human right system. This indicates the need to enhance the Arab human rights system to be more effective. In addition, the ineffective protection of human rights led to create a fertile ground for terrorism and may lead to further violations.

Accordingly, the system has been investigated and analysed in Part Two of this research in which the Arab human rights system has been defined. Chapter Five includes a review

of the phases and the struggles the LAS been through while seeking to adopt the Charter, analysing the LAS reports by which the Charter has been formed and analysing the two versions of the Charter. The analysis showed that the LAS refused to adopt the amended version of the Charter submitted by a coalition of international and local human rights experts, and embraced the one provided by the Commission; that is, the existing version. This implies that the LAS found the existing version more suitable for the Arab World. The analysis also shows that there are some articles did not come in line with international human rights standards, such as Article 8 (prohibition of torture), Article 3(3) (gender equality) and allowing member states to regulate some provisions as per their domestic laws. This research believes that the third point can tackled by utilising the margin of appreciation.

Chapter 5 examines and analyses the Arab enforcement mechanisms e.g. the Commission, the Committee and the Court. Analysing the Commission indicates that it lacks operative regulations for decades (1968-2007); this has affected the functions of the commission. The analysis also showed that the Commission did not follow other systems in terms of its members independency, but rather it can be counted as member states gathering. The Commission, further, has no link with other Arab human rights mechanisms. The Chapter has also covered an analysis of the Committee; an independent body function to supervise the application of the Charter. Further, nothing mentioned in any of the Arab human right instrument about member states commitment to submit periodic report to the Committee in a specific time. Even more, the Committee lack the jurisdiction to accept individuals' petitions. The Committee also lacks following up measures to ensure considering its recommendations by member states. However, the third Arab Human rights mechanism mentioned and analysed in Chapter Six is the Court or the Court Statute. The main outcome resulted from the analysis is the fact that the Court limits the right to individual petition.

The third part of this research is mainly aimed at implementing the neo-relativist approach. Chapter seven covered an analysis of the theories of universalism and cultural relativism. The analysis showed that human rights universality is instrumental in the development of human rights culture. Moreover, the fact that cultural relativism will be an obstacle to people who wish to reconcile the two theories. Another finding is cultural relativism will help in implementing the right to self-determination. Furthermore,

universality enhance the spread of the message of Islam. The analysis also indicates that the UDHR lack any provision refers to cultural particularities.

Chapter Eight, however, aimed to explore the suitable work of reconciling universalism with cultural relativism, to be used in this research. It begun by examining and analysing the relative universality. Even though enjoyment of human rights will be divided on the two theories through the recognition of the universal human rights which is interpreted and implemented in accordance to cultures. Moreover, different cultures have various interpretations for human rights, thus unifying a certain right to be applicable by all cultures in rather challenging. The second theory that was covered is moderate cultural relativism. The outcome of analysing this theory implies that culture will be undermined by universality. The research then selected reverse moderate cultural relativism.

The final chapter of this research set out to activate the main argument of this research; that is, adopting the neo-relativist approach through applying the reverse moderate cultural relativism on the Arab human rights instruments. Since the Charter and the Court Statute have already been analysed in the second part of this research, and the outcome showed that some of their provisions are incompatible with international standards, the application of this research's approach will be limited on some of these problematic provisions.

10.4. Main Findings and Implications

This research sought to identify a better protection of Arab's human rights through reliable instruments; meaning that they must be subjected to amendments to become suitable for the Arab region. Part Two indicates that several provisions in the Charter and the Statute are in need to be amended. These amendments will serve the adopted Arab human rights protection mechanisms to work duly and achieve the purpose of their creation. This research argued that this can be achieved by adopting the neo-relativist approach; that is, employing one of the existences attempts of reconciling human rights universalism and cultural relativism, and apply it on the Arab human rights instruments. The following are the main findings resulting from this research.

The research has initially shown that Islam has a significant influence on Arabs and the Arab culture. It penetrates in every part that regulate Muslim life and it is not possible to separate them from each other. It involves in shaping Muslim morals, norms and

values. Moreover, it plays a vital role in the adopted constitutions and laws by states, besides international agreements that will eventually be part of the internal legislations therein.

Secondly, the history provides lessons that must not be ignored. According to the historical review discussed in this research, Arabs shows infinite and absolute preference to independence and sovereignty. They have prioritised their sovereignty over the goal they have struggled to achieve for long time, namely: Arab unity. This can be also seen in the absence of any reference to human rights within the LAS Charter although it preceded the Charter of the United Nations. This indicates that they have great interest in preserving their sovereignty and will deny any sort or attempt of interfering into their affairs.

Another outcome emerged from this research would be the LAS failure to ensure the enjoyment of human rights in the Arab region led to the Arab Spring, in which Arabs demonstrated to demand their rights. This has facilitated the path for extremists to spread their ideologies over the Arab countries, supported terrorism and the birth of terrorist groups.

The analysis in chapter five illustrates that the LAS adopted the amended version of the Charter that was provided by the Commission rather than the version recommended by the collective committee which includes academic, scholars, Arab employers in the United Nations, NGOs and other human rights defenders. Since adopting a regional human rights system that functions to commit member states to apply its provisions is challenging, given that sovereignty is sensitive issue for the Arab countries, then it is likely this can occur by adopting an instrument that is heavily influenced by Arab culture. This justify adopting the Commission's recommended version of the Charter⁸⁹⁸. As a mechanism of protecting human rights, the Commission failed in fulfilling its role; as it is mainly a supportive institution rather than protective.

An outcome that resulted from part three would be that universality support the human rights culture, since its concept is to spread the standards over the world. This also makes it in line with Islam which has been reveals to all humanity; hence universality

⁸⁹⁸ The Commission consists of member states representatives.

helps in the spread of Islam. Cultural relativism, on the other hand, enhances states sovereignty and the right to self-determination.

Moreover, the deliberation of the UDHR showed that it is greatly influenced by culture. Regardless of the impact of the Western culture that is imposed by the majority of the team members, the deliberation sessions of the UDHR have reflected those states prioritise their cultural norms and values. This can be clearly seen in the reservations, which have been provided by objected member states on the grounds of culture, on some of the UDHR provisions.

An important finding of this research is that adopting the reverse moderate cultural relativism indicates that cultures must be given more weight than international standards for a better protection of human rights in the Arab World. This will not undermine universalism, rather it will ensure that the various culture in the world, including Arabs, will enjoy the full set of human rights as per their values, norms and morals. This can also be seen as a support provided by universality to cultural relativism in order to promote and protect Arab human rights.

Ultimately, the neo-relativist approach has provided an understanding of the foundations of the Arab human rights as Arabs worked hard in creating their unique human rights system and be able to adopt instruments that based on international human rights standards and simultaneously influence by Islam. This has been identified when the neo-relativist approach has been implemented. The neo-relativist approach represented by the reverse moderate cultural relativism implied that Arab human rights can be enhanced without major amendment, as it had sought to form an international standard based on the cultures of the world, including the Arab culture.

10.5. Recommendations for Further Research

The research showed that the Arab culture and state sovereignty constitute a barrier for universal human rights standards. In terms of tackling the Arab culture, this can be undertaken by urging the international community to pare more emphases on cultures while forming the human rights standards. This responsibility must be shared by Arabs as well; this can be achieved through attempting to reinterpret some of the Sharia provisions that involve in human rights to become in line with international standards.

This process is limited merely on scholar's interpretation of Sharia and not provisions of Islam's fundamental sources, namely: the Qur'an and Sunnah.

As for Arab states sovereignty, granting member states some limited capacity to estimate the application of some rights may be a good choice. By doing so, Arab countries will likely act upon their culture and regulate human rights within their territories and without any interference in their affairs. Therefore, this research recommends adopting and legitimating the Margin of Appreciation doctrine by the Arab human rights system, for better human rights practise in the region. This will also support in the entry into force of the Court, given the confidence Arab states will gain when taking the responsibility of regulating some of the human rights within their territories. This will give rise to Arabs belief in the notion of human rights and will likely make them seek to promote and protect the human rights in of the region, including accepting the Court jurisdiction.

Although the failure of the LAS in promoting Arabs human rights resulted in the Arab Spring and terrorism, Arab states must take all necessary measures to ensure the non-occurrence of such situation. They should intensely work on promoting human rights and competing terrorism. This may be through spreading the culture of human rights and the dangers of terrorism in the various sectors of the Arab states, including education and media. Since the Commission is entitled to spread out the Arab human rights culture, this research suggests further study on the possibility of enhancing the role of the Commission in promoting human rights for the purpose of combating terrorism in the Arab region.

Furthermore, the research showed that sovereignty and independence are crucial for Arabs. This will enhance the consideration that protecting human rights is likely a domestic matter Arab states themselves should be addressing and regulating its application within their territories. This likely justifies their non-commitment to some of the international agreements by which their provisions are mandatory. Since Arabs highly adhered to their particularities and culture, this research suggests further examination on applying the reverse moderate cultural relativism on the Arab state level.

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