

The League of Arab States in the Wake of the “Arab Spring”

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In 2011 and 2012, the League of Arab States (the League) took limited steps in relation to what has become known as the “Arab Spring” which may have important implications on human rights issues, as will be discussed below. While these developments may have broken with some of the practices of the past, they do not reflect a fundamental change in the work of the mechanisms of the League inspired by a set of coherent policy decisions, nor have they led to a new systematic approach within the League with regards to human rights.

Arguably, some of the positions taken by the League in 2011 and 2012 - when cries for freedom and democracy rocked the Middle East and North Africa - illustrate that respect for human rights principles and international law is slowly but increasingly featuring in the work of the League. Despite this, the League has missed countless opportunities to play a constructive

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and decisive role in systematically ensuring that its member states respect and protect human rights at all times.

It is believed that some new factors may increase the potential for the Arab League to play a more decisive role in relation to respect of human rights and international law. These include the recent appointment in July 2011 of a prominent jurist as its Secretary General,² the changing balance of power in the region as dictated by the emergence of new political leadership in some Arab countries, and the functioning of the treaty body which oversees implementation of the Arab Charter on Human Rights, as well as the reform process that is said to be taking place within the League itself. However, some observers fear that the developments of the “Arab Spring” do not portend well for human rights in the region nor, therefore, in the context of the Arab League, at least for the foreseeable future.

It should be highlighted that most of the League’s major decisions related to reform initiatives in Arab countries have been made by the political bodies of the League. As such, balances of power and political interests and considerations continue to be the main impetus behind these decisions. At the same time, the significance of the positions adopted should not be underestimated.

The Process of Reforming the Arab League

One issue that has long been on the agenda of the League is the reform of its Charter, including in order to include reference to the promotion and protection of human rights as one of the aims of the organization. However, decisions on this have been repeatedly delayed. In March 2011, the Council of the League (the League’s highest decision-making body) endorsed the report and recommendations made by the Standing Commission on Human Rights in its January 2011 session.³ In this report, the Commission noted the resolution issued by the Council in its earlier session in September 2010 to postpone adopting a decision on including a reference to human rights in the Charter of the League. This was said to be pending proposals on more general reform of the Arab League (see below for further information).

² Nabil al-Arabi was appointed as Secretary General of the League in July 2011. He is a seasoned Egyptian jurist and diplomat and holds a doctoral degree in law. His extensive career includes many positions at the international level. He has served as a member of the International Court of Justice and previously as a member of the International Law Commission.

³ Council Resolution 7343, Regular Session 135, 2 March 2011.

Therefore, no concrete decision about putting human rights at the heart of the organization has been adopted.

The Standing Arab Commission on Human Rights, as a political body formed of political representatives of each of the 22 member states, has a narrow mandate and methods of work which are believed to significantly hinder its ability to actively engage on human rights concerns in the region. The Commission does not have special mechanisms (such as country or thematic special rapporteurs or working groups) to allow for direct engagement with victims of human rights violations. In March 2011, the Council of the League endorsed the decision of the Commission to ask the Secretariat to consult with member states and present a report on ways to activate the role of the Commission. The Commission also asked for an evaluation of the role of the Committee of Experts, which was initially created as a sub-Commission in 2007 and whose mandate was expanded to include the preparation of studies upon the request of the Commission or the Secretariat.⁴ However, in 2012, the Council of the League approved the recommendation of the Commission to end the work of the Committee of Experts as an independent body and to maintain an expert committee only for the purpose of overseeing the human rights education plan.⁵

The Standing Commission had also asked its Committee of Experts to propose ways to develop the criteria for giving observer status to NGOs, as the current criteria are very restrictive and have been widely criticized. Of particular concern is that the Commission only allows for NGOs to obtain observer - rather than consultative - status. Thus, NGOs are not allowed to intervene in deliberations or to make presentations, and until very recently they did not have access to documents or even the agenda prior to the League's sessions.

All of these issues are now being considered by a special commission on reform established by the Secretary General following his first speech upon being appointed. This commission, headed by Lakhdar Brahimi, will present its report to the Secretary General, who will transfer the matter to the Council. The mandate of the commission is supposedly to suggest ways to reform the Arab League in general, rather than specifically in relation to human rights mechanisms and standards or to the structure of the Secretariat. In its development of the report, the commission has only met with a very limited number of NGOs, and it failed to establish mechanisms for holding

⁴ See agenda item 5 of the Report of the Commission for Human Rights, 26-30 January 2010, approved by Council Resolution 7202, Regular Session 133, 2-3 March 2010.

⁵ Council Resolution 7488, Regular Session 137, 10 March 2012, approving recommendations of Session 32 of the Arab Commission on Human Rights.

public hearings, for calling for and receiving submissions, or for any formal avenues for civil society engagement.

Nonetheless, several informal meetings did take place. Based on their own initiative, human rights NGOs also sent two main letters to the Commission at early stages in order to present specific observations and proposals.⁶ However, as it is not clear whether the report will be made public or if the League will establish avenues for debating the report with NGOs before its adoption, another joint letter was sent in 2012 calling for these two steps to be taken.

International Law and Setting Standards

The Arab Human Rights Charter and Committee

The Arab Charter on Human Rights was revised and entered into force on March 15, 2008. Currently, it has been ratified by 11 states, which represent half of the member states of the League. According to Article 48, initial reports are to be submitted one year after the Charter enters into force in a given state party, and periodic reports are to be submitted every three years thereafter. However, by June 2012, only Algeria and Jordan had submitted their initial reports, despite the fact that initial reports were due for all 11 state parties. Jordan's report was considered by the Arab Human Rights Committee in April 2012 and Algeria's report in October 2012, and the concluding observations and recommendations concerning both countries were made public several months after the review sessions. Bahrain also submitted its report in August 2012, but it was not discussed until the end of the year.

The Arab Charter on Human Rights is the first and only existing treaty in the League to have an independent supervisory mechanism established according to the treaty itself. The consideration of Jordan's report was particularly important, as it was the first time that the Committee issued concluding observations. A review of these concluding observations reveals that the work of the Committee has been serious and vigorous – taking into consideration that this was the first report to be reviewed by the Committee – and that the Committee even referred to international law and standards in its consideration. Some of the most important points included in the Committee's concluding observations are as follows. The Committee welcomed many positive aspects but initially criticized on principle the fact

⁶ For details of the letter signed by 37 NGOs in various Arab countries, see <http://www.cihrs.org/?p=1889&lang=en>.

that no non-governmental organizations - nor even the National Human Rights Institute⁷ – were included in the process. The Committee referred specifically to CEDAW in criticizing that the Jordanian Constitution still does not expressly provide for equality between men and women, despite having been amended. Among the other issues criticized by the Committee were the light punishments imposed by the law for the commission of torture, highlighting that they are disproportionate to the seriousness of crime; the lack of clear legal provisions for reparation for torture; the contradiction between the law regarding protection of government secrets and the right to access to information; and the widespread practice of administrative detention and the legal grounds which provide for it. The Committee also noted that the state's report does not clarify how the state deals with problems arising from the inability of Jordanian women married to non-Jordanians to pass Jordanian nationality on to their children, pointing out that this is a form of discrimination against Jordanian women and recommending that the law be amended to enable Jordanian women to pass their nationality on to their children. The Committee also noted that labor legislation does not adequately deal with issues of trade union rights, child labor, and social security. The Committee provided a number of recommendations, including on combating torture, compensating victims of torture and arbitrary detention, and the need for an absolute prohibition of corporal punishment of children in the family and schools. The Committee further called for the amendment of a number of other laws and policies.⁸ Despite these important observations and recommendations, it should be noted that the Committee overlooked a number of critical observations and recommendations made by the mechanisms of the United Nations, which should have been addressed by the Committee as well.

In October 2012, the Committee considered Algeria's report. Among the issues of concern referred to by the Committee in its concluding observations were the lack of wide participation from civil society organizations in the preparation of the report, the fact that Algerian law does not explicitly prohibit the use of confessions extracted through torture, the authority of the executive branch exerted over the Supreme Judicial Council, the lack of clear standards for appointing, promoting, or dismissing judges, the lack of standards for making reparations to individuals following wrongful detention or unfair court decisions, the increased use of preventive detention, and the lack of surprise visits to detention centers. The Committee

⁷ The National Human Rights Institute is a state institution working in the field of human rights in Jordan.

⁸ Full text of the Observations and Recommendations of the Arab Human Rights Committee, issued in April 2012, is available on the website of the Arab League at www.lasportal.org.

welcomed the issuance of a new law on associations in 2012 while noting that it remains unclear whether organizations will be able to carry out their activities in cases where the authorities do not respond with either approval or rejection within sixty days of when an organization's application for registration is submitted. The Committee also welcomed the removal of some crimes from the list of those punishable by the death sentence under Algerian law, yet it criticized the lack of available information regarding a number of cases which were pardoned or in which lighter penalties were issued in place of death sentences.

The Rights of the Child

The last few years have also witnessed a discussion on whether there is a need for elaborating a revised Arab Convention on the Rights of the Child. In its session in January 2011, the Standing Commission took note of the position of the Arab Childhood Committee, which found that there is no need for updating the 1983 Charter on the Rights of the Arab Child. This position argued that since most Arab states (with the exception of Somalia) have ratified the UN Convention on the Rights of the Child (CRC), there is no need to create an Arab instrument parallel to every international instrument. In its 2012 summit, the League adopted the Marrakech Declaration, which affirmed commitment to the CRC and its protocols and adopted tools for advancing children's rights accordingly. According to the Charter of the Rights of the Arab Child, states submit reports to the General Secretariat (rather than to a treaty body of independent experts) on measures they have taken to give effect to the Charter. However, there is no clear timeframe or format for this.

The International Criminal Court and Impunity

In May 2011, a conference was hosted by Qatar between the ICC and the Arab League, shedding light once again on the earlier position of the League which had strongly opposed the ICC following the indictment of Sudanese President Bashir. The conference saw the presentation of many statements on the importance of combating impunity and of cooperating with the ICC. However, the Arab League did not change its formal position concerning the

indictment of Bashir.⁹ Furthermore, the League did not officially discuss the arrest warrants issued by the ICC against former Tunisian President Ben Ali and against former Libyan President Qadhafi and members of his family.

It should be noted that Jordan, Djibouti, and Comoros were the first members of the Arab League to ratify the Rome Statute establishing the ICC. Following its revolution, Tunisia also acceded to the Rome Statute on 24 June 2011. Algeria, Bahrain, Egypt, Kuwait, Morocco, Oman, Syria, the United Arab Emirates, and Yemen are also signatories.

The “Arab Spring”

The demands for democracy, reform, and human rights in the Middle East and North Africa, described by some as the “Arab Spring” or the “Arab revolutions”, have great ramifications for the relationship between the League and its member states on the one hand, as well as for the relationship between the League and international human rights law and standards on the other. While the situation in several Arab countries has been alarming and human rights were gravely violated for decades prior to the revolutions, the Arab League never took firm, serious steps in these situations to ensure respect for and protection of human rights. In fact, the position of the League on human rights violations leading up to and during the “Arab Spring” continued to be driven not by a coherent and systematic human rights policy but by political considerations. This is evidenced by the way in which the Arab League dealt with the situations in the various countries which experienced uprisings. While the Arab League discussed the situations in Libya and Syria through regular and extraordinary sessions of many of its bodies, the situations in Yemen and Bahrain did not attract similar attention, despite the seriousness of the violations being committed in these two countries. From the start of the events in Tunisia, Egypt, and other Arab countries, the Arab League reacted initially through statements issued by the previous Secretary General, calling on states to respect freedom of speech and peaceful assembly, to resort to dialogue, and to refrain from the use of excessive and lethal force. However, this did not trigger a noticeable reaction beyond such general statements. For example, in a statement made by the Secretary General on February 3, 2011, the Arab League called for an inquiry into the violent events which had taken place in Tahrir Square in

⁹ Following the decision of the ICC prosecutor to issue the arrest warrant against President Omar Al-Bashir of Sudan on 9 December 2009, several bodies of LAS, including the Summit, issued resolutions rejecting the decision, stressing the integrity of Sudan. See for example Summit Decision 465, Regular Session 21, 30 March 2009. See also Prosecutor v Al Bashir [Warrant of Arrest] ICC-02/05-01/09-1, 4 March 2009.

Cairo, Egypt when demonstrators were violently attacked. However, the matter did not come before any of the political or human rights bodies of the League, and no decision or position beyond this statement was taken on this particular event. Surprisingly, another statement welcomed the announcement of President Mubarak not to run for another term in office.

The response to the situation in Libya was different. It may be argued that the position of the League concerning Libya was not surprising, given that at the time of the revolution in 2011, the Libyan leader Muammar al-Qadhafi had made an enemy out of almost every Arab regime. For this reason, the route that the Arab League took in the case of Libya was different from that adopted in relation to Tunisia, Egypt, Bahrain, and Yemen, which all have their own political allies both within the League and in the international community.

In February 2011, the Council suspended Libya's right to participate in all of the League's bodies and meetings out of protest at the violence being used against civilians.¹⁰ This was followed by a resolution of the Council on Libya in its regular session in March 2011 condemning the violence and attacks unleashed by the Libyan authorities against civilians; at the same time, the resolution rejected what was called "any attempts at foreign intervention in Libya".¹¹ In an extraordinary session held ten days later, the Council, while still rejecting foreign intervention, asked the UN Security Council to "take necessary measures to impose a 'no fly zone'" over Libya.¹²

The subsequent UN Security Council Resolution no. 1973,¹³ which refers to the resolutions of the Arab League, authorizes "all necessary measures" to protect civilians in Libya while excluding a foreign occupation of any form on any part of Libyan territory. A coalition of NATO allies and other Arab partners began an operation whose purpose was said to be "to enforce an arms embargo, maintain a no-fly zone, and protect civilians and civilian-populated areas from attack or the threat of attack in Libya."¹⁴

In the case of Bahrain, the League did not condemn the use of force against demonstrators or the mass arrests of reformists and demonstrators. The Council approved the initiative of the King of Bahrain to resolve conflict

¹⁰ See Statement of the Council no. 136 in its extraordinary session on 22 February 2011. Full membership status was restored on 27 August 2011 when the Libyan Transitional Council was considered the representative of the Libyan people in the League. See Council Resolution 7370, Extraordinary Session 27 August 2011.

¹¹ Council Resolution 7298, Regular Session 135, 2 March 2011.

¹² Council Resolution 7360, Extraordinary Session, 12 March 2011.

¹³ See: <http://www.un.org/News/Press/docs/2011/sc10200.doc.htm#Resolution>.

¹⁴ See NATO and Libya on NATO's website, available at http://www.nato.int/cps/en/natolive/topics_71652.htm.

through dialogue and rejected any foreign interference in the country's internal affairs yet justified the entry of the Gulf Shield Forces into Bahrain on the basis of the joint security and defense agreement between GCC members. The League welcomed the establishment of the Bahrain Independent Commission of Inquiry but did not comment on the outcome of the Commission's investigation, conclusions, or report, which blamed the government for the use of lethal force and pointed to the shared responsibility of the government and the opposition for the escalation of events.¹⁵ Further, the League did not call on Bahrain to implement the recommendations of the Commission.

The position of the Arab League on Yemen has been weak, calling for a peaceful transition of power, condemning "crimes against civilians", and requesting concerted efforts to safeguard national unity and the right to freedom of expression. In April 2012, the League announced its support for the initiative of the GCC to reach a peaceful solution to the crisis in Yemen. This marked a setback for international justice, as the GCC initiative provided for impunity for President Ali Abdullah Saleh through an agreement under which he was allowed to leave the country and given guarantees that he would not be brought to justice in exchange for a transfer of power.¹⁶

The position of the League towards Syria was clearer and marked a shift towards a more proactive role. In addition to condemning of the use of lethal force and calling for respect for freedom of speech and peaceful assembly, the League initially approved a four-step agreement with Russia based on calling on all parties to cease violence, the acceptance of an independent monitoring mechanism, the rejection of international intervention, and enabling access to humanitarian assistance.¹⁷

¹⁵ The Independent Commission of Inquiry concluded that "there is no doubt that what occurred in February/March [2011], and subsequently, was the result of an escalating process in which both the Government and the opposition have their share of responsibility in allowing events to unfold as they did." The Commission adds that "[t]he forceful confrontation of demonstrators involving the use of lethal force and resort to a heavy deployment of Public Security Forces led to the death of civilians. This caused a marked increase in the number of persons participating in protests and led to a palpable escalation in their demands." See Report of the Bahrain Independent Commission of Inquiry, presented in Manama, Bahrain on 23 November 2011, para. 1690-1691, available at <http://www.bici.org.bh/BICIreportEN.pdf>.

¹⁶ See Summit Decision 555, Regular Session 23, 29 March 2012.

¹⁷ Council Resolution 7460, Regular Session 137, 10 March 2012.

In October 2011, the League agreed with the Syrian president on a plan which called for the cessation of violence by all parties, the release of all detainees arrested in the context of the crisis, the removal of all arms from residential areas, and allowing the organizations of the League and all media outlets to access Syria freely. In the light of Syria's lack of cooperation with this plan, the Council of the League voted in November 2011 to suspend Syria's right to participate in meetings of all bodies of the League. This resolution also provided for the imposition of economic and political sanctions.¹⁸

Gradually, the position of the League became more decisive. On September 5, 2012, the Council of the League condemned attacks against civilians by government forces and *Shabiha* and decided to provide all required forms of support for the Syrian people to defend themselves. The Council further called on the UN Security Council to ensure the cessation of attacks against civilians by the Syrian regime in accordance with Chapter VII of the UN Charter.¹⁹ In an earlier resolution of an extraordinary session of the Council, the League had decided to call on the Syrian president to leave power but also stated that the League would assist him and his family in achieving a "safe exit".²⁰ In this resolution, as in many previous resolutions, both Algeria and Iraq registered their reservation against the call for the Syrian leader to step down and the reference to Chapter VII of the UN Charter. Lebanon distanced itself altogether from this resolution as with similar resolutions previously passed. It should be noted that the League met at several occasions with representatives of the Syrian opposition. On July 3, 2012, the Arab League sponsored a conference for the Syrian opposition which concluded with the participants, who represented various opposition groups, adopting a common political vision.

Previously, the League had made a decision in November 2011 to send an observer mission to Syria.²¹ This was widely criticized by NGOs and some bodies of the League, including the Arab Parliament and the Arab Human Rights Committee, for lacking clear guidance, training, and equipment. The mission was withdrawn in February 2012. On February 23, 2012, Kofi Annan was appointed as the Joint Special Envoy of the UN and the Arab League to Syria and mandated to provide good offices with the aim of ending all violence and human rights violations and promoting a peaceful solution to the Syrian crisis.²² In an annex to Security Council Resolution

¹⁸ Council Resolution 7438, Extraordinary Session, 12 November 2011.

¹⁹ Council Resolution 7523, Regular Session 138, 5 September 2012.

²⁰ Council Resolution 7510, Extraordinary Session 22 July 2012.

²¹ Pursuant to Council Resolution 7438, Extraordinary Session, 12 November 2011.

²² In accordance with the General Assembly resolution A/RES/66/253, 16 February 2011.

2042 of 14 April 2012, the Security Council adopted the six-point plan proposed by the Joint Envoy.²³ On April 21, 2012, the Security Council adopted Resolution 2043, which set up the UN Supervision Mission in Syria (UNSMIS), initially established for a period of 90 days and made up of a deployment of up to 300 unarmed military observers and a civilian component. The UNSMIS mandate has been renewed regularly since its establishment.²⁴ This and many other subsequent resolutions, which also refer to the positions and role of the Arab League, demanded that the Syrian Government ensure timely provision of humanitarian assistance, increase the pace and scale of releasing arbitrarily detained persons, ensure freedom of movement for journalists throughout the country, and respect freedom of association and the right to demonstrate peacefully. Mr. Lakhdar Brahimi was appointed as Joint Envoy a few days after the resignation of Mr. Annan on August 2, 2012, when Annan acknowledged that his mission had failed.

The Arab Parliament

The Baghdad Summit in March 2012²⁵ adopted the Statute of the Arab Parliament, which was previously endorsed by the Council of Ministers of Foreign Affairs.²⁶ The Arab Parliament is a new addition to the structure of the League established through an article added to the League Charter which provides that “[an] Arab Parliament shall be established in the framework of the League, and its rules of procedure, composition, functions and areas of competence shall be defined”.²⁷ The Parliament is composed of four members from each state who are to be chosen, appointed, or directly elected by their own national parliaments or similar national assemblies. According to the Statute, considerations are to be taken to ensure female representation. The primary responsibility of the Parliament is to ensure economic, social, and developmental cooperation towards achieving Arab unity. Particularly, the Parliament has a primary responsibility to foster Arab relations, cooperation, and joint mechanisms and to guarantee national security and

²³ See: <http://www.un.org/News/Press/docs/2012/sc10609.doc.htm>.

²⁴ See: <http://www.un.org/News/Press/docs/2012/sc10618.doc.htm>.

²⁵ Arab League Summits are held annually in March. The March 2011 Summit was delayed repeatedly until it was finally held at the end of March 2012 in Baghdad; the various and sometimes conflicting positions of Arab states concerning the situation in the region were said to be reasons for the delay, along with security concerns over holding the summit in Iraq.

²⁶ See Summit Decision 559, Regular Session 23, 29 March 2012.

²⁷ ‘Development of the Joint Arab Collaboration System: Amendments to Some Articles of the Charter of the League of Arab States’, the League Summit Decision 290, Regular Session 17, 23 March 2005, and ‘Development of the Joint Arab Collaboration System: Establishment of an Interim Arab Parliament’, the League Summit Resolution 292, Regular Session 17, 23 March 2005.

promote human rights. The Parliament is not given the power to draft agreements, but it can endorse agreements referred to it before they are ratified by the Council of Ministers of Foreign Affairs. The decisions of the Parliament are not binding but rather are considered recommendations which must be ratified by a Ministerial Council or a Summit if they are to take effect. The body can question ministerial councils, the Secretary General, senior staff of the Secretariat, or the specialized agencies of the Arab League. The Parliament also plays a primary role in leading efforts to unify Arab legislation and to provide guidance in this area. The seat of the Parliament is Syria, and its sessions are public unless the Parliament decides otherwise.²⁸

It is clear that the Parliament is a relatively weak body which will not be able to ensure through its decisions that, for example, Arab legislation is consistent with international law. However, it is possible that the Parliament will be able to ensure that debate on such matters is constantly prioritized on the agenda, especially in its efforts to review treaties or unify Arab legislation. Obviously, this will depend on the members and their own commitment to human rights.

An Arab Court

Although Article 19 of the original version of the League Charter (Article 20 of the amended Charter) provides for the creation of an Arab Court of Justice by the agreement of two-thirds of the Council, this provision has not yet been realized. Discussions regarding the creation of such a court have taken place in the past, but a decision on this has been repeatedly delayed. In 1996, the Arab Summit agreed to establish the Arab Court of Justice in principle and charged the Arab ministers of foreign affairs with the task of completing a final draft of its Statute.²⁹ Proposals for the statute of the court were made by the Secretariat in 2005, but discussion on this was again delayed.

In March 2012, a new proposal to create a court was presented by the Kingdom of Bahrain. However, this time the proposal was specifically to create an Arab Court for Human Rights. The Council of the League took note of the proposal and welcomed Bahrain's suggestion to convene a conference in 2012 to discuss the issue. The Council also asked the

²⁸ Until June 2012, sessions of the Parliament have met outside Syria due to the situation in Syria. The creation of the Parliament was preceded by a Preparatory Parliament, which also met in Syria.

²⁹ Summit Decision 196, "Arab Court of Justice, Honour Charter for Security and Cooperation, League of Arab States Mechanism for Conflict Prevention and Arab Union Proposal", 23 June 1996.

Secretariat of the League to develop a study on the issue, taking into account the comparative experiences of regional courts and drawing on studies done by Arab experts. The Council decided to review the outcome of the conference, the study, and the opinions of Arab states at a later session.³⁰ No documentation of this proposal was made public, which makes it virtually impossible for NGOs to comment on the details of the proposal.

³⁰ Council Resolution 7489 “Establishment of an Arab Court on Human Rights”, Regular Session 137, 10 March 2012.

