

The effort made by various sectors of the Muslim culture to define an Islamic doctrine of human rights was part of a large movement which united all the Muslim Community in a search through its past.¹ That is, a search through its own religious and cultural traditions to find answers to the challenges of modernity.

According to important exponents of Islamic thought and in contrast to other concepts, like democracy, 'the notion of inherent rights to the human person has from its origins been inscribed in the Islamic conscience.'² Like any other civilization, even Islamic civilization has developed its own vision of Man and of the totality of rights and obligations that are inherent to his person.

Islamic speech on human rights is therefore not simply a concession to the spirit of an era, but is an integral part of the traditional and cultural tradition of Islam. Undoubtedly, though, both the ideological conflict on one hand and the Western model of development on the other, have pushed the Arab-Muslim world to express, in a different form, its own vision of man and in particular of the rights and obligations that belong to his person. The search for a definition of an authentic Islamic vision of human rights is also enhanced by Muslim culture's need to define itself, aiming to present itself as a valid interlocutor on the international scene.

The Western tendency of considering the human rights debate to be its own, exclusive property – even if this can in part be justified by the universal force which the elaboration of Western Illuminist philosophy has taken on – is associated

with the tendency of excluding Islam from the cultural sphere in which human rights have been elaborated and proclaimed. The exclusion of the Islamic civilization from the sacred fence of human rights has provoked a reaction on the part of the same Muslims who have attempted to outline their version of man in a language which conforms with the needs of modernity. Central to the Islamic 'counter-offensive', is the idea, common to the greater part of contemporary Islamic thought, that Islam, being of divine origin, has reached the apex in the regulation of human relations; it is thus deduced that the original matrix of human rights is already included in the religion which *Allah* granted to man more than thirteen centuries ago.

This type of speech in apologetic tones, aims to reject the Western cultural models while searching for common elements between the original Islamic message and the values which govern international relations. In fact beyond the theoretical disputes as to who 'invented' them, 'human rights represent an important determined policy'³ which no civilization can ignore. Certainly they cannot be ignored by the Islamic community which particularly, 'in virtue of the idea it has made of its own original vocation – that of a witness – community amongst men (2,143 – Koran) – it cannot remain indifferent to questions which are raised, at an international level by the human rights issue'.⁴

To this need, which we might consider 'international', one is to add that the debate on the concept of 'rights inherent to the human person', reflects a proper need of the religious and cultural tradition of Islam.⁵

¹ 'When analyzing the question of human rights, one must not forget, that the year 622, is now present more than ever in the elaboration of strategies for the future.' Bennani, B. P., *L'Islamisme et les droits de l'homme*, Lausanne, Ed. de L'Aire, 1984, p. 96.

² Merad, A., 'Droit de Dieu, Droit de l'homme en Islam', in *Universalité des droits de l'homme et diversité des cultures: Les Actes du premier Colloque Interuniversitaire*, Fribourg 1982, Ed. Universitaires Fribourg Suisse, 1984, p. 129.

³ Abu-Sahlieh Sami, A. A., *Les Musulmans face aux droits de l'homme: religion et droit et politique: Etude et documents*, Bochum, Verlag D. Winkler, 1994 p. 13.

⁴ Merad, A., *Droit de Dieu, droit de l'homme en Islam*, op. Cit. p. 128.

⁵ Man is imprinted with a dignity that has no equal amongst the creatures of God: Man is the 'vicar (califa) of God on earth' (2,30 – Koran), Ali Merad specifies that 'the concept of vicarage of God on earth establishes the equal dignity of the sons of Adam in Islam. This is the essential principle of every charter of human rights' (Ali Merad, "Le concept de 'droits de l'homme' en Islam", in Hirsch, E., *Islam et droits de l'homme*, Paris, Librairie de Libertés, 1984, p. 193. The concept of 'vicarage of God' implies certain responsibilities, obligations which the human being has with regards to God: it is such duties that define the quality of the believer. 'Signifying submission, obedience to God, the Master of the Universe, the law of Islam affirms the rights of God over the creature that means the duties the latter has *vis-à-vis* the former, before thinking of the duties of man *vis-à-vis* himself' (Santucci, R., 'Le regard de l'Islam',

As Ali Merad rightly observes, 'Islamic speech reflects – today as yesterday – a searching thought process',⁶ in which the efforts aimed at defining an Islamic doctrine of human rights have assumed an ever increasing importance. Starting from the Universal Declaration of 1948, the debate on human rights and the necessity of a specific Islamic or Arab position on the question has slowly increased between Muslim countries. Such a necessity has been fueled by the sentiment, much diffused amongst Muslims, that the West had imposed a Universal Declaration, designed by its own jurists, without an authentic participation of the Arab countries.⁷ The Arab or Islamic declarations of human rights, first of all express the need of Muslim countries to have a proper position on the international scene and, in the case of explicit Islamic declarations, to represent the attempt to bring the universality of human rights within the universal perspective of the Islamic religion: they are thus an attempt at 'Islamizing' human rights.⁸

One of the most interesting official documents issued within the Arab Muslim ambit is undoubtedly the Arab Charter of Human Rights. Adopted on the 15th September 1994 by the Council of the League of Arab States,⁹ the Charter is made

up of a preamble and 43 articles, subdivided into four sections. The first section sanctions the right of people to self-determination; the second contains general principles, rules of application, the limitations and enunciation of the rights and fundamental freedoms; the third section is dedicated to the creation of the Committee of Experts of Human Rights; the fourth deals with the regulation of signature, ratification and the entry into force of the document.

The idea of a specifically Arab codification of human rights had already appeared in 1969 in the action programme of the Permanent Arab Commission of Human Rights, but despite various attempts, the project was only concluded in 1994, that is only four years after the Organization of the Islamic Conference had adopted the 'Declaration of Human Rights in Islam'. In content as in timing, the Arab Charter represented a response on the part of the Arab States,¹⁰ now more secular and more modern, to the traditional Islamic vision expressed by the Declaration of Human Rights in Islam.¹¹

The Charter in fact differentiates itself from Islamic documents not only for the rights and liberties enunciated, but above anything else by its basis, which is not religious but

in Hirsch, E., op. cit., p. 212). Carrying out the rights of God / duties of man is thus the way of participating in the divine truth. This dialectic couple constitutes one of the fundamental tenets of Islamic theological-juridical thought; the rights of God / duties of man are in fact the original matrix of the rights of man. It is in this manner that sharia prescribes a series of duties of man, both as an individual as well part of a community, which correspond to other rights which man enjoys with regards to nature, to the community, to others and to himself. This is the Islamic origin of human rights: the rights that appertain to the human being are derived from the duties prescribed by the Koran and by tradition.

⁶ Merad, A., 'Le concept de 'droits de l'homme' en Islam', in Hirsch, E., *Islam et droit de l'homme*, Paris, Librairie de Libertes, 1984, p. 190.

⁷ For a complete overview of the accession of Muslim-Arab States to international treaties vide Tavernier, P., 'Les Etats arabes, l'ONU et les droits de l'Homme: La Declaration universelle des droit de l'Homme et les Pactes de 1966', in Conac, G., & Amor, A., *Islam et droits de l'homme*, Economica, 1994, pp. 57-72.

⁸ They in fact express the principle that Islamic law is absolute and eternal in that it is a direct emanation of God and that therefore it must be directly translated into positive law.

⁹ Established by the Pact of Cairo of 22nd March, 1945, the Arab league is the most important inter-governmental organization of the Arab world. It is at present constituted of 22 Arab Muslim states including the Palestinian Authority, which according to the language used by the League is emblematically 'The State of Palestine.' These 22 Arab states, besides forming part of the league, also constitute 'nervous system' of the 'Organization of the Islamic Conference' of which Saudi Arabia is considered to be the leader state. The Arab League is the oldest of the international organization that emerged in the post war period, even prior to the United Nations. It was in fact because of the imminent birth of the United Nations that the institutional treaty was drafted in a particularly flexible form granting ample space for modifications and explicitly expressing the will to collaborate with future international organizations. Since it was set up, the Arab league has notably modified its structure as well as its aims. It has in fact expanded from the 7 founding states to 22 states; besides the initial commissions, others have been added, including The Permanent Arab Commission of Human Rights established in 1968.

¹⁰ The internal contrast in the League itself between the traditionalists and progressists is exemplified in the reservations which 7 states expressed in 1994. From among the 7 states (Saudi Arabia, United Arab Emirates, Bahrain, Kuwait, Oman, Sudan, and Yemen), Saudi Arabia is undoubtedly the most intransigent and is the one who contested the validity of the Charter on the basis that it was not in conformity with Sharia and the Declaration of the Organization of the Islamic Conference.

¹¹ The Declaration of Human Rights in Islam, known as the Cairo Declaration was adopted at the 19th Foreign Affairs Ministers' Conference of the Organization of the Islamic Conference, held in Cairo between the 31st July and 5th August, 1990. The declaration distinguishes itself for its attachment to a traditional Islam in which is reaffirmed the eminent religious foundation of human rights. Such a position, instead of conceiving Islam as particular within what is universal, tries to bring back the universality of human rights within the specificity of the Islamic religion, conceding little or nothing at all to the conquests of modernity and the inter-cultural dialogue. The best comment about The Declaration of Human Rights In Islam is supplied nonetheless by the last two articles of the same declaration in that they affirm that 'all the rights and freedoms laid down in this document are subordinate to the dispositions of Islamic Law' (Art. 24) and 'Islamic law is the only source of reference as to the interpretation and clarification of every article of this Declaration'. It is thus an expression of one of the most traditional and orthodox viewpoints that characterize the Islamic community, which is of more significance in that it is made within the ambit of an international organization constituted by sovereign independent states.

fundamentally secular. In fact, although evoking in the preamble 'the eternal principles of fraternity and equality amongst human beings, established by the Islamic Sharia and', significantly 'by the other celestial religions' the Charter is characterized by, 'the presence of explicit references to the ideal of Arabic unity (from the Arabian Gulf to the Atlantic). It is also characterized by values and principles, which besides being religious, are human – and thus secular – values which are common to the Arab nation and consolidated all throughout its long history.¹²

The text of the League, therefore, presents itself in a positive form, 'in the sense of a laity and secular codification, adopting a religious reference, only in so far as the sum of inspiring cultural values'.¹³ The originative matrix of the Arab Charter of Human Rights does not lie, therefore, in the Islamic religion, but principally in *Arabit *,¹⁴ that is in the other identifying factor which defines the Arab Muslim countries.¹⁵ Since its expression is the Charter, *Arabit * refers to 'a certain idea of the Arab nation, or of that which can be defined as a classic Arab humanism: a nation that believes in the dignity of man, ever since *Allah* honoured it by making it the cradle of religious and the place of origin of the civilization that has declared the right of every man to a dignified life, based on liberty, justice and peace'.¹⁶ *Arabit * is also defined by the pride in values and human principles consolidated all through its long history, which are at the basis of a re-establishment of one's own ideology, believing in its unity, fighting for its liberty, defending the rights of nations to self-determination and the safeguarding of one's own riches.

An ulterior confirmation of the Charter's secular aspects and its aspiration of participating in the intercultural dialogue, subsists from the explicit reaffirmation of 'the principles of the United Nations Charter, of the Universal Declaration of Human Rights, of the disposition of the two United Nations Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights...'¹⁷

After the glorification of the history and culture of the Arab Nation, which is taken on as the source of legitimacy and inspiration, and from which are deduced the principles of liberty, fraternity and justice which govern the international cooperation and inter-cultural consensus, the Preamble, 'Recalling the close relationship between human rights and peace', affirms the strong refusal 'of racism and Zionism, both of which constitute a violation of human rights and threat to world peace'. These concepts are then condensed in Article 35, which confirms the bond between the pride of Arab nationalism, human rights, the refusal of any discrimination and world peace.

The second section starts with what is undoubtedly the Charter's most important article. Article 2 in fact sanctions in an extensive manner, the principal of equality, affirming that:

all the State parties to the present Charter, bind themselves to guarantee to every person present in their territory and to submit to their jurisdiction, the enjoyment of all the rights and liberties established in this Charter without distinction as to race, colour, sex, language, religion, political opinion, national or social origin, richness, birth or any other condition and without discrimination between men and women.

¹² Modica, M., 'La progressiva internazionalizzazione dei diritti dell'uomo nel mondo arabo-islamico e africano', in Ungari, P., & Modica, M., *Per una convergenza mediterranea sui diritti dell'uomo*, Euroma, La Goliardica, 1997, pp. 124-25.

¹³ Ibid., p. 125.

¹⁴ As defined in *Nouveau Petit Le Robert*, (1993).

¹⁵ '... in the majority of Muslim countries, Islam still constitutes the supreme criterion of loyalty and group identity. It is Islam which distinguishes between him and the other, between those within and those without, between brother and foreigner... as recent events have repeatedly shown, Islam guarantees the most efficient system of symbols for a political mobilization, intended to raise the peoples, be it to defend a regime perceived as gifted of the necessary legitimacy or to reprimand one held to lack such legitimacy, in other words which is non-Islamic.' (Louis, B., *Il linguaggio politico dell'Islam*, Roma, Laterza, 1991, pp. 7-8). For the Arab populations, side by side with the Muslim Identity lies another identifying factor, represented by *arabit *. According to Radinson, M., 'we can consider as belonging to the Arab ethnicity, people or nationality, those who:

1. speak a variant of the Arab language and at the same time consider it as their natural language, that which they should speak, or else even though they do not speak it, consider it as such;
2. hold as their own patrimony the history and cultural traits of the people who have called themselves or which others call Arabs, merging into these cultural traits, from the 7th century AD, the massive adhesion to the Muslim religion (which is far from being their own exclusivity);
3. reaffirm the Arab identity, have an Arab conscience' (Rodinson, M., *Gli Arabi*, Firenze, Sansoni Ed., p. 54).

The Arab ethnicity has without doubt a particularly close relationship with Islam, but *arabit * and islamicity are two terms which, even though they have often been erroneously confused with one another and which have often been used one instead of the other in the definition of the Muslim – Arab identity, express two different identifying poles, in some cases representative of irreconcilable visions of man and society.

¹⁶ Redissi, H., 'L'universalit  alla prova delle culture: le dichiarazioni islamiche dei diritti dell'uomo', a paper presented at the Convention 'La Dichiarazione Universale dei diritti del uomo cinquant'anni dopo', held at Bologna from the 18th to the 20th December 1998, p. 627.

¹⁷ Besides these documents, the Charter also refers to the Cairo Declaration of Human Rights in Islam, that is to a traditionalist and confessional document. The motive behind this reference to a text in which the basis and rights laid down are completely different, lies in the existing contrast within the Arab League between traditionalists and modernists.

It is an Article which takes up exactly what was established in Article 2 of the Universal Declaration of 1948, with the notable specification of the Arab perspective, that there should be no discrimination between men and women.¹⁸

The proclamation of an absolute equality between sexes is clear and precise, even though the Charter then does not provide specific rights that define such principle in detail; in fact Article 38, besides considering the family to be the root of fundamental unity within society, does not provide anything about the obligations and rights of spouses and at the same time, lacks an article which clearly defines the right to marriage without restrictions as to religion.

However, the Charter's avant-garde approach is also evident in the proclamation of the freedom of belief, thought and opinion of every person – (Article 26). Article 27 then determines the forms of exercising this freedom in a wide and liberal manner, conceding, 'to every person of whatever religion the right to express one's opinions by word, practice or teaching without prejudice to the rights of others'.¹⁹ A limitation to the exercise of such a right may only be imposed by the law of the state,²⁰ but that does not exclude that this right be sanctioned in a clear manner, conforming to international norms. It would however have augured well, were the Charter to have also explicitly contemplated the freedom of changing religion. This would have unequivocally affirmed a right that opposes the orthodox reading of the Sharia which in its most extreme form also prescribes the death penalty for those who stain themselves with the crime of apostasy.

As regards another problematic question in Arab-Muslim countries – that is, the right to life – the Charter establishes that 'every individual has a right to life, to freedom and to the security of his person' (art. 5). It is evidently a step forward in respect to the Islamic declarations,²¹ but at the same time the protection of life does not reach the point of eliminating the death penalty; Art. 10 in fact foresees that 'the death penalty is not permitted except in the cases of crimes of extreme gravity,' but is nonetheless permitted. Yet, the Charter attempts to limit it as much as possible, surrounding it with guarantees to such an extent that the accused may hope to obtain 'mercy or a reduction in punishment' (Art. 10) to benefit of its suspension in case of pregnancy or lactation and its cancellation in case of minors (Art. 12). Moreover the death penalty is absolutely not permitted in cases of crimes of a political nature.

In so far as corporal punishments are concerned, Art 13(a) is explicit in saying that

the State parties to the Charter protect all individuals present in their territories from physical or moral torture as well as cruel, inhuman or degrading treatment.

Contrary to the Universal Declaration, the Charter omits the term 'punishments' thus leaving certain doubts as to the possible acceptance of the corporal punishment foreseen in Islamic law. In this case, as in that of apostasy and the condition of women in marriage, the drafters of the Charter could have been more explicit in proclaiming these rights with the aim of eliminating any possible doubt.

¹⁸ In the Declaration of Human Rights In Islam of the Organization of the Islamic Conference, the discrimination against women emerges in Art 7(b), relative to the rights of the child, where it is affirmed that the child's education is in the hands of the father or who is in his stead; the women are excluded from choosing their children's education. Art. 6 is more explicit in that it states: 'the woman is equal to man in human dignity; her rights are equivalent to her duties... the husband has the duty of maintaining the family and the responsibility for its protection.' All of this corresponds to the traditional vision, according to which moral equality between man and woman does not include juridical equality because of the fact that the woman is socially and economically dependent on her husband. In this respect the phrase 'her rights are equivalent to her duties' is quite indicative: in fact since Islam prescribes to the woman lesser duties and responsibilities than the man, she consequently has different (or lesser) rights.

¹⁹ In the Cairo Declaration, Art. 10 establishes that Islam being the natural religion of man, 'it is not permissible to submit the latter to any pressure or to make gain from his poverty or his ignorance in order to convert him to another religion or to atheism' It is a norm which is decisively in contrast with international norms, as it indirectly eliminates the freedom of religion and explicitly indicates the impossibility for a Muslim to change religion, thus negatively resolving the problem of apostasy. Religious discrimination is indirectly present even in the attribution of political rights (Art. 23) and in Art. 5 relative to the right to marriage and the right to form a family. In this last article it is in fact affirmed that 'men and women have the right to marry and no restriction as to race, colour or nationality will impede them from exercising this right.' It is clear that restrictions relative to differences in religion are not mentioned as these are presently in force in many Islamic countries and are foreseen by the orthodox Islamic law. As to art. 23(b) one can read that 'every individual has the right to participate directly or indirectly, in the administration of the public affairs of his country. He also has the right to occupy public posts in conformity with the dispositions of Islamic Law.' The recourse to sharia norms, beyond the falsities put forward, means that non-Muslims do not have the same rights as Muslims and women cannot carry out certain public functions which Sharia reserves exclusively for men.

²⁰ The possible limitation by the law of the state is common even in international declarations. However, it is not posed as an instrument for the state to arbitrarily limit fundamental rights, as articles 3 and 4 of this Charter demonstrate, which themselves put limitations as to the possible limitations by the law of the state.

²¹ The Declaration of the Organization of the Islamic Conference, in integrating the limitations foreseen by Art. 2 with the affirmation of Art 19(d) that there are 'neither crimes nor penalties other than those in conformity with the norms of Islamic law', in practice sanctions both the law of eye for an eye, tooth for tooth (inflicting on one as much harm as he has inflicted on others) as well as the attack on the physical integrity of the person.

A large part of the second section deals with the protection of the freedom of the individual and procedural guarantees. It is affirmed in a clear and simple manner that 'legal personality is inherent to every individual' (Art. 18), that law may not have retroactive effect (Art. 6), that 'no one may be tried twice for the same crime' (Art. 16), that 'every accused is innocent so long as his guilt has not been legally proved in a trial' (Art. 7), that all are equal before justice and that the statement must guarantee to anyone recourse to it (justice) [Art. 9].

The Charter also establishes a series of principles and rights of a political nature, first of all intended to eliminate any possible form of discrimination against non-Muslims and women. After having affirmed that 'the people are the source of power' (Art. 19), the Charter continues to say that 'political capacity is a right of every citizen having reached majority' (Art. 19) and every citizen may accede to public employment (Art. 33). Even more important, because they are not contemplated in the Islamic declarations²² and because they are at the basis of a pluralistic and democratic society, are the right to the freedom of assembly and of association (Art. 28) and the right to form unions and the right to strike (Art. 29). The rights of minorities are also posed in the perspective of a tolerant and pluralistic society, in which minorities 'may not be denied the right to enjoy one's cultural life and to follow the teachings of one's religion' (Art. 37). The enunciation of minority rights carries great weight considering the fact that in the name of 'Arabization', many Arab countries have undertaken policies aimed at the gradual destruction of non-Arab cultures (for example the Berbers in the Maghreb region and the Kurds in Kurdistan). It is thus an enunciation that reduces (at least in theory) the fear that Islamic intolerance be substituted by an Arab intolerance in the name of belonging to the Arab culture and Nation.

It is also worth noticing all the dispositions relative to citizenship and national belonging, even though the nationalism that arises there from 'manifests itself solely in a statal vision without managing to develop the primordial design of the League of the Union of Arab people'.²³ The dispositions first

of all take into consideration the prohibition of weakening or denying anyone of his original citizenship in an arbitrary manner (Art. 24); of the prohibition of limiting the freedom of residence and free movement (Art. 20); of the prohibition of exile (Art. 22) and finally of 'the right of asking for political asylum in another country so as to escape persecution' (Art. 23).

Other important rights sanctioned in the second section are the economic and social rights, which include amongst others the right to work (Art 30), the right to private property (Art. 25) and the right to education (Art. 34).²⁴

The third and fourth articles which protect the rights and freedoms laid down in the Charter in two manners are also of note. In the first instance, the Charter prohibits States from restricting or limiting human rights on the basis of law, conventions or custom. It also prohibits States from arguing on the basis of the fact that the Charter does not enunciate or finally give effect to the rule of reciprocity between States against a State which does not respect human rights.

The only limitations are conventional and even these are surrounded by guarantees. In particular art 4(c) foresees that 'in no case, can such limitations or derogations concern the rights and guarantees relative to the prohibition of torture and degrading treatment, of returning to one's homeland, of political asylum, of not being tried twice for the same action or crimes not foreseen by the law or suffer non-legal punishment.' The second form of protection of rights is indicated in the third section, which is entirely dedicated to the creation of a 'Committee of Experts of Human Rights'. Both the structure as well as the functioning of the Committee²⁵ are established within the aforementioned section. The fourth and last section foresees that 'the Charter will enter into force after two months from the deposit of the seventh instrument of ratification or adhesion' (Art 42(b)).

Conclusion

The Arab Charter of Human Rights is undoubtedly one of the most interesting official documents ever produced by the Arab-Muslim world on the subject of Human Rights. It clearly

²² Besides the already cited Declaration of the Organization of the Islamic Conference, reference is to be made to the first Islamic declaration made in order of time: The Universal Islamic Declaration of Human Rights. It is a document adopted in 1981 by the Islamic Council of Europe, which expresses a vision no less traditionalist than the Cairo Declaration. According to the vision expressed in The Universal Islamic Declaration of Human Rights, only Sharia may guide the human being, and the status of reason is degraded in that human reasoning is judged incapable of providing valid models of life if it ignores divine guidance and inspiration.

²³ Modica, M., *op. cit.*, p. 42.

²⁴ The Cairo Declaration reserves the right of education of the child exclusively to the father. As regards union rights, the Declaration does not provide anything just as the fundamental right to freedom of association is not recognized.

²⁵ It is to be underlined that art. 40, subsection 4 lays down that 'the candidates... carry out their functions on an individual basis and with absolute impartiality and conscience.' The job of the Committee is that of examining the reports which the single states are obliged to present every three years and to present its own report about what has been referred to it by the various countries (Art. 41) to the Permanent Commission of Human Rights.

distinguishes itself from the Islamic documents not only as regards to its basis but also with regards to the whole sum of rights and freedoms enunciated.

Notwithstanding a little grey area which exists with regards to the most problematic matters such as the condition of women, the freedom of religion and the freedom to change religion, the Charter distinguishes itself both for its convergence from the principles enunciated by international norms as well as for its reaffirmation of the dignity of Arab civilization.

What has changed though, in respect to the Islamic Declarations is the basis itself, which is no longer religious but fundamentally secular. The Charter is in fact a secular and lay document, in which the principles enunciated are defined as eternal while the rights and freedoms are eminently historical and thus susceptible to the modifications of man. Although not as explicitly as the Universal Declaration,²⁶ the Charter proposes a vision in which the use of reason is the principle means utilized by man to govern himself and the world.²⁷

In the second instance, the Charter adds the glorification of Arab history and identity to the most important rights expressed in the International Convention on Human Rights, without wholly resolving the convention within the Islamic religion. The Charter in fact dedicates ample parts of the preamble and several articles to the definition of an Arab Identity and to the rights which define the Arab person, placing emphasis on the importance 'of living in an intellectual and cultural atmosphere which is proud of Arab Nationalism' (Art. 35). Islam is instead indicated as a fundamental component

of the Arab identity to which it provides, together with the other monotheistic religions, 'the eternal principles of fraternity and equality between human beings' (preamble). Nonetheless, this does not mean the dissolution of *Arabité* with the Islamic religion; instead it is actually *Arabité* which is the originative identifying matrix on which to build the rights and freedoms which belong to every individual, without making of *Arabité* a new ideology against ethnic and cultural minorities.

Thus, the Charter re-establishes the right proportion between the universal and the particular,²⁸ presenting itself as a particularistic document in the context of the international community, to which it provides its specific contribution without claiming for itself the right of representing what is best or the whole. Rebalancing the distances between universalism and particularism, the Charter of the League thus presents itself in a favourable light, contributing to intercultural dialogue and to a more incisive internationalization of the fundamental rights of man.

As Hamad Redissi concludes, because the charter is twice as much at the forefront, in respect of the Cairo Declaration and the internal or municipal legislations of the States and the League... it will probably have little possibility of entering into force. Were one to accept that it actually takes place, it is difficult to see how the states which do not respect human rights can accept the control of the Committee of Experts and the Permanent Commission of the League.²⁹ A limitation as well as a merit of the Charter is actually that it seems to go beyond what the Arab-Muslim countries seem to concede in practice.

²⁶ The first article of the Universal Declaration affirms that '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.'

²⁷ While both Islamic Declarations propose a restrictive interpretation of Sharia as a positive law which establishes the sum of rights and obligations prescribed to man by religion, the Arab Charter of Human Rights views Sharia in the wide sense as the sum of principles which provide an Islamic vision of the world without it being directly translated into positive law. In the first specification, Sharia becomes a non-modifiable sum of positive law which finds full application in statal case law without granting to man the faculty of historicizing them or modifying them. This results in a vision of nature and man completely contrary to the philosophy of human rights. In the second specification, the value of Sharia lies in the ends which it proposes, ends which, according to Ferjani – 'can be reduced to the Koranic principle that establishes that God orders the good and justice (16, 90). The content of the good and justice can be deduced from the sense of evolution of the Koranic dispositions, which is what supposes a historic reading which relativizes the Koranic annunciation.' (Ferjani, M. C., *Islamisé, laïcité et droits de l'homme*, Paris, L'Harmattan, 1991, p. 270). Such a relativization goes against the dogma of the uncreated Koran (according to which the book and laws which it contains are derived directly from God) thus restoring to man his primary function of guide of the research and thus legislative activity. A reading of the Sharia in accordance with Islamic Principles is thus fully compatible with the human rights. Moreover it may serve as a huge support to the same cause.

²⁸ The Islamic declarations of Human Rights have a religious basis and thus construct their identity on Islamicity: For them universality lies within the Islamic religion in so far as it is the religion of the only and omnipotent God. Making of the Islamic religion a possible but not necessary part of not being Arab, the Arab Charter of Human Rights expresses a lay and secular foundation built on *arabité*. In this way, the relationship between universality and particularity is also overturned: The Arab Nation in fact expresses the particularity with the universality represented by the United Nations, or to be more precise, from the sum of the peoples of the earth, while Islam represents on its part, only an eventual part of *arabité*.

²⁹ Redissi, H., op. cit; p. 7.