

**Asylum in the Arab World**

**Some Recent Instruments**

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**Introduction**

Before the coming of Islam, most of the Arab tribal-kingdoms had traditional rules relating to extension of hospitality and reception of foreigners and other persecuted persons fleeing their native places. After the Islamisation of the people in the area, they have adhered to the Islamic traditions and rules on Forced migration or "*Hijra*".

In fact, during the "*Jahiliya*" (the pre-Islamic era), the Arab society, in general was governed by rules of hospitality towards foreigners. Apart from that it was considered a divinely ordained duty to protect people seeking asylum, notably the refugees who were fleeing their places of origin out of fear of persecution; it was especially so if they had sought refuge inside holy places or in the homes of community leaders. This tradition was called "*al ijara*" or protecting persons who asked for asylum. Because of this tradition, Prophet Mohammed, who asked for protection from his uncle Abu Talib, was granted asylum and this helped him considerably in promoting the Islamic religion during the early years. Seeking asylum was then considered a "human right".

Islam also confirmed this pre-Islamic Arab tradition regarding "asylum" and gave it a legal framework. Providing asylum to persecuted persons who are not allowed to stay in places where they are unable to resist persecution and seek refuge in Islamic countries, as well as protecting such asylum seekers, has become, since then, an Islamic duty for all Moslems and for their political leaders. Similarly, it has become a right for any persecuted person to be granted asylum. Asylum is especially defined in Islam as a very general and comprehensive protection granted to all asylum seekers (except for criminals) who should be helped materially and morally and permitted to stay until they decide to leave. They can even bring their families if they so wish. Many verses in the Quran relate to asylum and deal with the rules concerning it.<sup>1</sup>

However, such generous Islamic views on asylum or "*Hijra*" were rarely put into practice within the Moslem and the Arab worlds throughout history. Cases from the early periods of Islam show some kind of respect for the Islamic theory on asylum, but with the development of modern Moslem States, this theory has been progressively abandoned, in the Arab States of the Middle East where it was originally practised and even in the States ruled by the Sharia Law.

If they are not following their Arab and Islamic traditions on asylum today, most Arab States have not adhered to the international law on human rights and refugees either. This has caused a lacuna in the legal sphere. However, recently, some legal instruments were enacted in the Arab world concerning status of the refugees in the Arab world: The Cairo Declaration on the Protection of

Refugees and Displaced Persons in the Arab World, the Arab Convention on Refugees and the Arab Charter on Human Rights. All of them were issued in the 1990's.

What is the content of these Arab documents? How could they be compared with the universal instruments on human rights and refugees? And what is the attitude of the Arab States towards them?

### **The Cairo Declaration**

This Declaration was issued on 19<sup>th</sup> November 1992. It was the result of four extensive seminars in which many experts on asylum and refugee law in the Arab world participated and deliberated over the issue. These seminars were organised by the San Remo International Institute of Humanitarian Law, under the sponsorship of the United Nations High Commissioner for Refugees. The first seminar took place in San Remo in 1984, the second in Tunisia in 1989, the third one in Amman in 1991 and the fourth one in Cairo in 1992.

During these four meetings, the Arab experts discussed, exchanged views, compared opinions and presented studies on Forced Migration in the Arab region. The last seminar, which took place between 16 and 19 November 1992, issued the Cairo Declaration on the Protection of Refugees and Displaced Persons in the Arab World.<sup>2</sup> This instrument was a quite significant achievement. It was issued just after the Gulf war, which had forced millions of persons in the Middle East to leave their homes, and in its wake, had shown the quite conspicuous lacuna, relating to refugees, in the legal sphere in the region.

In the preamble, the Declaration states:

“Nothing with deep regret the suffering which the Arab world has endured from large-scale inflows of refugees and displaced persons in the Arab world and the human tragedy encountered by them.”

The text of the Declaration goes on to invoke the Islamic sentiments. The text of the Declaration recalls the humanitarian principles “deeply rooted in Islamic Arab traditions and values and the principles and rules of Moslem law (Islamic Sharia)”. It refers also to the principles of social solidarity and asylum reflected in the universally recognised principles of international humanitarian laws” and recognizes the imperative need for seeking a humanitarian approach in solving the problems of refugees and displaced persons.

The Declaration call upon the Arab government to ensure respect for and promote the principles of human rights, of international humanitarian law and of international refugee law.

The main innovation introduced by this regional document (if compared with the existing international one) is that it is linking the protection of refugees (who have crossed the national boundaries) with that of displaced persons (who have remained inside the country), just as it was the case in the early instruments on refugees, issued after the Second World War.<sup>3</sup>

The Declaration reaffirms the right of every person to free movement within his country and the right to leave for another (*Art. 1*). It bans expulsion and refoulement of refugees to countries where their lives could be in danger (*Art. 2*). It considers granting asylum as a peaceful act (*Art. 3*).

Few Arab countries have acceded to the international instruments on human rights and refugees. The Afro-Arab States are an exception in this regard. In fact, only nine Arab States have ratified the 1951 Geneva Convention relating to the status of refugees and its protocol. Eight among them are African and only one is Asian.<sup>4</sup> That is why the Declaration encourages the Arab States to adopt these instruments (*Art.4*). For situations not covered by international refugee law, it urges the nations to protect forced migrants by the Islamic values and principles on asylum and by the basic universal human rights rules and other principles of international law (*Art.5*).

This Declaration also emphasises the need for special protection for women and children (*Art. 10*) and mentions that necessary attention should be given to the dissemination of refugee law and to the development of public awareness about the question. It even states that an Arab institute of international humanitarian law should be established (*Art.11*).

The Declaration calls upon the Arab States to inform the Arab League on various statistical data and laws on asylum and on the conditions of the refugees within their territories (*Art.8*). It especially requests them, pending the elaboration of an Arab convention relating to refugees and displaced persons, to adopt a broad concept of “refugees” and “displaced person” as well as to apply a minimum standard for their treatment (*Art.6*).

The Declaration emphasises the need for a regional Arab instruments relating to Forced Migration in the Arab World and calls the League of Arab States “to reinforce its efforts with a view to adopt an Arab Convention on refugees” (*Art.7*).

Two years later, on 3 September 1994, this Arab Convention was held under the auspices of the League of Arab States.

## **The Arab Convention on Refugees**

### ***History***

Since the year 1984, the Arabs had expressed their will to adopt an instrument on the protection of refugees. The process started with a meeting of Arab experts, gathered in San Remo from 16 to 19 January 1984, where a proposition to draft such convention was made.

The Council of Ministers of the Arab League then asked the Secretariat General of the League to study the question. The Secretariat asked the Permanent Arab Commission on Human Rights to draft the Convention. The Union of the Arab Lawyers was then asked to do the drafting. In 1986, a draft of the convention was prepared and was submitted to the Council. The Council studied the draft and suggested some amendments. The draft convention prepared by the Arab Lawyers consisted of a preamble and 29 articles.

The preamble of the Draft refers to the Universal Declaration of Human Rights, to the two 1966 Covenants on Human Rights, to the 1951 Convention on the Status of Refugees and to its 1967 Protocol. It does not mention, however, the OAU Convention of 1969 and adopts, therefore, the restricted definition found in the 1951 Geneva Convention. It reserves the right of granting asylum to the State only, but forbids the expulsion of refugees and their refoulement. It includes articles relating to the Palestinian refugees and the need to protect them.

The amendment of this draft gave birth to the present Arab Convention on refugees. The Convention is not yet in force; it has not been ratified by any Arab country. Egypt is the only country, which has signed it.

## **Content**

The 1994 Arab Convention on refugees consists of a preamble and 18 articles. The Preamble refers to the Islamic law and traditions pertaining to human rights. It mentions the Universal Declaration of human rights, the two Covenants of 1966 and the Cairo Declaration on the protection of refugees and displaced persons in the Arab World, which is an important innovation and could lead the Arab lawyers to press for the adoption of the protective stipulations found in this Declaration.

The definition of a refugee given in Article-1 of this Convention is almost similar to that given in Article-1 of the 1951 Geneva Convention, except that one reason for seeking asylum is omitted, i.e. persecution, because of the prevailing political opinion in the forum. This could be justified by the sensitivity for politics and political opponents in the Arab World. It could, however, be overcome by a broad interpretation of the preamble in order to include persecution for political opinion as a reason for seeking asylum. The same article adds the broad African definition of a refugee who is fleeing because of foreign aggression, occupation or domination or events disturbing public order in whole of the country or parts thereof.

The most important innovation brought about by the Convention is the introduction of a new reason for seeking asylum: natural catastrophes. This innovation means simply that there is no more distinction between man made forced migration and forced migration resulting from natural calamities, which might lead one to question the concept of persecutions as mentioned in the Geneva Convention. This could also mean introducing the traditional concept of seeking asylum (found in most ancient societies) based on two reasons: fear for one's life and the need for protection.

According to Article-2, the Convention does not apply to persons who have committed crimes against humanity, terrorist acts as defined by international law or non-political crimes outside the asylum country. But, the definition of terrorist and political crimes still causes problems within the international society and no standard definition seems to have been adopted at the international level. This might cause problems when interpreting this *Article-2*.

*Article-3* urges the Arab States to grant asylum to refugees as defined in Article-1. *Article-4* deals with cases when the Convention will cease to apply. These are similar to those found in *Article 1/c* of the 1951 Geneva Convention.

Asylum should be considered as a peaceful act according to Article-4. Other articles deal with the *human rights of refugees*: non-discrimination (Art.7), non-refoulement, non- expulsion and the right to temporary asylum when the life of asylum seekers might be in danger if sent back (Art. 8). This stipulation represents a very important innovation as it introduces some kind of a right to asylum for asylum seekers. Voluntary repatriation is a right of refugees (Art.9). Refugees have also the right to be provided with documents for travelling abroad and the right to return to the country of asylum (Art.10.)

The Convention guarantees rights for refugees and asylum seekers, *who have also, obligations* towards their asylum countries. Among these obligations, the important ones are: to conform to the laws and regulations of the country of asylum (Art.11), not to commit any terrorist or subversive activities (even though there is no common international definition of these activities) (Art.12). The refugee, while exercising his right to freedom of speech should avoid attacking any Arab State, including his own state, which is an important restriction on his freedom of speech (Art.13). If a member State finds difficulty in granting asylum to refugees, other Arab States should, in the spirit of Arab solidarity and cooperation, lighten the burden of the member state granting asylum (Art.14). The member states are asked to submit reports to the Secretariat of the Arab League on the application of the Convention (Art.15). The Convention will enter into force after its ratification by 1/3 of the members of the Arab League (Art.17).

### **Characteristics**

The main innovations of the Convention consists in broadening the refugee definition by including the definition given by the Cairo Declaration and adding to it refugees who flee their place of habitation because of natural catastrophes. This means merging at the same time three laws, which were distinct before: Human Rights Law, Refugee Law and Humanitarian Law. It means also protecting the refugees as also the forced migrants. The Convention gives them the broadest and most comprehensive definition of a refugee found at present in international law: it incorporates the definitions given by the 1951 Convention, by the 1969 OAU Convention, by the 1984 Cartagena Declaration, as well as the definition found in international humanitarian law.

The Convention also reflects the suspicion that the Arab countries have about political opponents by not stating clearly persecution for political opinions as a reason for asking for asylum.

The Convention does not include stipulations relating to ways of amending or reviewing it, which might represent a problem incase there is a need to change its content.

The Convention does not focus on *Palestinian* refugees, as it used to be the case before.

The text of the Convention does not include clauses concerning reservations. But, so many reservations have been already made by Arab States. The Arab Emirates, Bahrain, Saudi Arabia, Qatar have expressed reservations on many provisions of the Convention. Iraq has presented reservations on stipulations relating to expulsion and to temporary asylum. Kuwait has declared that the ratification of the Convention and its analysis should be done only when all Arab countries

have ratified the 1951 Geneva Convention. Morocco has presented reservations on the definition of a refugee and expressed its worries by saying that the broadening of the definition leads to encouraging all types of Forced Migration and might endanger the protection of real asylum-seekers. Morocco has also expressed disagreement with the right to question the decision of expulsion and proposed the amendment of Article-8 (relating to expulsion and granting of temporary asylum even after the decision of expulsion) in accordance with Article 32 of the Geneva Convention.

All these reservations presented before the entry into force of the Convention lead us to ask if this is a final Convention or only a draft? Does the present text need to be reviewed already before it has entered into force? Should the Arab State be waiting until 1/3 of the Arab States have ratified it and enact a corrective protocol to it or should they leave it as it is and wait?

What is sure is that, in case the Arab States decide to ratify this Convention, it will lead to a “real revolution” in the definition of a refugee and will mean a legal return to traditional asylum based on a very broad definition of a refugee as a forced migrant in need for protection, without taking into consideration the reasons of his/her flight or persecution.

### **Asylum in the Arab Charter on Human Rights**

This Charter was issued by the Arab League on 10 September 1994. But, it has not been ratified by any Arab State and has not yet entered into force, just like the Arab Convention on refugees.

The Charter refers in its preamble to the Islamic humanitarian traditions. It also refers to the other religions and their humanitarian principles. The preamble mentions the United Nations Charter, the Universal Declaration on Human Rights, the two 1966 Covenants on civil and political rights and on socio-economic and cultural rights and the 1990 Cairo Declaration on Human Rights in Islam. This Charter declares in its Article-12:

“Every man shall have the right, within the framework of Shariah, to free movement and to select his place of residence whether inside or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall ensure his protection until he reaches safety, unless asylum is motivated by an act which Shariah regards as a crime.”

This means a mixture of the traditional Islamic concept of asylum and the modern one: the right to freedom of movement, duty of protecting asylum-seekers, denial of asylum if motivated by an act considered as a crime by Islamic Law, but at the same time, the right to grant asylum depends on the will of the Islamic countries only and there is no control in case asylum is denied. Thus this article (Art.12) is confusing and does not include the right to asylum or the duty of protecting refugees, as stated in the Islamic theory on “*Hijra*”.

Moreover, the Arab Charter on Human Rights guarantees some (human) rights to the refugees, as foreigners living in Arab countries. Article 2 declares:

“Each State (signatory) to the present Charter commits itself to respect and to guarantee to every individual found in its territory and subject to its jurisdictions all the rights and all the freedoms

proclaimed in this charter, without distinction of any kind based on race, colour, sex, language, religion, political opinion, national or social origin, wealth, birth or any other status and without any distinction between men and women.”<sup>5</sup>

Article 4 speaks of the right to entry and return to the country of origin and of only one kind of asylum: political asylum. It declares in *Paragraph C*:

“These measures must not bring about any derogation from the rights and guarantees provided against torture, inhuman treatment, the right to entry and to return to one’s own country, political asylum, the right to judicial proceedings, the right not to be prosecuted two times for the same offense, and to the principles of legality of criminal offenses and punishment.”

*Article 22* forbids “exile” as a mode of punishment and declares:

“No citizen may be exiled from his State of origin or prevented from returning to it”.

*Article 23* stresses the fact that only political asylum is considered by the Charter and says:

“When faced with persecution, every citizen has the right to seek political asylum in another State. This right is not invoked in the case of a person condemned for the commission of a common crime. It is prohibited to extradite political refugees.”

## **Conclusion**

We can conclude by saying that, in theory, there is quite a few instruments relating to asylum and to refugees in the Arab World and there is a very rich Islamic tradition and history of hospitality and granting of generous asylum. But, in practice, none of these texts have entered into force or could be applied in the region and not much of the Islamic tradition on asylum and “*Hizra*” is applied by the Arab countries.

There is still, therefore, a need to promoting the legal instruments on asylum in The Arab world. All the Arab and Islamic principles and the tradition relating to asylum should be taken into consideration in this regard. This could be the task of Arab specialists dealing with this issue. It is also their responsibility to generate popular support in favour of such refugee laws to the whole region.

## **References**

1. For more details on asylum in Islam, see Khadija Elmadmad, “An Arab Convention on Forced Migration: Desirability and Possibilities” in *International Journal of Refugee Law*, Vol.3, No.3, 1991, pp.461-481.
2. Seed Khadija Elmadmad, “An Arab Declaration on the Protection of Refugees and Displaced Persons in the Arab World”, in *Journal of Refugee Studies*, Vol. 6, Number 2, 1993, p. 173-175.
3. On these instruments, see UNHCR, *Collection of International Instruments Concerning Refugees*, UNHCR Publications, Geneva 1990, pp.45-47.

4. These are: Algeria, Djibouti, Egypt, Mauritania, Morocco, Somalia, Sudan, Tunisia and Yemen.
5. Personal translation from Arabic.