

“Human Rights: universal principles and regional guarantees”

- The Arab Charter on Human Rights and the European Convention on Human Rights

The Mediator of the French Republic

The Johns Hopkins University

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* * * MORNING SESSION * * *

Mr. Jean-Paul Delevoye, Mediator of the French Republic [Mr. Delevoye, MFR]: Your Excellency, Your Excellencies, Mr. Vice President, dear ombudsmen, ladies and gentlemen, I want to begin by thanking each of you for responding positively to our invitation and for attending this conference.

I would like to thank Professor Dr. Mohamed Mattar from the Johns Hopkins University, School of Advanced International Studies in Washington DC, for helping organize this event and for agreeing to provide us, following this event, with the full transcripts in Arabic, English and French. Also, I would like to thank Dr. Emmanuel Decaux, Professor at the University Panthéon-Assas Paris II and Vice President of the Consultative Committee of the UN Human Rights Council, and Ms. Elham Al Shejani, who has recently replaced our friend Mr. Ghaleb Mahmoud Rached as the head of the Human Rights Committee of the League of Arab States. I also thank the representatives of the United Nations High Commissioner for Human Rights, the International Organization of la Francophonie, and of the Council of Europe for attending this Conference.

This event is especially meaningful. During recent years, France has developed close relations with countries who are part of the Association of Ombudsmen and Mediators of the French-speaking community and of the Association of Ombudsmen of the Mediterranean. Thanks to Wali Al-Madhalim of the Kingdom of Morocco [the Moroccan Ombudsman, NT] we have set up a training center in Rabat for all ombudsmen’s collaborators. The center will hold its first training session for employees of Ombudsmen of the Mediterranean at the end of March.

In cooperation with the League of Arab States, together with Dr. Al-Marri of Qatar, we have also been considering the establishment of a Center in Doha. It was during the Arab Charter of Human Rights meeting organized by the Arab League at its headquarters in Cairo on July 3 of last year, that my Director of Cabinet—who was representing me at the meeting—suggested the idea of meeting in Paris today for the first meeting between ombudsmen from Council of Europe States, and representatives from human rights committees in countries belonging to the League of Arab States.

Moreover, France has supported the draft resolution submitted by the Kingdom of Morocco on the role of ombudsmen and national institutions for human rights in the defense, promotion and

protection of human rights. This draft resolution will be presented for adoption at the next session of the UN General Assembly.

In France, the Ombudsman shares responsibility for the defense and protection of human rights with the National Consultative Commission of Human Rights, which brings together NGOs and experts. As a member of the Commission, I would like to thank my friend, President Yves Repiquet. The Mediator of the Republic institutionally complements the work of the Commission by investigating cases involving the violation of individual human rights. This Mediator is lawfully empowered to propose legislative reforms to Government and Parliament.

As you all know, I am the current French Ombudsman. My term will end in two months, after which the institution of Mediator of the Republic will be replaced by a new, stronger institutional figure having a wider scope of action: The Defender of Rights. The new institution, now foreseen by the French Constitution, will aim at defending the rights of the most vulnerable, the rights of citizens in their dealings with bureaucratic and administrative offices, and the defense of human rights in general. The Defender of Rights will be closer to the individual than the existing Mediator of the Republic, thus becoming a real ombudsman according to the French tradition.

Since my arrival as head of this institution, I have sought to expand its international scope by reaching out to fellow ombudsmen in other countries. That is why I have convened our meeting today: to strengthen outreach with other ombudsmen.

I believe that we must continue our discussion and share our experiences, which should prove useful to all. As ombudsmen, I think we have a special place in the political and institutional organization of our countries. We deal with the most complex issues through a methodology characterizing our work: dialogue. We are able to deal with controversial issues without controversy. It is on this basis that I would like to start our meeting.

At this point, we cannot know exactly how our dialogue will develop. The issues at stake, and the speakers' names, can be defined in advance, but not the way in which our discussion unfolds. The way will depend on you. I am convinced that honest intentions will lead to honest goals, that pertinent questions will lead to intelligent responses, that a sincere willingness to listen will promote effective dialogue, and that respect shown by one individual can inspire respect in the others.

Today I would like to start a discussion in light of my previous appeal: "Let's discuss controversial issues without controversy". Dear friends, this is the objective we should set for ourselves today. As an Arab proverb goes: "Always shoot for the moon. Even if you miss it, you will still land among the stars".

Our meeting is especially important in bringing countries together which, though geographically close, are not necessarily accustomed to participating in this kind of event. 58 countries are represented here today: this meeting, then, represents the interests of many.

We sit here today as equals. In the field of human rights, we must not configure a predominance, let alone superiority, of one country over the other. I say this with special humility, since I am French, and France has long claimed a certain parenthood over the concept of human rights, and with it, the right to give advice or, worse, impart lessons to others. In any event, we must not remain constantly anchored to the past. That would be like trying to assess the goodness of a tree by sampling only its roots, and not its fruits.

Western imperialism and colonialism are over and done with. The Western world is no longer an undisputed economic and military power. The West had been using “human rights” as the flagship of its civilization, the justification for its influence and hegemony. Now that its power is fading, its stars begin to lose their brightness and splendor.

Today, modern democracies are well aware that human rights are not simply a model to export, but rather a model to consolidate, defend, reaffirm within their own borders, and within themselves. I am particularly worried about a number of human rights violations which are hopefully a mere passing storm. I am referring to the restrictions on civil liberties imposed by many of our modern democracies in the face of increasing security concerns, and even worse, signs of xenophobia and racism. These deplorable behaviors are often reported in the media, often in foreign media. But it is particularly those who are not reported, the ones that are hard to define, to measure, that are the hardest to combat.

We speak as equals, then. This does not mean that we minimize or deny our differences. We will talk as equals while respecting our differences. It would be a mistake to minimize our differences because everyone's experience and vision are a source of enrichment. To exaggerate our differences would also be a mistake, as it might imply that finding common ground is impossible.

A great French anthropologist, who recently died at the age of one hundred, spoke these words: "Humanity is constantly faced with two contradictory processes. The first aims at establishing a unified identity, while the other seeks to maintain or restore diversification."

We are all different, but we have one common goal determined by our common human rights. There are many ways to get there, but there is only one destination. The shared objective is better achieved together. At first, our goal may seem to be very ambitious, idealistic and even utopian. But when I see the various experiments conducted to date in the spirit of global governance, I say that "human rights" may be the area where we are most likely to succeed.

Nuclear power (think of Korea, Iran), the economy (the global crisis), the environment: all these issues evoke conflicting interests which are seeing a growing curve in certain countries (China, India) and a sloping curve in others (the rest of the world). This situation pertains to the economy in particular. Given these trends, one might find it hard to believe that nations can reach common ground.

Why is the issue of human rights the only one which States are prepared to discuss in the framework of global governance? Obviously, we still disagree on issues pertinent to certain specific rights, and we may even disagree about the fundamental values of human rights. But our shared and ultimate goal is to respect human dignity! Whether the person is a creationist or an evolutionist, atheist or believer, Arab or European, we must strive to ensure that we share the same respect for human dignity. Humanity's point of reference is, first and foremost, the human community as a whole; it takes precedence over an individual's geographical, political, religious, national, family or even emotional ties. The commonality of this objective stems from its universality. Indeed, the general theme of this symposium is "universalism of human rights and regional security." We must continue to negotiate, but we must not forget that certain principles are non-negotiable, meaning that they call for some form of intransigence. Certain rights are unalienable and inviolable. I humbly believe—this is my personal conviction, anyway—that in the end, human rights bind us more than they oppose us.

Dear ombudsmen, I look forward to listening to you. In a world where speaking, listening, discussion have lost value, I think ombudsmen can play an important role. The new means of communication offer each individual a chance to express his opinion. But to whom does society give a chance to speak out, to whom does it listen? The current trend in France is to professionalize listening: the "medicalization" of listening worries me; today it sometimes seems that, in order to be heard, you have to go to your psychiatrist. We ombudsmen can play a role as listeners by mastering the art of dialogue, thanks to our autonomy with respect to central power. We are placed above suspicion thanks to our independence, which allows us to speak freely and maintain our credibility in the political realm. The word is the foundation of our civilization. It is now tarnished. So we would do well, I believe, to recall our most illustrious ancestors, looking back to the prophets and thinkers who laid the principles of our respective civilizations, and put those principles into words.

To conclude, I will quote Khalil Gibran, the Lebanese poet who greatly influenced both Arab and European thought. His cultural and intellectual mélange made him a great advocate of cosmopolitanism, the architect of a bridge between peoples. "Open your eyes and look; you'll see your face in every face. Turn your ear and listen; you will hear your own voice in all voices." Thank you.

Mr. Gianni Magazzeni, Head of Branch, Americas, Europe and Central Asia, National Institutions and Regional Mechanisms, United Nations High Commissioner for Human Rights [Mr. Magazzeni, UNHCHR]: Ladies and Gentlemen, it is an honor for me to address this prestigious forum on behalf of the United Nations High Commissioner for Human Rights and to participate in today's discussions on the universal principles of human rights and regional security.

Regional organizations are crucial to maintaining peace and to promoting and protecting human rights. The UN Charter emphasizes this important role, especially within Articles 33 and 47 which establish regional institutions and agreements aimed at resolving disputes which threaten international peace and security. This approach was solidified with Chapter VIII of the Charter on Regional Agreements. Regional organizations have developed regional systems of human rights in Europe, Africa, and the Americas. Recently, the South-East Asian countries' organization, ASEAN, has created the Intergovernmental Commission on Human Rights. As part of the League of Arab States, the Arab Committee for Human Rights was established last year. Furthermore, several members of the League of Arab States are already members of the African system of human rights. Recently, the High Commissioner for Human Rights and the Organization of Islamic Conference jointly organized a meeting in Geneva, so that the OIC could benefit from the experiences of regional systems of human rights in the context of the creation of a permanent independent Commission on Human Rights. Many OIC members are also members of the League of Arab States. All members of these two entities are either members of—or have observer status at—the United Nations. As a result, they are all bound by the UN Charter and the Universal Declaration of Human Rights proclaimed by the UN General Assembly December 10, 1948. In this context, Article 1, paragraph 3 of the Charter encourages respect for human rights and fundamental freedoms for all, without distinction of race, sex, language or religion. This is the normative basis of the universality of fundamental human rights. It is listed in the Universal Declaration of Human Rights, in the depth of international instruments of human rights, within

the International Covenants on Civil and Political Rights, and also in The Covenant on Economic, Social, and Cultural Rights.

The fundamental human rights are not a privilege; they are inherent to us all. One of each State's responsibilities is to enforce them. Article I of the Declaration and Program of Action, adopted in 1993, stipulates that The World Conference on Human Rights reaffirms the solemn commitment of all States to fulfill their obligation to promote universal respect, observance and protection of all human rights and fundamental freedoms for each individual, in accordance with the UN Charter and with other instruments relating to human rights and international law. The universality of these rights and freedoms is beyond question.

Regional systems reinforce the universality of human rights by elaborating and applying international law on a regional and individual level. Countries are grouped by geographical or cultural proximity, to help implement these universal standards of human rights by way of a common approach and vision which binds them. On October 1st, 2009, the United Nations Council of Human Rights adopted resolution A/HRC/RES/12/15, on "Regional arrangements for the promotion and protection of human rights." The preamble of the resolution reaffirms that regional organization plays an important role in the promotion and protection of human rights, and should reinforce the universal norms of human rights, as set out in international instruments relating to human rights.

At the very least, regional systems are called on to respect and enforce the international law of man. Thanks to the progressive approach of certain regional systems, international law is evolving and expanding in scope. As it does so, further avenues and means emerge as necessary in protecting universal rights; they then find definition as international obligations.

Article 4 of the Council of Human Rights Resolution 12/15 calls upon the United Nations High Commissioner for Human Rights to organize regular workshops concerning regional arrangements for the promotion and protection of human rights; the next workshop should take place on May 3 and 4, 2010, with the support of existing resources. It will aim to develop information-sharing and to make concrete proposals for strengthening cooperation between United Nations structures and regional arrangements in the field of human rights. It should define strategies for overcoming obstacles which hamper the promotion and protection of human rights on regional and international levels. Participants will include representatives of regional and sub-regional structures, experts, representatives of the UN Member States involved, observers, and representatives of national institutions and nongovernmental organizations for the protection of human rights. Prior to such workshop, the High Commissioner has held three other regional consultations to improve and enhance cooperation between regional and international mechanisms for the promotion and protection of human rights. These consultations were held in Addis Ababa, Washington DC, and Strasbourg.

Also, we must not forget the important roles played by the national institution of human rights, the ombudsmen, national commissions, non-governmental organizations, and civil society. All these actors work to enforce the universal values of human rights in their totality, and the proper application of international standards for human rights. Such actors will be most competent in ensuring the success of national human rights arrangements, even on international levels. They recognize the need, for all concerned, to enforce the regional system's validity in relation to national human rights institutions, NGOs, and the civil society at any stage of creation and strive

to carry out its mandates. In order to function effectively, a human rights institution should be independent of the three State powers, and of NGOs as well. It should have the financial means and human resources necessary. It must be able to freely deal with regional and international human rights systems, shedding light on any flaws existing on the national level, in order to ensure that governments comply with their recommendations. National institutions must therefore adhere to the Paris Principles.

The High Commissioner for Human Rights provides technical assistance programs for the creation of a national human rights institution and reviews relevant legislation in order to ensure the institution's compliance with the Paris Principles. Such technical cooperation programs often continue for several years in order to strengthen the capacity of national human rights institutions in their task of promoting and protecting human rights. The United Nations High Commissioner for Human Rights remains available for assisting you in your noble mission of defending universal human rights.

Mr. Alvaro Gil Robles, Former Human rights Commissioner of the Council of Europe and former Ombudsman of Spain:

Mediateur of the French Republic, Ladies and Gentlemen, firstly, I would like to thank the organizers of this event for inviting me and for addressing such timely and important issues. I am the Director of the Center for Studies at the Valsain Foundation whose main goals are the protection and promotion of democratic values and it is an honor to participate in this initiative. We are faced, today, with many challenges with regards to the respect of human rights as codified after the Second World War in the United Nations Universal Declaration of Human Rights and, in Europe, in the European Convention on Human Rights and its Protocols. The aim of these and other national and international conventions is, without any doubt, the defense of the principles and values ingrained in our democratic societies together with the consolidation, protection and development of human rights. On the European continent alone, over the last fifty years we have witnessed a remarkable development of the rights guaranteed under the European Convention of Human Rights thanks to the tireless and invaluable effort of the Council of Europe. This is a proof of the progress of our society towards the acceptance of human rights as fundamental guiding principles of the relationship between individuals and States and an essential component of European political culture. This is why the Sixth Protocol of the Convention describes the prohibition of death penalty in member States as a fundamental right to life and human dignity. Similarly, the incorporation of the European Charter on Human Rights in the Lisbon Treaty is a step towards building a supra-national system, with both shared economic and political objectives based on the recognition of the right to judicial protection of all people. This commitment to the defense of human rights, its universality, and its promotion is also at the core of the European Union policy towards non-EU members and it underpins all cooperation agreements with third countries. Moreover, we must not forget the role the Ombudsmen have had in the advancement of human right in Europe, especially in those countries troubled by long dictatorships and charged with the difficult task of building democratic and free societies. This is how national constitutions, national courts, Ombudsmen and international conventions have worked together in Europe to shape—at least formally—an area of freedom and protection of human rights which is at the heart of the social and political European model.

However, the question today is whether all European citizens and people residing in Europe fully enjoy the rights that have been so strenuously consolidated over the last sixty years of democracy building. Unfortunately, in my experience as an Ombudsman and European Commissioner on Human Rights, I have learned that far too often, particular social groups—especially minorities and vulnerable groups—face significant limitations to the enjoyment of these rights. In the last few years, these rights have been further restricted due to the so-called war on terror that has justified gross violations of human rights in the name of security by countries that declare themselves as defenders of freedom. The civilized and democratic world, including Europe, has been captured by a security-first frenzy that has seriously undermined the historical advancements in the realm of the rule of law. Fortunately, there is always peace after the storm, and we have now acknowledged our mistakes. The core fundamental freedoms and rights of all people are still in force. The Ombudsmen and human rights organizations have an important role to play in constantly monitoring the respect of human rights and guaranteeing that no derogation from these rights occurs and no liberticidal policy develops. The limitations to the respect of human rights and fundamental freedom that have characterized the traditionally democratic countries in recent times can partially be explained by the fact that, since the end of the Cold War, we have witnessed an unconditional belief in the triumph and irreversibility of democracy. As a consequence, the emphasis of our discussions has shifted, especially among the young generations, from the principles of freedom, democracy, and rule of law to those of the pursuit of personal success and self enrichment at all costs. The primacy of the individual over the community has caused profound social disruption and has weakened the cooperation within the community. I believe this should be the focus of our discussions. However, we are not alone in our battle to consolidate, disseminate and protect human rights. Indeed, we can count on the partnership of many Arab countries, especially the countries in the Mediterranean area, who are attending today's conference. The Arab Charter of Human Rights is a concrete proof of the gradual expansion of the recognition of human rights and fundamental freedoms in these countries. Let's not be mistaken: human rights are not the result of the Westerns civilization. They are a universal conquest and no derogation based on interpretation, cultural relativism and religion must be permitted. Human rights must be enjoyed by all people, regardless of race, color, gender, culture or religion. To deny this fact is to allow for discrimination and oppression. Everyone here today—I am certain—believes in the freedom and dignity of all people and in the need to work together for the advancement and consolidation of the universal principles of human rights.

Message from Jean-Paul COSTA, President of the European Court of Human Rights (Read by Mr. Markus Jaeger): Dear friends, my judicial duties regrettably prevent me from being here today. But I want to commend the role played by the Ombudsman of the Republic, and especially the current holder of that title, with whom I have excellent relations, Jean-Paul Delevoye. I regret not being able to meet my dear friends Robert Badinter, Alvaro Gil Robles, and Emmanuel Decaux, on this occasion.

Today the focus of your discussion is "Human Rights: Universal Principles and Regional Guarantees." This title reflects the growing number of regional human rights instruments inspired by the 1948 Universal Declaration of Human Rights. The European Convention on

Human Rights is a direct extension of the Declaration and jurisprudence of the Court. It has never missed an opportunity to link a particular article of the Convention to the Declaration's article inspiring it. Although this Convention did not aspire to become a model for other regional instruments, it was the first human rights treaty to create its own supranational jurisdiction, ensuring compliance by State parties. Over the years, it has become a text of reference, and the Court, in its role as monitor of State compliance, has become a guarantor for the advancement of rights and freedoms. That's probably why other regional courts are keen to intensify their relations with this Court. We are always eager to welcome their members to our offices.

Our relations with the Inter-American Court of Human Rights, the African Court on Human and Peoples' Rights, and the regional institution recently established in Asia, testify to the universal recognition of human rights. Within this framework, I welcome the establishment of the Arab Charter of Human Rights which came into force in 2008; it cannot help but promote the advancement of human rights in areas where it applies, in the same way that the European Convention on Human Rights helped improve the situation for human rights in Europe during the sixty years of its existence. Regional systems exist in different political and cultural contexts. However, we can learn from each system, and the set of values it upholds. For instance, our jurisprudence encourages peace and tolerance. If the protection of human rights is already an end in itself, placing it at the service of tolerance and peace is a goal we all seek. These meetings should clarify our common goal. I am sure we have much to learn from each other. I wish everyone a very successful meeting.

Mr. Delevoye, MFR: All the ombudsmen present here today are extremely important, because they are close to the citizens, and can therefore carry on a direct dialogue with them. They listen to citizens' complaints—complaints that don't get as far as the government ear—and thus face with the reality of a country; they can see what goes wrong within a given country. And this is extremely important. So all of you play an extremely important role in bringing about change, and enforcing respect for human rights. We should all work together in spite of our differences because, whatever they may be, we can always manage to identify common ground and common objectives. If we succeed in this, I think, citizens in all countries will be grateful to us. With this meeting we are launching a new dynamic that you will, I hope, pursue in the future. Now I would like to give the floor to Professor Abdelmadjid Zaalani, Vice President of the Arab Commission for Human Rights.

Dr. Abdelmadjid Zaalani, Professor at the University of Algiers, Vice-president of the Arab Committee for Human Rights [Dr. Zaalani, Arab Committee for Human Rights]: Thank you, Mr. Chairman. I am extremely happy to be here today, and I would like to thank all those who took part in the organization of this very important meeting. This meeting indeed embodies our wish to engage in dialogue and exchange views and experiences. Thank you Mr. Delevoye, and Dr. Mattar for taking this initiative. Ours is a meeting inspired by the two notions that President Costa has mentioned: the notions of peace and tolerance, which are embedded in the first article of the Arab Charter on Human Rights. Article 1 of the Charter places human rights at the center of international consensus among Arab States, stating that they are fundamental ideals. This article also considers broader human tolerance, noble human values, and openness towards others. This shows that the Arab region has lagged behind in the area of human rights. Unlike the

Arab Charter on Human Rights, the Charter of the League of Arab States is not really concerned with the issue of human rights. Despite the significant evolution of human rights since the adoption of the UN Universal Declaration of Human Rights in 1948, and even more, since the adoption of the 1966 Covenants on Human Rights, the question of human rights has remained outside the concern of the League of Arab States. However, with the Arab Charter on Human Rights, the Arab region took the initiative of joining fellow members of the international community in the battle for human rights.

I will be extremely brief in my speech this morning and just touch upon the Arab Charter and its main characteristics, and upon the Arab Commission for Human Rights, which is the supervising body in charge of enforcing the Arab Charter. I will speak only briefly, since Dr. Mattar will give you an exhaustive presentation of the Arab Charter later. I would like to mention something that came to my mind while listening to President Costa's speech. He told us about the European Court of Human Rights and the European Convention, which were established sixty years ago. President Costa also mentioned that the Arab Charter on Human Rights came into force on March 16, 2008: two months after the seventh State party ratified it. However, this was not the first attempt in the Arab world to establish a regional human rights instrument. The first attempt was made in 1971 when, following the 1968 meeting in Beirut organized by the League of Arab States, the Arab world adopted a Declaration of Human Rights. Participants at the meeting also set up a Standing Arab Committee on Human Rights. The Committee was a governmental body made up of government representatives—not to be confused with the newly established Arab Commission for Human Rights which is made up of seven independent members. However, the Declaration was never truly enforced because of the lack of States' willingness to enforce it.

Following these initiatives, there were many attempts by the Standing Committee to draft an Arab Charter on Human Rights. There was an unsuccessful attempt in 1985, followed by others. However, the initial drafts lacked specifics concerning basic rights enshrined in international and regional covenants and allowed for restrictions on those rights due to exceptional emergency situations. In addition, the drafts did not include organs of control and enforcement mechanisms, nor did they prescribe the procedure for activating the Charter. Therefore, in 1994 the Committee initiated a revision of the draft Charter drawing particularly on the Cairo Declaration on Human Rights in Islam and the Organization of Islamic Conferences in 1990. On September 15, 1994 the Council of the League of Arab States adopted the draft Charter. This draft differed from the previous ones, as it defined a system of actuation, along with enforcement mechanisms. Nonetheless, it remained a dead letter because no States ratified it. In 2001, the Council of the League of Arab States once again put the Standing Committee in charge of updating the Human Rights Charter. During the drafting process, there was an attempt to include a Court, and to grant individuals the right to make complaints against States, but these attempts failed. The Charter was finally adopted in Tunis on May 23, 2004 and became effective on March 16, 2008, following its ratification by the 7th State, pursuant to Article 49.1, which States "this Charter takes effect two months after the date of filing the seventh instrument of ratification with the Secretariat of the League of Arab States." As of today, ten States have ratified the Charter. These are: Algeria, Syria, Palestine, Qatar, The United Arab Emirates, Yemen, Saudi Arabia, Bahrain, Jordan and Libya.

Like other international or regional human rights Conventions, the Charter is legally binding for State Parties. Specifically, the Charter creates three sets of responsibilities for State Parties: First, under Article 44, States must adopt, in conformity with their constitutional procedures and the provisions of the Charter, whatever legislative or non-legislative measures are necessary to enforce the rights set forth in the Charter. Second, States should also guarantee effective remedies for anyone whose rights or freedoms guaranteed by the Charter have been violated, even if the violation has been committed by persons acting in their official duties. Finally, in addition to these specific obligations, Article 48 calls upon State Parties to submit reports to the Secretary General of the League of Arab States on the measures they have taken to enforce the rights and freedoms recognized by the Charter, and on progress made in exercising of those rights. Article 45 establishes the Arab Human Rights Committee, composed of seven members elected by secret ballot for a term of four years, who are nationals of Member States. The candidates must have wide experience and expertise in the Committee's field of activity. Committee members serve in their personal capacity, and are independent and impartial. The essential mission of the Committee is to monitor implementation of the Charter by reviewing reports submitted periodically by States Parties. According to the Charter, the Secretary General must transmit the reports it receives from States, to the Committee, for consideration. After reviewing them, the Committee makes comments and appropriate recommendations in harmony with Charter's objectives. Finally, the Committee submits an annual report setting out its findings, and making recommendations to the Council of the League through the General Secretariat. The reports, concluding observations and recommendations of the Committee are then published. Since the Committee took office it has prepared and sent Member States a blueprint for the use of their reports. It has held meetings with civil society, and participated in numerous international events, including the Beirut meeting held at UN headquarters on April 11, 2009; and it has initiated dialogue with the United Nations High Commissioner for Human Rights in Geneva. Thank you so much. I wish you great success in this meeting.

Ms. Elham Alshejni, Director of Human Rights Department, League of Arab States [Ms. Alshejni, League of Arab States]: The Arab Charter on Human Rights was adopted in 2000 after 30 years of waiting. It has updated all the previous texts, which had been sharply criticized by both Arab and international NGOs. When I was first appointed Director of the Human Rights Department for the League of Arab States, I worked on updating the previous draft of the Charter, and that was done between October 2003 and January 2004. So the current draft was first submitted to the Council of Ministers of the League of Arab States in March of 2004, and then to the summit of the League of Arab States in May of 2004, when it was adopted. This draft was written in conjunction and with the help of the United Nations High Commission for Human Rights. We had access to all the Arab experts working from the UN Commission, who submitted a draft, from which we adopted no less than 85%. This Arab Charter on Human Rights went into effect in March 2008.

Unfortunately, though, the Charter has not garnered the interest it deserves among the Arab States. A good number of Arab citizens still do not know it exists, and I believe that the Arab media is accountable for this situation. Five years since it was adopted, only ten members of the League of Arab States have ratified it. Today, we would like to urge the largest number possible of members of the League of Arab States to ratify it. And we would also like to urge all human

rights activists inside and outside the Arab world to take a look at the Charter and identify all of its weaknesses and strengths. We believe that if this analysis and review is done, we can add protocols to it. This Charter is extremely important because it is one of the most important regional instruments for human rights in the Arab world. In conclusion, I would like to thank Mr. Jean-Paul Delevoye as Mediator of the French Republic for the invitation. And I would like also to thank Dr. Mohamed Mattar, Professor of Law at Johns Hopkins University, who has dedicated his life and work to the promotion of human rights and is also an activist in combating human trafficking. Thank you so much.

Mr. Delevoye, MFR: Thank you so much Ms. Alshejni. I believe that indeed your conclusion was extremely important, for the United Nations has declared that human trafficking is the second most important crime that the world suffers from after arms trafficking. Now, I would like to give the floor to Mr. Markus Jaeger.

Mr. Markus Jaeger, Legislative Support and National Human Rights Structures for Human Rights, General Director for Human Rights and Legal Affairs, Council of Europe [Mr. Jaeger, Council of Europe]: Thank you, Mr. Chairman. Ladies and gentlemen, the Médiateur de la République and the Council of Europe have launched a remarkable collaboration in the past few years. This came as a result of the very deep understanding that exists between the two institutions. First of all, I would like to mention Mr. Alvaro Gil Robles, who is the former Human Rights Commissioner of the Council of Europe, and also the former ombudsman of Spain. He always aspired to promoting and unifying the ombudsmen in greater Europe, from Russia to Portugal, from Iceland to Turkey. Also, when Jean-Paul Delevoye was appointed Mediator of the French Republic, he immediately identified the potential synergies that could be gained from stepping up the cooperation between similar institutions on the continental level. He was convinced of the need to work together in order to achieve a greater degree of understanding between various ombudsmen's institutions throughout Europe. Under the leadership of these two men, a quantitative and qualitative leap forward was taken. The French team, led by Christian Le Roux, Ombudsman Director of Cabinet, undertook a systematic policy combining national and international action, while ensuring strict cohesion between these two branches of its activity. Mr. Chairman, it is thanks to the work of such an enthusiastic team that we are able to meet today. It is indeed a great pleasure for me to have the opportunity to see my friend, Jean-Paul Delevoye, and to further promote our cooperation. This cooperation between an intergovernmental institution such as ours and a national institution such as the Mediator of the Republic is an important aspect of our meeting today.

As for the specific topic of our meeting, I would like to touch upon two important issues: the need for a regional guarantee of universal human rights, and the issue of whether a regional structure is likely to undermine the universal dimension of human rights. As regards to the need for a regional guarantee, I would like to refer here to a recent European experience—which I had the privilege to conduct—aimed at fighting torture and inhumane treatment. The absolute right of every human being, in all circumstances, not to be subject to torture or to cruel, inhuman or degrading treatment, is a right enshrined in Article 3 of the European Convention on Human Rights, as well as the International Declaration on Human Rights. This rule is also present in the national laws of all 47 members of the Council of Europe. However, as important as laws may

be, they are only on paper; to ensure their implementation we need constant, intensive supervision. This is especially important when dealing with torture and cruel and inhumane treatment, for three reasons. First of all, abuse can be inflicted in various sorts of places and situations, and at any time, by a potentially large number of people. Second, often victims do not have the opportunity to reveal and denounce what has happened to them; prisoners, sick people, or very old people are often isolated from the outside world. Third, violations of the prohibition against torture often leave scars so deep that the effect is irreversible. That is why we must actively and continuously prevent violations and not simply punish them. This need represents a serious challenge, because it not only entails fighting against the impunity of the perpetrators and of those who have allowed abuse to happen, but also requires monitoring in sites where violations could take place at any time. Clearly, we cannot rely solely on the UN conventions and structures to provide permanent and constant monitoring throughout the world. And this is why the Council of Europe includes a Committee for the Prevention of Torture, covering all 47 member countries. This Committee is in charge of enforcing the prohibition of torture and inhumane treatment, as defined in the European Convention. However, even that is not enough: each year the European Court of Human Rights is overloaded with cases alleging torture and cruel and inhumane treatment. This is why we now have an Additional Protocol, the Optional Protocol to the UN Convention against Torture (OPCAT), which has created national structures complementing the Council of Europe and UN structures: the National Preventive Mechanisms (NPMs). We are working, then, in a three-tier system that seeks to prevent torture and enforce its prohibition, on the international, regional and national levels: the UN Subcommittee on Prevention of Torture (SPT), the European Committee for the Prevention of Torture (CPT) in the Council of Europe, and the National Preventive Mechanisms (NPMs). My point is simple: regional guarantees are not sufficient. They must be complemented and supported by national guarantees.

As regards the second question—whether a regional defense system may diminish the universal character of human rights—the multiplication of instruments clearly poses a number of risks, including a waste of resources and a waste of time; this problem may well irritate both public opinion and governments. The multiplication of structures may also multiply contradictions and even inconsistencies between the various instruments. In any event, when many voices speak, can we really avoid dissonance? We think not. We assume that we must live with this risk, and seek to understand it. To do so, we urge the three actors in the Prevention of Torture—the UN SPT, the CPT in the Council of Europe and the NPMs—to cooperate on three fronts: first, by conducting joint workshops in order to understand and compare the definitions and modus operandi of each mechanism; second, by establishing an ongoing dialogue between the three types of mechanism; and, third, by working together to identify the inconsistencies between our mechanisms, and bridge those gaps, often due to the different contexts in which we operate. Ladies and gentlemen, thank you for your attention.

Mr. Delevoeye, MFR: I would like to thank all panel members for sticking to the given time frame. I would just like to remind you that you will find in your folders a copy of the European Convention of Human Rights as well as the Arab Charter on Human Rights. Thus, we will start now our first round table discussion and listen to Professor Emmanuel Decaux, Professor of Law, who will present to us the European Convention of Human Rights.

Dr. Emmanuel Decaux, Law Professor, University of Pantheon-Assas – Paris II [Dr. Decaux, UPA]: Thank you, Mr. Chairman. I am extremely happy to take part in this very promising meeting, but I am also aware that I am faced with a daunting challenge of having to summarize sixty years of activity in a couple of minutes. As you already know, the European Convention on Human Rights was adopted November 4, 1950 in Rome, so it has turned sixty this year.

The European Convention on Human Rights was established by the twelve Member States of the Council of Europe in the aftermath of the Second World War. The Convention sought to respond as quickly as possible to the International Declaration of Human Rights and promote human rights and fundamental freedoms at the time when the European continent was divided in two by the Cold War. The European Convention, in its first sentence, refers to the Universal Declaration of Human Rights and to the obligation of States to respect the rights enshrined within. We could therefore say that the European Convention followed the example of the Universal Declaration of Human Rights even though it chose to focus on part of the rights that were protected by the Declaration and member countries were allowed to introduce a number of conditions and limitations to the exercise of those rights. The approach was a mixture of audacity and caution. France, for instance, took its time to recognize the competence of the European Court of Human Rights and we had to wait until 1981—and until Mr. Badinter—to accept the right of individuals to bring complaints before the European Court of Human Rights.

The European Convention on Human Rights has been characterized by a dual dynamic—an internal and an external one. Let's look first at the external dynamic. Since it was first adopted in 1950, the European Convention has evolved a great deal and, in order to follow and adjust to the changes and developments that Member States were experiencing, no less than 14 Protocols were added over time. At the beginning, the system was optional and the Court was flanked by a Committee of Experts and a Council of Ministers, composed of representatives of governments. With the approval of Protocol 11, the system was radically changed and individuals were allowed to have direct access to the Court. Protocol 11 thus established the Court as we know it today—a permanent Court made up of 47 independent judges. Protocol 11 was followed by Protocol 14, which is due to come into force in 2010 after Russia ratifies it. However, some structural problems still remain and the possibility of further amending the system was put forward at the Conference of Interlaken, organized under the aegis of the Swiss Presidency of the Council of Europe. This institutional development of the Court occurred in conjunction with a development in the area of human rights and public liberties. Initially, the Convention focused mostly on civil and political rights, rather than economic and social rights, with the exception of the right to property and the right to form trade unions. In 1961, a European Social Charter was adopted which established some level of control on social matters and was based on a reporting system and was later complemented by the right of trade unions to have access to the Court. With the advent of the 1990s, we witnessed another major change: a new wave of membership in the Council of Europe. As a consequence, many States adopted the European Convention and a number of its Protocols since its ratification is one of the entry conditions. The Convention today covers 47 countries as diverse as Iceland, Portugal, Morocco, and Russia. It also covers the French territories in the West Indies and it was declared to be in a famous ruling rendered by the European Court of Human Rights as its fundamental document for the settlement of litigations

between Member States. With regards to the internal dynamic of the European Convention suffice to say that, since the old European Court of Human Rights was overhauled, the new Court managed to render no less than ten thousand rulings, as compared to the one thousand rulings rendered by the old Court. We could say that there are a number of elements that govern the work of the Court. The first element is the notion of effective remedy. This translates into the application of the “principle of subsidiarity” according to which national jurisdictions are bound to implement the provisions of the European Convention on Human Rights and the European Court will not consider a case unless all national remedies have been exhausted, with few exceptions, depending on the nature of the case. This principle exists to guarantee the good administration of justice and a fair trial. There are also a number of obligations, both positive and negative, that the Court imposes onto Member States. For instance, the States must refrain from using torture and inhumane treatment and are bound to investigate all cases of torture and inhumane treatment.

The second element that governs the work of the Court is the commitment to uphold democratic values. This is why the Convention includes a number of articles that oblige States to respect democratic values, including the liberty of conscience, the liberty of opinion, and freedom of speech. Some of these rights are qualified rights since States are allowed to introduce limitations. However, limitations are permitted only under three conditions. Firstly, the limitation has to be enshrined in national law. Secondly, it has to seek a number of legitimate purposes such as public order, for instance. Thirdly, it has to be deemed necessary within a democratic society defined through the Court’s jurisprudence as a society where there is a great deal of tolerance and openness towards a large number of opinions.

The third element is that of non-discrimination. Thus, through case law, the Court established the link between article 14 prohibiting discrimination and a number of substantial articles, including, for instance, the right to access to social benefits. In promoting the protection of the rights enshrined in the Convention, the Court has to take into consideration the differences among the European judicial systems that often resist uniformity of the application of its jurisprudence. As a consequence, the Court developed the notion of national margin of appreciation to allow national courts to act with self-restraint on a number of issues, especially ethical issues such as cases of euthanasia (*Pretty v. UK*, 2002) or abortion. States may also be granted exonerations or exemptions from a number of rulings and provisions in certain circumstances such as in the context of the fight against terrorism like in the *Lawless v. Ireland* case of 1957-1961.

A more exhaustive overview of the Convention would highlight the linkages between the European Convention on Human Rights and the Treaty of Nice, which is the equivalent of the European Convention at the EU level and is bound to come into force once the Treaty of Lisbon has been adopted. Unfortunately we do not have the time to discuss this issue but it is worthwhile mentioning that, with the entry into force of the Treaty of Nice new important areas of cooperation in the field of human rights will emerge between the Council of Europe and the EU system. Thank you.

Mr. Delevoe, MFR: Thank you Professor Decaux for this very brief presentation on a highly complex issue. You have underlined that this system has been flexible enough to provide countries with a certain level of independence so that they could evolve each of their own pace but also clarity when it came to the vision in the long run. Now we would like to give the floor to

the participants. Are there any questions that you would like to put to Mr. Decaux? Our colleague from Armenia, please go ahead.

Mr. Armen Harutyunyan, Human Rights Defender of Armenia [Mr. Harutyunyan, Armenia]: Thank you very much. And thank you for organizing this conference. I would like to ask Mr. Decaux's opinion regarding the European Court's case law and specifically in what way he thinks this can develop in a way that reflects the different political and institutional frameworks of the more recent members of the Council of Europe. It is certain that European regional mechanisms are more effective because of the influence of the Court, since its decisions are obligatory for Member States. The Court's case law is often based on decisions taken a while ago—when the Council of Europe was mostly composed of Western European countries. This, however, often does not correspond with the reality of Eastern and Central European countries, for example with post-Soviet countries. What do you think? Maybe we should consider changing some case law that is not effective for some countries since the reality in these countries is very different from that period when the case law was established. Thank you.

Dr. Decaux, UPA: This is a very interesting question. I didn't want to go into detail about the way the European Court works. I would just like to remind you that we have had a Court established until 1998, which gave nearly one thousand verdicts. The new European Court, under the Convention of Human Rights, has been extremely active ever since. It is made up of 47 permanent judges. It is divided into seven chambers, and there is a geographical balance in representation within those chambers. I do not know exactly how they manage to guarantee the equal representation of all the regions, but I can tell you that Western judges do not prevail over judges from Eastern and Central European countries. And there is also a certain level of consistency in case law and in the Court's rulings. However, as a Frenchman, I am a staunch believer in the relativity of the rulings. And it is clear in French law that a ruling reached in a specific context takes into consideration the facts of the case. Indeed, this was one of the aspects covered during the Conference of Interlaken: that is, the possibility of extending the scope of case law application. In France, this seems quite shocking because we believe in *Raison d'Etat*, and this is actually why we had a revolution.

Mr. Delevoye, MFR: Well, what Professor Decaux has been trying to say is that the rulings of course do not constitute the pure superior source of law, but those rulings can force political leaders to take action. After listening to the presentation by Professor Emmanuel Decaux on the European Convention on Human Rights, we shall now ask Mr. Mohamed Mattar to present the Arab Charter on Human Rights.

Dr. Mohamed Mattar, Professor and Executive Director, The Protection Project, The Johns Hopkins University, School of Advanced International Studies [Dr. Mattar, JHU]: Good Morning. To place human rights at the center of the key national concerns of Arab States; to teach the human being in the Arab States pride in his identity, loyalty to his country, and attachment to his land, history and shared interests; to prepare the new generations in Arab States for a free and responsible life in a civil society; to entrench the principle that all human rights are

universal, indivisible, inter-dependent, and interrelated: these are the goals that the League of Arab States pledged to pursue when it adopted the Arab Charter on Human Rights in May 2004.

Mr. Chairman, I am privileged to be here today to discuss the Arab Charter on Human Rights with you and our distinguished guests from the Arab world and from Europe. I want to thank you, Mr. Chairman, for hosting such an important event. I value this cooperation between our institutions: the Protection Project at the Johns Hopkins University, School of Advanced International Studies, the French Ombudsman and the League of Arab States.

Ms. Elham, together we have had several of these meetings, always with one purpose: to enhance human rights protection in our countries and open a dialogue between the Arab world and Europe. As Professor Emmanuel Decaux explained, Europe has sixty years of experience and we in the Arab world are here to learn from you. Three years ago we had a meeting on the status of human trafficking in the Arab world and we asked the following question, “Which countries in the Arab world have a law against human trafficking?” In this regard, I want to take this opportunity to congratulate Director Salah Al-Sharekh and the Human Rights Commission in Saudi Arabia for passing the most recent law on anti-trafficking. I am happy to report to you that their law is in total compliance with international legal standards under the United Nations Protocol on Trafficking. Some time ago we also had another meeting—this time in Cairo at the premises of the Arab League—where we addressed the issue of the monitoring mechanisms under the Arab Charter. Should we establish an Arab Court? In the absence of an Arab Court, what agency should have the authority to interpret for us the 54 provisions of the Arab Charter? Should we allow for individual monitoring mechanisms or should we only be satisfied with what the Charter was satisfied with, and that is establishing a reporting mechanisms? These are questions that I would like to address to you today.

As you all know, Algeria, Bahrain, Jordan, Libya, Palestine, Qatar, Saudi Arabia, Syria, United Arab Emirates, and Yemen all have ratified the Charter, which entered into force in March 2008, after seven instruments of ratification were obtained in accordance with Article 48 of the Charter. Also, the seven-member Arab Human Rights Committee was established in accordance with Article 45 of the Charter. So allow me to take this opportunity to congratulate the Chair of the Committee, Dr. Abdelrahman Yousef Al Awdi, and the other distinguished members of the Committee who are all highly experienced and competent in the committee’s field of work. From this beautiful hotel in Paris, France, I would like to send them an email: “Dear Members of the Committee, we are looking forward to your review of the reports that will be submitted by each State party one year upon ratification. We are also looking forward to your comments and recommendations on the progress that is made to improve the record of human rights in the Arab world, when you submit your annual report to the Secretary General of the Arab League in accordance with article 38 of the Charter.”

I am delighted that the Arab Charter of Human Rights of 2004, which is still young compared to the European Convention, is being discussed today, in relation to the European Convention on the Protection of Human Rights and the Fundamental Freedoms of 1950. In fact, in March 2010, The Protection Project at the Johns Hopkins University will host a conference in Bologna, Italy on Islam in Europe, to promote a dialogue between the Arab world and Europe. I want to know why Europe is taking a second look at Islam, and what Muslims are doing that is sometimes offensive to European values and traditions. We must come together and we must acknowledge that work has to be done on both sides, not only in Europe but in the Arab and the Muslim world

as well. Sixty years of experience, Prof. Emmanuel. We are happy that you have such an experience and we are definitely here today to learn from such experience.

Just a few words about the general principles and provisions of the Arab Charter before we look into specifics in the second and the third session, when we will discuss the death penalty, women's rights, and freedom of expression. In accordance with the Arab Charter, a Bill of Rights for the Arab world was established for the first time, including civil, political, economic, social, and cultural rights. 54 provisions that I am very proud of. However, under Article 29.2 these rights may be restricted on the basis of the law, morality, public order, freedoms of others, and general welfare in an economic society. So the question that I am posing to my good friends in the Arab world as well as in Europe is the following: are these restrictions justified and reasonable? In other words, to what extent does the Arab Charter as well as the European Convention, allow for the limitation clause or the restriction clause to limit or restrict the exercise of rights? This is something you see all over the Arab Charter. The right is given and then in the same provision the right is taken away. How do you balance exercising the right with limitations that may be imposed for the purpose of the common good, common interests, democratic values, and freedoms of others? An example is the right to liberty and security, which is guaranteed under the Arab Charter in Article 14. A second example is civil and political rights, which are guaranteed under the Arab Charter in Article 24. Freedom to religion or beliefs is guaranteed under the Arab Charter in Article 30. The rights to information and freedom of opinion and expression are guaranteed under the Arab Charter in Article 30. However, all these rights are subject to limitations and we have to be careful in interpreting the limitation clause or restriction clause as not to contradict the essence of the right itself. Let me give you an example from Saudi Arabia: during the last pilgrimage season, restrictions were imposed on Muslims making a pilgrimage for health reasons, to avoid spreading swine flu. Is this reasonable? I believe so. Is this justifiable? I believe so. But you must not make a wife's travels for pilgrimage from one country to another, contingent upon her obtaining approval from her husband. Why? Because such a restriction contradicts the essence of the right itself. What is the essence of the right? The right to movement; you are restricting the wife's right to movement if you are not going to allow her to exercise such a right except upon approval from her husband. The question demands interpretation. When should we allow for a restriction? When should we allow for a limitation? And when should we not allow for such limitations or restrictions because they contradict the essence of the right itself? This is the first question that we have to address, because we are talking about a lovely document with 54 provisions, proclaiming rights that are detailed, guaranteed, acknowledged for Arabs.

Another, related problem that we have to address is the relation between the Arab Charter as a regional legal instrument and national law. I believe that we must address this issue especially when the Charter refers to the law. The Arab Charter is one of those documents that refers to rights and duties, rights and guarantees, rights and freedoms, but at the same time refers to the national law. Such rights and freedoms are to be provided as long as the national law itself allows that to happen. An example is Article 29, regarding the right to nationality. A child may have the right to acquire nationality through the mother as long as the national law allows for such a right. How do you interpret Article 29? Is the right to nationality guaranteed? Or does it impose discrimination on the basis of sex? A second example is Article 33, and that is my favorite because it talks about marriage. Article 33 states that "the laws in force regulate the

rights and duties of the man and woman, as to marriage, during marriage and its dissolution.” It does not provide for the principle of equality between man and women as does article 16 of CEDAW, the Women’s Convention. Instead, it defers the implementation of the principle to the national law in force. How do you interpret article 33? This is a question that needs an answer. It also raises other issues: First, does the Charter provide for the supremacy of a provision in the national law over the Charter? I do not think so. Does the Charter require that the interpretation to its provisions be in conformity with domestic laws? I don’t think that this should be the case. Is there a conflict between the Arab Charter and international law in this regard? Well, maybe. How about when a State party to an international convention makes reservation to one of its provisions: would international law apply regardless of the reservation or the reservation would constitute a limitation for the State to argue international law? There is an interesting case in the United States where the court referred to international law. This case was about a Mexican who came to the United States illegally. He had two children and was about to be deported. He argued the Rights of the Child Convention, under which you do not separate a child from his parents. The court said that, although the United States is not party to the CRC, the Convention will apply to this case as part of international customary law. This is something we would like to see in Arab jurisprudence and Arab jurisdiction. Hence, how do you resolve this conflict between international law and the Arab Charter when there is room for such a conflict? Article 43 seems to solve this dispute. It says that we will not construe or interpret a provision in the Arab Charter in a way that takes away or reduces the right of a citizen or freedoms of the citizen that is stipulated in international legal instruments, including international conventions. That is a good article since it stipulates that international law will have supremacy over a regional instrument. I would like to see article 43 interpreted in this way. When there is a conflict between a provision in the Charter and a provision in international law, we will give supremacy to international law. Let me give you some examples: Articles 9 and 10 of the Arab Charter prohibits human trafficking, especially trafficking for sexual exploitation and forced labor and slavery, and practices similar to slavery. The argument I’m making here is: if we apply article 43, we have to interpret the human trafficking provisions in article 9 and 10 in accordance with articles 6 and 7 of the United Nations Protocol to Prevent, Suppress, and Punish Trafficking in Persons Especially Women and Children. What does this mean? It means that it is not enough for an Arab State to prohibit or criminalize trafficking. Under international law you must provide assistance and protection to victims of trafficking. So, although the Arab Charter did not explicitly refer to protection and assistance to victims of trafficking, it may be implied under Article 43. On March 22 and 23 Qatar is launching a three year program on human trafficking in cooperation with the United Nations and the Johns Hopkins University. In the coming three years, Qatar will hold fifteen trainings and workshops in different Arab countries as part of an initiative promoted by the Arab League and the United Nations. That is an implementation of articles 9 and 10 and that is what is required under international law. A second example of how you reconcile the Arab Charter with international law is article 23 that talks about access to justice, effective remedy. Every person in the Arab world must have access to justice. His voice must be heard in court. The article provides for that remedy. The article should be interpreted in light of article 2 of the International Covenant on Civil and Political Rights that says that such remedy must be enforced and must be decided by a court of law. I am happy here that with us is Mr. Abdelilah Al-Kurdi, from Jordan. Mr. Al-Kurdi is the head of what we call “the board of

grievances”. If you want to express a grievance, Saudi Arabia has a similar institution. How can we make remedies effective? How can we allow our women to file a lawsuit? Perhaps by establishing a family court, as Egypt did? Also, next month we are starting a program in Egypt to launch what we call a “law clinics” or “legal clinics.” Alexandria Law School—and hopefully other law schools—will establish a law clinic similar to a medical clinic. So, if you have a woman who doesn’t know where to go to file a lawsuit, she’ll come to our law school; the students will help her, under the supervision of the professor, and will provide her with legal advice and refer her to pro bono lawyers to get legal representation.

How about Islam? We cannot talk about the Arabs and the Arab Charter on Humans without talking about Islam. Several references are made to Islam in the Arab Charter. This is positive because you cannot lose your identity as an Arab if you are a Muslim. The question is: what role should Islamic law play in the interpretation of the Charter? The Preamble recognizes the Cairo Declaration of Human Rights in Islam of 1990. I know many of you do not like the Cairo Declaration. I don’t know why. It is a good document. Admittedly, it was written in 1990. Now we are in 2010 and twenty years may have taught us something about human rights. Perhaps some of the provisions of the Cairo Declaration seem discriminatory in nature and perhaps this is something that we have to think about. Conflicts between the Arab Charter on Human Rights and the Cairo Declaration on Human Rights in Islam do arise. The question is: how do you resolve such conflicts? Also, the Preamble of the Charter refers to the noble Islamic religion, but also refers to other religions. The provision that refers to Islam explicitly is Article 3. It talks about the equality of men and women and we all believe that men and women are equal. But the Charter also says that they are equal within the framework of the positive discrimination established in favor of women by Islamic Sharia and other divine laws. How do you interpret positive discrimination? I am one of those who believe in positive discrimination. If you come to a country like Egypt where women are underrepresented and Egypt says: “Well, we’re going to reserve 66 seats for women in Parliament,” that is discrimination big time. You are discriminating against men. But we love you guys for it because we believe in positive discrimination. That is what CEDAW talks about: the quota system. We have it in Iraq under the Iraqi constitution. We have it in Sudan. There is nothing wrong about that. That is how I interpret Article 3 of the Charter: positive discrimination in favor of women under Islamic Sharia. But the question still remains: what is the relation between Islamic law and the Charter, especially when the Charter refers to national law and the national law is based on Sharia? Let’s say the Charter refers to a national law. That national law happens to be the law of Saudi Arabia which is based on Islamic Sharia. What role does Islamic Sharia play? You have eleven States in the Arab world which make Islam a source of legislation, including Egypt and Qatar. Seven of these countries say Islam is a source of legislation; four countries say it is the source of legislation. If you’re referring to national law and it happens that the national law is based on Islamic law, Islamic law becomes here the applicable law. The question is how do you address a conflict if there is a conflict between one of the rights and freedoms under the Charter and under Islamic law? I would like to send another email. This time to Mr. Amr Moussa, the Secretary General of the Arab League: “Dear Secretary General, please look for any requests submitted by an Arab State that would like to invoke Article 52 of the Charter, and consider adopting an Optional Protocol to the Charter allowing individual complaints as another monitoring mechanism, besides reporting.” We just learned from Professor Emmanuel that there are 14 Optional Protocols to the

European Convention. We would like to see an Optional Protocol perhaps allowing individual complaints.

For now, let me conclude by saying that I believe that the Arab Charter gives us an adequate and effective regional instrument for the protection of human rights that must be fully implemented. Also, I would like to propose a three phase program for the implementation of the Charter: what I call the L.T.E. approach: L stands for “legislation”. It is time for Arab States to take the necessary legislative measures to bring national laws in conformity with the Charter. For example, Article 33 of the Charter prohibits violence against women. The Charter provides for no violence against women, but when you take a look at Arab legislation only Jordan has a comprehensive law on domestic violence. I understand there are drafts in Saudi Arabia, Lebanon, and Bahrain. These should be promptly passed into law. Similarly, if the Charter in Article 10 prohibits human trafficking, it is time for every Arab State to pass a law prohibiting human trafficking. To assist governments in adopting new legislation, I would like to propose drafting a parliamentary handbook. The handbook will serve as a legislative guide, explaining the 54 provisions, so that our Arab legislatures may make use out of the legislative guide and amend laws that are inconsistent with the Charter or propose laws that would be implementing the Charter. This would be useful, especially since we don’t have an Arab Court similar to yours in Europe. The questions would then be: who would interpret the 54 provisions of the Arab Charter? How do you balance public order with the rights stipulated in the Charter? How do you define the relationship between the Charter and international law? How do you address the supremacy clause where there is Islamic Law? We would like to propose a parliamentary handbook to answer these questions. That is the L and L stands for legislation, a parliamentary legislative guide is a good thing to do. Second, T, which stands for “training” We just heard about the judicial interpretation of rights and freedoms, and I believe in the role of the judge. In the Arab world, if you want to guarantee rights and duties, rights and freedoms, you have to go to the judge and train the judge on the Arab Charter to make sure the judge is incorporating the Arab Charter in his decisions. I’d like to give an example. In 2009, in Iraq, a Christian husband filed a lawsuit for disobedience, asking his wife to come to the marital court. The court said it wasn’t an Islamic issue because the husband and wife were Christians. Which law should apply? The court should have applied Article 16 of CEDAW, equality in marriage. We want to go to judges and say: “These are the 54 provisions of the Charter which are part of the national law. You should impose and utilize these provisions when you decide rights and duties of a citizen in the country.” Finally, E, which stands for “education.” When you go to many of these Arab countries few people know what you are talking about when you mention the Arab Charter on Human Rights. I’d like here to invoke Article 41 of the Charter that explicitly calls upon State parties to incorporate principles of human rights and fundamental freedoms in educational curricula. On behalf of the Protection Project at the Johns Hopkins University, School of Advanced International Studies, Mr. Chair, Mrs. Elham I am proposing a workshop on incorporating human rights and educational curricula. Thank you so much.

Mr. Delevoye, MFR: Thank you for presenting us the Arab Charter on Human Rights. But, before we give the floor to Mr. Badinter, we will take one question from a colleague from Kuwait.

Mr. Waleed Al-Tabtabae, Ombudsman, Kuwait National Assembly [Mr. Al-Tabtabea, Kuwait]: In the name of God, I would like first of all to thank Mr. Mohamed Mattar for making his very interesting presentation. However, Mr. Mattar is actually calling for additional laws to complement the Arab Charter on Human Rights and I believe that the Arab countries do not lack acts and laws. What they lack is the will and possibility to enforce them. For instance, if you look at the various provisions in the Arab Charter, none of those provisions are enforced in the Arab world. Some of those rights are enforced and others are not, but there is not a single country where they are totally enforced. For instance, let's look at the right of refugees, the right to stay in an Arab country, and the equality before the law. I don't think that these rights are respected. Similarly, I do not think the presumption of innocence really exists in our countries. Instead, the accused is considered guilty until proven otherwise. Also, I do not believe that Arab citizens enjoy the right to privacy. These are all rights that, unfortunately, are not enforced. We could say that the situation prevailing in this area is quite unfortunate because we often have either military or hereditary regimes where we have no say in terms of succession. We cannot say that we have democratic regimes or governments, even though there are countries in the Arab world that are republics. Presidents have managed to modify and amend their constitutions so they can renew their term more than twice, and some of them have a life-long mandate. There are also cases of illegal detention for various reasons. What are the reasons for this? Can we consider the Western countries today as an example for the Arab countries in terms of human rights? Unfortunately that is not the case. Just take a look at the post 9/11 events, Guantánamo, what happened in Gaza, the violations of the rights of Palestinians by Israel, what is taking place in Afghanistan, in Pakistan. Unfortunately the West can no longer be considered as a model in terms of respect and promotion of human rights.

Mr. Delevoye, MFR: Thank you Sir for putting forth this question. I'd like to establish that the spirit governing this meeting is that none of us can be taken as a model and that we are all here to learn from each other. It is clear that we believe the most precious thing we have in this life is our freedom and our dignity.

Dr. Mattar: I agree with some of what Mr. Al-Tabtabea said—that the issue is not in the law, but is the implementation of the law. However, if you do not have the law, you won't be talking about implementation. What we have in the Arab world is a significant step in the protection of human rights. The Arab League Charter never really referred to human rights. The fact that the Arabs came together and adopted a regional instrument like the European Convention, the African Convention and the American Convention represents is a step in the right direction. It doesn't mean that we are to seek advice from the Europeans, the Africans, or the Americans. No. Here, we are talking about a dialogue and a learning experience. If you have a court that interpreted issues of rights and freedoms for sixty years, what's wrong with looking at what the Court interpreted? Do I believe in improvement? Absolutely yes; I think there have been improvements in the Arab world. In many countries now we have the human rights departments and we are training our police on human rights. Do our police violate the law? Absolutely, yes; it happens everywhere. But the question is: How are we addressing these violations? Now we can recognize that these are violations and have the liberty to denounce them—something that never really happened before.

Mr. Delevoye, MFR: Thank you. I will give the floor to Mr. Badinter, who has been an activist on the international stage for some time.

Mr. Robert Badinter, Senator and Former Minister of Justice, France [Senator Badinter]:

Thank you, Mr. Chairman. I would like to thank you for taking the initiative and organizing this important and very interesting meeting. After listening to the comment that was made earlier, I am tempted to say that there are two principles that human rights activists should always bear in mind. The first is that human rights are universal. The second is that national experiences can never be presented as the ideal or the model way. We always stand to learn from other countries' experiences. We listened to Professor Decaux when he presented the European Convention on Human Rights. He noticed that the rights enshrined in that Convention have evolved a great deal and it took a great amount of time for full-fledged democracies to build a regional system of rights and guarantees. It is thanks to this very long process that today we can benefit from the protection of our rights and that we can enjoy these guarantees within the 47 Member States of the Council of Europe. There is no need for us to take pride in that because this is a situation that can change very quickly. I say this as an activist that has been battling for the promotion of human rights for the past fifty years.

The European Convention and the Arab Charter are very often overlooked and dismissed as ineffective and simple statements of intent. However, I would like to remind you that, at the end of the Helsinki Conference, people were criticizing the text of the Helsinki Declaration saying that nothing good would come out of it. Nonetheless, the Helsinki Declaration was used by dissidents in the Soviet Union and it contributed, albeit indirectly, to the dismantling of the communist regimes.

It is true that the Arab Charter does not yet have a system of guarantees such as the ones mentioned by Mr. Gil Robles in his speech. Nevertheless, the Arab Charter will both strengthen the position of human rights activists and help them hold governments accountable for their violations because these governments, by ratifying the Charter, have pledged to protect the rights of their citizens. It doesn't mean that the system is perfect: there is always room for improvement. This is also true for the European system of guarantees as we know it in Europe. This is my comment and response to the question put for us by the gentlemen from Kuwait.

I have taken a close look at the Arab Charter on Human Rights. In regards to the provision on positive discrimination, I believe the situation is not ideal, especially when we look at the issue of polygamy. Article 2 of the Egyptian Constitution says that all provisions should be in conformity with Sharia. In other words, the Constitution, as the supreme law of the land, should in its provisions be aligned with Sharia, which is a religious law in substance. Thereafter, when it came to polygamy, my friends in Egypt found that polygamy was an absolute right granted by Sharia. We know that polygamy exists. Nevertheless, my friends at the Egyptian Constitutional Court found that, I am quoting: "polygamy is enshrined in a Qur'anic verse and therefore the principle of polygamy is applicable everywhere and at all times." As you may know, my wife is a keen women's right activist, and therefore I was slightly puzzled by this finding. Should we therefore infer from this that the principle of polygamy cannot be put in question or revised? What is left of positive discrimination? To the best of my knowledge polyandry—the possibility for women to have more than one spouse—is not granted to women in return. Faced with such a

situation, I find that it is up to you, my Muslim friends—not us because we cannot—to interpret a provision that is spelled by religious law. If this principle were an absolute principle, then it means that polygamy is a principle that is applicable to all Muslim women at all times. I draw attention to this problem because this is a very thorny issue. In Egypt, scholars have resolved this controversy by stating that if the first wife wishes to divorce because her husband seeks to exercise his right to polygamy, then she will be granted that right. However, this means that—far from being the realm of God—humans should be governed by human rights until we are judged by God on judgment day.

I would like now to say a few words on the prohibition of the death penalty. When France adopted the Law in 1981 it was the 35th country to do so, and the last one in the European community. Since then, we have made huge steps forward and, today, out of a total of one hundred and ninety eight members of the United Nations, one hundred and thirty-three countries have banned the death penalty. There are a number of protocols that ban countries from implementing the death penalty regardless of the situation, even in case of emergencies, including during war time. There is a moratorium that has been signed by a number of countries within the United Nations. Europe has a tragic past, full of crimes. We can all stand witness to what happened in the 20th century with the Second World War and the wars in ex-Yugoslavia. Therefore, it is a great progress that Europe has managed to develop regional instruments including those that ban the death penalty. However, there are three major regions that are still sore points: the United States, the MENA region, and China. I would like to call your attention to the United States because it is making great progress towards the prohibition of the death penalty. There is a moratorium—a reduction by fifty percent of the implementation of the death penalty—and the Supreme Court has issued a number of rulings that are on the right track. I think that within ten to fifteen years the death penalty will be abolished in the United States. In 2008, according to the data and statistics published by the UN and organizations such as Amnesty International and Human Rights Watch, the MENA region was the second largest area in the world, after China, for number of death penalties, accounting for 21 percent of all the death penalties executed. According to Amnesty International, 9 countries have executed at least five hundred. These countries are Iran, Saudi Arabia, Iraq, Yemen, Libya, Egypt, Bahrain, Syria, and United Arab Emirates. In this regard, ladies and gentlemen, I would like to draw your attention to article 5 of the Charter that says: “every human being has the inherent right to life.” I believe that human rights are essentially a body of rights that can be used against States as soon as the States claim to take a human life. However, Article 6 says that the death penalty may be imposed for the most serious crimes in accordance with the laws in force and that anyone sentenced to death shall have the right to seek pardon or lesser sentence. This does not put in question the death penalty. Furthermore, Article 7 states that the death penalty shall not be imposed on persons under 18 years of age but—and I find this absolutely horrifying—it also mentions that this prohibition holds unless otherwise stipulated in the laws enforced at the time of the commission of the crime. I would like to remind all of you that the United Nations International Convent on Civil and Political Rights prohibits the use of the death penalty on persons under 18. I would like to know how many countries among the parties to this Charter have ratified the Covenant. In spite of that, Article 7 allows countries that have pledged to not impose the death penalty on minors under 18, the possibility to violate their international obligations. It is clear and true that the United States violated this specific provision of the

ICCPR by executing minors. However, the Supreme Court of the United States has now put an end to these executions because in absolute violation of the international obligations made by the United States in this respect.

For abolitionists that are against the death penalty like me, it is always very sensitive to discuss this issue in the context of the Arab and Muslim world. Not long ago I went to China and discussed the same issue with a number of lawyers, including an Attorney General. He told me that Confucius was actually philosophically in agreement with me. Therefore, he didn't agree with me but he agreed with Confucius. Although I am agnostic I still believe that human rights are a God-given gift. When discussing death penalty in Islamic countries it is very difficult for us lay people to discuss death penalty in light of Sharia. We recently had a very interesting symposium at the Institut d'Etudes Politiques. Some of the participants in the panel were doctors of Sharia. They told us that, if we look at Sharia, it is possible to find arguments in favor of the death penalty and also in favor of its prohibition. It is therefore a matter of interpretation and it is up to the lawmaker to take a clear position. Similarly, in the Christian and Jewish traditions, there are instances in the scriptures where the death penalty is proscribed. This is why I believe that the issue of the death penalty in Arab and Muslim countries will not be solved without a new and fresh look at Sharia. Human rights are a corpus of rights that cannot be divided and should be applicable in its entirety, everywhere. The right to life is one of the most essential human rights and it is paramount that such right be respected, first and foremost, by States and governments. Thank you.

Mr. Delevoye, MFR: Thank you Sir, for this very important testimony. Indeed, you touched upon one of the points that were made by Dr. Mohamed Mattar, the question of interpretation. When we gathered the European ombudsmen in a previous symposium to ask them what should the ombudsmen do when the national legislation is not in line with international conventions, we all decided—with the exception of one of us who was not in the position to take an independent decision on this matter—that we should bring attention to this discrepancy and seek to adjust and modify national legislation to bring it in line with international treaties. Also, I would like to point out that ombudsmen are not politicians. They represent an independent institution whose scope is to raise issues and ask politicians a number of questions. Our role is to promote an open debate on very thorny issues, such as the prohibition of the death penalty. For this reason, we often tread on very delicate ground and we are thus subject to criticism from our governments. Nonetheless, we have to pursue our missions of defending human rights and protecting our people from any attempt to undermine their dignity and their freedom.

Dr. Zaalani, Arab Committee for Human Rights: Chairman, there are two, three points I would like to raise. First, I would like to respond to our colleague from Kuwait. It is clear that the Arab world is faced with great difficulties when it comes to the promotion and respect of human rights in the universal exception or definition. However, I do not think that one could say that laws do not matter because they are not enforced. I am more tempted to think like Dr. Mattar that it is extremely important that the law is there. As Senator Badinter just reminded us, some laws and conventions have been invoked by human rights activists and they have been instrumental in bringing about a great deal of progress. As a professor of law myself, I am faced with questions by my students who ask me why, albeit not being implemented, some laws are

still in force. To respond to them, I remind them that article 1 of the criminal code states that no crime exists in the absence of a law prohibiting such crime. If a policeman stops me in my car and tells me I have committed an infraction I can ask him the specific definition of that infraction. Thereafter, we cannot deny the importance of the law. It is apparent to me that the very fact that the Arab world has adopted an Arab Charter on Human Rights is extremely important because it represents an opportunity for us to further promote human rights in the Arab world and defend such rights through bodies such as the Arab Commission for Human Rights. My second point draws from Senator Badinter's comments. Everything is possible. It is clear that with the exception of very specific issues, everything in Sharia can be reinterpreted in one way or another. Even in the case of polygamy, there are a number of judges who have found that, although the principle of polygamy is absolute, in practice it is a right that can be limited or accompanied by a number of conditions. In regard to the issue of the death penalty, I would like to present the case of Algeria, my country of origin. On this issue, Algeria took a position which is quite different from that of fellow Arab countries. It signed the United Nations moratorium as early as 1993, and it has been supporting all the resolutions and initiatives taken by the United Nations in this area ever since. We could say that Algeria has nearly abolished the death penalty, and therefore the death penalty can only be passed as a sentence for a specific number of crimes, mostly related to terrorism. Of the 200 death penalty sentences, 99% had to do with terrorism, and they have not been carried out. Mr. Ksentini, the Algerian Ombudsman, unfortunately could not attend this meeting. However, I would like to mention that he is a staunch activist in favor of the abolition of the death penalty and that he organized a symposium on this very topic last year. His position was then criticized by some representatives on the Islamic Council. Consequently, he decided to have a private interview with some members of the Council to ask them if there were specific provisions in Sharia that called for the death penalty and they stated that the death sentence is applicable in cases of murder. Mr. Ksentini therefore conceded that the death penalty could potentially be allowed, but only in cases of homicides and murders. As this instance shows, there is always room for interpretation. Thank you.

Mr. Harutyunyan, Armenia: I think the position of ombudsmen must always be in favor of human rights. The State is a political organization whose function is that of effectively managing society and solving the problems that rise within society. If a contradiction between international law and national legislations emerges, the office of the ombudsman must stand as the voice of the people and of international law. This is my position. And when we are talking about the death penalty, no one has the right to deprive another person of his or her life. Death is not punishment. It is revenge. Furthermore, given that women represent half of society, but their participation in the political life in many countries is still very limited, I believe that the institution of positive discrimination is a positive development and must be widely implemented.

Dr. Ali Bin Samikh Al-Marri, President, National Committee for Human Rights, Qatar
[Dr. Al-Marri, Qatar]: Thank you Mr. Chairman, I would first like to express my heartfelt thanks to the Mediator of the Republic as well as to the Johns Hopkins University. I have a number of comments to make. It is clear that some of the practices in the Arab world are in violation of human rights, but we also find that Europeans have been committing violations of human rights, especially when it comes to freedom of faith when, for instance, France passed a

law seeking to ban the headscarf. The point of having such a symposium is to help us know and learn more about each other and our legislation and this is something that could be taken as an opportunity to further develop and advance the legislation on human rights in our countries. Having said this, I would like also to express my disagreement with the view expressed by our Kuwaiti colleague. I found his diagnosis of human rights in the Arab world too stark. It is clear that in the Arab world, we face problems when it comes to the respect and promotion of human rights. However, there are also some positive aspects which should be underlined. A number of progressive steps were made in the past few years both within the League of Arab States and on the domestic level. For instance, in the past few years the Arab Charter on Human Rights was adopted with the establishment of an Arab Commission for Human Rights. We are also discussing the possibility of introducing new provisions in the Statute of the League of Arab States for the promotion and protection of human rights. Furthermore, there are a number of mechanisms that have been established in our countries in order to incorporate some of the Paris norms. Hence, no fewer than 20 organizations have been established in the past 10 to 15 years to tackle human right violations. Of course, the situation is far from ideal. Nevertheless, there has been progress and we need to continue our struggle in order to overcome all these difficulties. Finally, we need to find ways to maintain these achievements and, as mentioned by Dr. Mattar, to fully implement the Arab Charter we need training courses and also to add a number of Protocols that call for the establishment of an Arab Court of Human Rights.

Mr. Delevoye, MFR: Thank you sir for this contribution. I would like to take this opportunity to remind all the participants that we have set up a training center for French and English speaking ombudsmen in Rabat, Morocco and we are currently considering the possibility of setting up a similar center for Arabic speakers in Qatar.

Mr. Mohamed Fayek, President of the Ombudsman's Institution, National Council for Human Rights, Egypt [Mr. Fayek, Egypt]: First, I would like to thank the organizers of this symposium for the excellent organization. I would also like to thank Dr. Mohamed Mattar for his very insightful presentation in which he highlighted one of the biggest challenge in the implementation of human rights, that of the conditions and limitations on various provisions in both international and regional instruments. We have a new Arab Charter on Human Rights, which provides a number of tools that were not present in the previous drafts. Amongst the 10 parties that have ratified that Arab Charter on Human Rights, two countries are also party to the African Convention on Human Rights, and the African Court on Human Rights. These two countries are Libya and Algeria. I find it extremely odd that only these two countries signatories of the African Convention chose to ratify the Arab Charters. The Arab Charter insists on a number of rights that are already provided by the international treaties, such as the right to secession. However, the Arab Charter also limits such rights by allowing certain provisions to be limited by national laws, which sometimes prevent or curtail such freedoms. This is why it is very important that we use effectively the tools of supervision and monitoring that are provided by the Charter.

Mr. Mohammed Al-Maqtari, Executive Manager of the Human Rights Observatory, Yemen [Mr. Al-Maqtari, Yemen]: I would like of course to start by thanking all the organizers

of this symposium and I would also like to express my heartfelt thanks to Dr. Mattar for the work he has been doing in the area of human rights. It is clear that there are a number of rights that have been circumvented, such as the right to freedom of expression, freedom of conscience, freedom of associations. All these fundamental liberties have been subjected to a number of provisos and limitations. It is also clear that Arab regimes in the vast majorities are not democratic and that they systematically abuse human rights. Hence, I would like to ask Dr. Mattar how does he think the Arab Charter will lead to the improvements of human rights under such undemocratic regimes. I would also like to draw your attention to what the reference in the preamble to Zionism, which, I believe, is a call for hatred. I think that, although Zionism could be construed as an impediment to human dignity by promoting hatred and exclusion, should we meet exclusion with exclusion, shall we respond to hatred with more hatred?

Mr. Jobran S. M. Ibrahim, Undersecretary, General People's Committee for Inspection and Popular Monitoring, Libya [Mr. Ibrahim, Libya]: Thank you, Mr. Chairman, for your excellent organization of this meeting. I would like to ask a question to Professor Decaux about the applicability of the rulings of the European Court of Human Rights. In particular, I would like to know if the rulings issued by the European Court of Human Rights are binding at the regional level or should they be considered as some sort of legal opinion or advice? Thank you.

Mr. Taher Alhussami, Member of the Arab Committee for Human Rights, Syria [Mr. Alhussami, Syria]: It is a pleasure to convey thanks to the distinguished sponsors of the conference who took the initiative to add to their agenda the topic of the Arab Charter on Human Rights. The Charter is in fact the first warning of a political will on the highest level that demonstrates the commitment on the side of the Arab leaders to guarantee human rights and a genuine step towards the acceptance of the need to hold the leaders accountable for the implementation of the rights enshrined in the Charter. According to Article 44, the Arab Human Rights Committee is independent. Furthermore, according to Article 48 the Committee should make its observations and recommendations available to the public and widely disseminated. As was mentioned during the workshop in Cairo in July 2009, this is one of the aspects of the Charter that make it a modern and advanced document. The Arab Charter did not come from emptiness. Its roots are in the many constitutions and laws of the Arab States, the international declarations and conventions, and the covenants of which the majority of Arab States are a part of. Nonetheless, we are here to listen to the comments of our European counterparts and benefit from the European experience, despite the unfortunate misunderstandings between our two regions in approaching the concepts of human rights, and the negative stereotypes. We are obliged to clarify that no single country or group of countries could claim itself as the godfather of human rights in the world. It is very unfortunate that many countries have sacrificed human rights and dignity of human beings under the pretext of security needs and that of combating terrorism. Arab generations have embraced the three monotheistic religions which have provided humanity with the solid base of humanitarian behavior and ethics. If human rights in the Arab countries do not make the progress we hope for, it is because of the instability created by the Israeli wars and occupation of Palestinian territories. Human rights concepts face many confusions and distortions. They swing between international standards and national sovereignty and security and are further complicated by the lack of clarity regarding certain definitions such

as that regarding the distinction between terrorism and the right to resistance and that between combatants and civilians. We hope that this conference will address the international aspects of guaranteeing human rights in a fair approach and avoid putting the blame on developing countries which suffer from all kinds of shortages, foreign threats, and pressures. This conference could push for more just and balanced international climates, helpful to the promotion of human rights and fundamental freedoms for all. Let me end by quoting a representative who spoke at the Cairo workshop: “The objectives are the promotion and respect of human rights, and the identification of the best system of protection of such rights. A system that should be consistent with the culture, religion, and level of development of a given system, in line with the reality prevailing here and now.” Thank you.

Mr. Al-Tabtabae, Kuwait: I would like to respond to Mr. Badinter on both aspects he tackled. First, Islamic Sharia was one of the first laws that called for the elimination of the death penalty. In fact, Sharia always calls for pardon. Indeed the Islamic Sharia states that if you take one’s life you take mankind’s life. This is why we think that the law applicable in case of murder or homicide is a personal right and it is up to the relatives of the deceased to decide if they want to prosecute. This is quite different from what exists in objective law, where the right to impose sanctions and penalties belongs to society as a whole and to its representatives. Under Islamic Sharia it is up to relatives to decide what type of penalty needs to be applied and it is also up to them to grant pardon. When it comes to polygamy, polygamy is a right that is granted to men but it is subject to limitations. And it can also be useful; there are some cases where there are more women than men, because of war. And you have a great number of women who will not find a partner. So a solution that was emphasized at the time was to allow and authorize polygamy, but this was in ancient times. In modern times we know that there is also an outflow of immigrants from our countries and these are mostly men, therefore polygamy is a remedy for young women who are left at home and can’t find a husband. It can also be a solution that a husband can resort to if his first wife is sterile. But it is also a right that is subject to limitations because the husband must be able to provide for the two wives or for all his wives and provide them with independent housing. Furthermore, he is obliged to provide equal treatment to all his spouses. This is far better than the multiple relationships that men can have elsewhere which women and mistress have absolutely no protection.

Ms. Alifa Chaabane Farouk, Administrative Mediator, Tunisia [Ms. Farouk, Tunisia]: Thank you Mr. Chairman for giving us the opportunity to take part in this excellent symposium organized by the Mediator of the Republic and the Johns Hopkins University. I would also like to congratulate Dr. Mohamed Mattar’s outstanding presentation and to pay tribute to Minister Badinter for his speech. I would like now to address an issue that matters a great deal to more than 50% of mankind. First, however, I would like to say that we are evolving towards a universal civilization and that is a good thing in itself. Nevertheless, this universal civilization should not try to diminish or to dismiss other cultures and other civilizations but incorporate all our cultures and civilizations keeping in mind that all countries are different and legitimate in their own right. That is also true among the Arab world; Arab countries are not monolithic. They have differences when it comes to their religions, and legislations. I am particularly proud to be a part of an Arab and Muslim country that abolished polygamy back in 1956. And this is because

we considered it a violation of human dignity despite being a Muslim country. This is enshrined in our constitution. We chose to interpret the Qur’anic principles in an enlightened fashion, and we found that the holy Qur’an does not establish polygamy. Indeed there is a Qur’anic verse that states that polygamy can only be granted if the husband is able to treat all his spouses on an equal footing. Otherwise, he should not be authorized to have more than one wife. So this is the reasoning that was behind the abolition of polygamy. In Tunisia we have a civil marriage and a civil divorce and I am very proud to belong to a country that has put women on an equal footing as men and allowed them to take part fully in the development of their country. As for the positive discrimination—as you rightly said Mr. Badinter—is a notion that is referred to in the CEDAW convention, more specifically in Article 16. I believe that what Professor Mattar said in this respect is very close to what Mr. Badinter said. It is also close to what is provided in Article 33 of the Arab Charter in regards to the equality between men and women within the family. A number of Muslim countries are party to the CEDAW convention. However, the Convention allowed such countries to introduce a number of limitations which, unfortunately, had the effect of emptying the Convention of its substance thus undermining the struggle against discrimination, specifically the discrimination against women. One of the important roles of the ombudsmen is that of shedding light on all the discrepancies between national legislation, regional instruments and international conventions. In this respect, civil society and NGOs can play an important part in the promotion of human rights. Today, women in the Arab world are faced with strong opposition due to persistent stereotypes. We thus need a true review of our school manuals and to keep up the struggle in order to reach an effective and true equality between men and women.

Senator Badinter: I would just like to add something regarding the abolition of the death penalty in response to the Representative from Kuwait. In France, the abolition of death penalty is enshrined in our constitution, the highest law of the land. Now, the question for Muslim countries is to determine whether the Islamic Sharia can actually authorize and allow for the abolition of the death penalty, which I believe it can. If this is the case, this will become just one additional issue that needs to be settled by Arab and Muslim citizens.

Dr. Decaux, UPA: I would like to respond to the question from the Representative from Libya. If a State is condemned by the European Court of Human Rights, it can be ordered to pay awards and it also can be forced to take a number of measures, such as the release of a person who has been wrongfully convicted. In France, the number of cases can also be reviewed—when it comes to the criminal procedure—by an independent commission, put under the supervision of the Supreme Court. For instance, when France was condemned by the European Court because it had tapped some phones without prior authorization, France took the initiative of amending its legislation to avoid being condemned a second time. It also gives the possibility to anticipate a number of reforms. For example, when a country is condemned because of a specific aspect of its legislation that also exists in other countries, those countries can take the initiative of duly amending their legislation to avoid prosecution.

Dr. Mattar, JHU: Thank you. I wonder why we are considering the issues of women and the death penalty at the same time. Perhaps one way of looking at this connection is to look at

Article 7.2 of the Arab Charter, which provides that the death penalty shall not be inflicted on a pregnant woman or a nursing mother within two years of the date of her delivery. Let me close by emphasizing the goal of our gathering today. As my good friend from Qatar just said, we are here to learn about best practices, whether these practices may come from the European Convention and its 60 years of experience, or the African Charter, or the American Charter. We are open to all good ideas. I would also like to emphasize the general principles of human rights that inspire the Arab Charter on Human Rights. You may not like an article or two. Perhaps you have questions regarding the preamble, but the idea here is to interpret the Arab Charter in its entirety. It is about protection of human rights, equality between men and women, nondiscrimination between citizens, access to justice, enhancement of education, and development. That is how I view the Arab Charter. The question then is: who should interpret the Charter? I agree with the Egyptian representative with regards to the importance of the monitoring mechanisms. It is also true that we are lacking something equivalent to the African Court, and the regional mechanisms. However, we have now a Committee and we should give it all the support and the ability to make observations and recommendations that will help us understand what that Charter is all about because the seven members of the Committee are the ones who will interpret the Charter for us all. Two last points I would like to raise. The first is how to reconcile the principles of Islam with the principles of human rights, including the human rights stipulated in the Charter itself. Well, it's a matter of interpretation, and I agree with everybody who talked and said there is nothing called absolute rules here. If we talk about the death penalty I would like to mention that the prophet Mohamed tells us to avoid the death penalty as much as possible. The Arab Charter follows the International Covenant on Civil and Political Rights, Article 6, and limits the death penalty to the most serious crimes until you abolish the death penalty. Islam can be interpreted in that way. The question is what crimes? And what guarantees? Avoid the death penalty as much as you can. As for polygamy, it is a matter of interpretation as my good friend from Tunisia reminded all of us. In many Arab countries, polygamy is the exception to the rule. And if you have an exception, you must interpret it. For instance, you make it very difficult for a husband to have a second wife. Someone might disagree with that. But then again, it is a matter of interpretation. The second issue is that of reconciling international law with laws of the Charter, for example, with regards to the issue of positive discrimination. Article 4 and Article 16 of the CEDAW Convention talk about special measures to protect women. Maybe it is unfortunate that the Arab Charter referred to Islamic Sharia when it referred to positive discrimination. Nonetheless, we are talking about the same thing, special protective measures for women. I think it's a good thing. Finally, when you take a look at women's rights in the Convention and the Charter, I think it's beautifully written. I don't know whether women were part of the Committee who wrote the Charter, but the Charter is all about women. If you take a look at the European Convention there is only one article on women, Article 14. Instead, the Arab Charter refers to the rights of women at least 7 times. I know it's a matter of implementation, and it's not only the text. However, I am proud of the fact that the Charter refers to equal pay for equal work. I'm also proud of the fact that the Charter prohibits violence against women and of the fact that it prohibits trafficking in women. Yes, it's a matter of interpretation, and that is why we are here to learn from best practices and perhaps provide a Committee with some guidance on the various interpretations of the provisions of the Charter.

* * * AFTERNOON SESSION * * *

Mr. Delevoye, MFR: Let's start our afternoon session. The objective of this session is to continue our discussion on the issue of universalism and relativism of human rights while analyzing the role of the ombudsmen, the international institution, human rights NGOs and other jurisdiction. This morning we highlighted the role played by the higher Courts. As ombudsmen, we are free from any kind of economic or political influence, so our dialogue should be frank and open. The goal of our discussion is to analyze together ways to advance, step by step, in the fields of legislation and education on human rights. I therefore suggest that, by the end of the meeting, we adopt a resolution that takes into account the contribution of all participants and expresses the desire and determination to pursue these exchanges in the future. I would like to incorporate in the resolution three dimensions: the international dimension—which is undeniable and underlines the indivisibility of human rights; the regional dimension—European, African, and Arab League level; and the national level.

This afternoon let's not try to convince one another, because we each have our stances and each stance is respectable. As Aristotle once said: "You do not judge the morality of an action based on the quality of the actor but on the basis of its goal. What is the use of this action?" And our goal is to defend human rights.

Mr. Moulay Mhamed Iraki, Wali Al Madhalim, Morocco [Mr. Iraki, Morocco]: First of all, let me thank my dear friend, the Ombudsman of the French Republic and his colleagues for the excellent organization of this meeting. I would like to briefly mention a few points. First, although Morocco has not adopted the Arab Charter on Human Rights, it has nonetheless made huge progress, especially with regards to the equality between men and women. Morocco allows its women to give their nationality to their children when they marry a foreigner. With regards to political representation, all electoral laws were revised so that women in Morocco could be present at the national and regional levels, thereby giving a good representation of women within the parliament and the local assemblies. The Moroccan constitution establishes that Morocco is committed to human rights and to the respect of the norms enshrined in the international and regional instruments. Finally, although the death penalty is still on the books in Morocco, these sentences are usually converted into life sentences. Thank you.

Mr. Al-Tabtabae, Kuwait: I am the chairman of the Committee on Human Rights in the Kuwaiti parliament. Unfortunately, human rights have suffered a lot on the international front, especially since September 11th. Not only did the two towers collapsed on that date, but human rights collapsed as well. The deeply regrettable death of thousands of innocents, led to what we call the War on Terrorism. But it also became somehow an attack on human rights in Iraq, in Afghanistan, and innocent people have died as a consequence. You also have secret prisons managed by the Americans, in Arab countries, in some Eastern European countries, and Guantánamo Bay. Guantánamo is a shame for the whole of mankind. It is a prison that does not recognize any international instruments and that does not acknowledge international legislation. Israel has also infringed upon human rights, in Palestine. I went to Gaza and I realized the inhuman crimes committed by the Israeli soldiers. In those few days, I saw terrible things: deaths, injuries, people living in the streets because their houses were destroyed. Under those

conditions, it is not surprising that there is no real progress in the Arab world in the field of human rights. Dr. Mattar is quite enthusiastic with respect to the progress made on human rights in the Arab world. I do not always share this enthusiasm. We see countries, such as the United States, Europe and France which are sometimes accomplices in the infringement of human rights. Europe and the United States, for instance, expressed reservations to the approval of the Goldstone Report. But judge Goldstone is an honorable and responsible judge who provided evidence of the infringements of human rights by Israel during the Gaza war. How can we protect human rights, and how do we want Arab systems to protect human rights in these circumstances? There has been a regression in human rights in the Arab countries. If there were a democratic development in the Arab countries this was stalled. Free elections have been cancelled and the number of prisons increased. Freedom has regressed and the law does not have any value anymore in the Arab world. The friends who took the floor are optimistic. But we should not be optimistic. Freedom has regressed. We also spoke about human trafficking. We are going to adopt a law. What is the value of this legislation, if the whole population may take part in such traffic or not complying with legislation on migrants? The human rights advocates are faced with a lot of suffering. We must strive harder to rebuild the human rights which collapsed with the terrorist attacks in September 2001, in America. Thank you.

Mr. Delevoye, MFR: Mr. Al-Tabtabae raises an important question regarding the position of the ombudsmen in the face of official power. I am among those who think that when there is power, there is a risk of abusing power. When the mediator witnesses and abuse and does not speak out, he becomes an accomplice. I also believe that, in the global movement for wider respect of human rights, there are always times of steps forward and times of regression. The real question we must ask ourselves is the following: which role can the mediators play given their independence? In what way can they contribute to limiting the abuses of power of the authorities? Mr. Al-Tabtabae mentioned Guantánamo. Related to this topic, there is another issue we should discuss: in what way could the ombudsman use the media to raise awareness on human rights? Some countries have unfortunately not taken advantage of this tool and it is a topic which deserved to be discussed among the Arab and the Western world. We should also ask ourselves: how far can we restrict individual freedom in the name of collective security? These are real issues which we will address during our next round table discussion.

Mr. Ibrahim, Libya: I would like to draw your attention to the definition of human rights and its legal references. Personally, I am skeptical of the instruments of human rights because, if human rights are only defined according to behaviors, ways of life, or values, this will surely lead to conflict and disagreement. Human dignity is essential. Each human being has the right to decide his own future. Sometimes governments use human rights instruments to justify a way of life, which is applicable in some countries, but is not applicable elsewhere. Each country has different habits and values. Human rights have to be universal but they must be linked to human dignity. Each individual has the right to make his own decision about his future. I believe human rights must be based on natural law, not only on instruments manufactured by men. Those instruments might have a legal foundation today but this might not be the case tomorrow. Therefore, we have to look at natural laws as well. We should discuss other rights as well, such as women's rights and the right to life. It's true that life comes from God. Also, we should

probably talk about the access to pornography, and about espionage, because these phenomena affect human rights. We must not forget, however, that the most important thing is indeed the individual freedom to decide for yourself about your own life, your own individual rights. That is why we also need to look at the question of property, which is directly linked to freedom and the possibility of deciding about your own life. Now, without getting involved in all the areas, I think that we have to be able to justify things and we cannot overlook the difference in values among countries. Otherwise, this might lead to a situation where we adopt an instrument or a Charter which then cannot be implemented. Thank you.

Dr. Al-Marri, Qatar: First of all, I would like to add something with regard to the historical evolution of the Arab Charter and of its drafting committee, of which I was a member. Jordan, Syria then Yemen initiated the process and, in 2002, there was the largest meeting of Arab NGOs in Sana'a in Yemen. The first draft of the Arab Charter on Human Rights was then created, in compliance with international law. The first summit was then followed by other working meetings in Geneva with the UN Special Committee on Human Rights, the High Commissioner for Human Rights and other expert groups. During the drafting phase, some international organizations were instrumental in building the necessary political consensus for the adoption of the Charter among the Arab States and in designing an overall project for the Arab world. I participated in the drafting committee as an expert and as a consultant. The challenge of the committee was that of striking the balance between the creation of an advanced document, in compliance with international law that took into consideration the recommendation of the NGOs, and a text that will be accepted and adopted by the Arab States. I believe that the final version of the Charter on Human Rights is a good document and, in some places, better than what exists elsewhere because it also takes into consideration the context of certain rights. It also opened up the way for new rights. However, we feel that the current Charter lacks mechanisms of implementation and a commission of several members to implement it. It is not enough to draft reports. This is why some NGOs in the Arab world are currently working on the creation of additional protocols for the establishment of an Arab Court of human rights. The proposal will be presented to the Arab countries as soon as it is ready. I will conclude by suggesting four recommendations to add to today's final resolution. First, we should modify the Charter by introducing new human rights. This request was put forward by the NGOs and other organizations, and we hope that the Arab League will give a positive answer. Second, we must assist the work of the NGOs in setting up the Arab Court of Human Rights. Third, the conditions relating to the consultative status should be reviewed in order to assist these organizations in carrying out their work. Finally, we should establish a commission that brings together the five human rights regional mechanisms—European, American, African, Arab, and the forthcoming Asian mechanism—that will investigate ways to further the cooperation between these institutions and strengthen their efforts toward broadening the compliance with human rights standards around the world.

Mr. Mats Melin, Chief Parliamentary Ombudsman, Sweden [Mr. Mats, Sweden]: As our colleague from Qatar just mentioned, the entry into force of the Arab Charter almost a year ago is indeed an impressive achievement. I'd like to comment on Professor Mattar's suggestion regarding the elaboration of the handbook for parliamentarians to interpret the Charter in order to

facilitate the incorporation of the Charter into national legislation. From my experience, however, there are dangers in a general explanatory text that aims at interpreting an equally general legal text. There is a risk that such a text only expands the ambiguities of the original text. The experience of the European Court of Human Rights, on the other hand, has proven to be extremely valuable in order to interpret the ambiguities which are also found in the European Convention on Human Rights, and also to strike a balance between conflicting interests, which also characterizes the European Convention on Human Rights. I note with great interest, therefore, that our colleague from Qatar advocated the establishment of a similar Court on Human Rights within the Arab world. Having a supranational organ, like a court, that will try individual cases and emit decisions on a case-by-case basis, will provide us with an authoritative interpretation of the generally worded provisions and impose specific and precise obligations to be fulfilled by governments, by national parliaments, and heads of State. This will provide individuals with better protections and provide ombudsmen and other independent national human rights structures with legal arguments to improve national legislation. Consequently, I hope that the Arab States will consider enlarging the competence of the existing Committee on Human Rights and seriously take into consideration the establishment of the Arab Court of Human Rights, as proposed by our colleague from Qatar. Thank you.

Judge Mohamed Abuzeid Ahmed, Ombudsman, Public Grievances and Correction Board, Sudan [Judge Ahmed, Sudan]: Thank you, Mr. Jean-Paul Delevoye and Dr. Mattar, for organizing this meeting with the presence of many European experts, as well as with African and Arab experts. First, I would like to mention that a document will shortly be distributed to all participants. The document is an account of the Sudanese experience with regards to human rights legislation and is entitled “Ombudsmen - The Experience in Sudan.” Now, I would like to discuss the issue of relativism versus universalism of human rights. In brief, the supporters of the universality of human rights sustain that all societies, even the more primitive, will eventually evolve into a legal system similar to that prevalent in the western countries. Cultural relativists, on the other hand, hold that traditional culture is unchangeable. In universalism, an individual is a social unit entitled to specific rights. In the cultural relativism model, individuals are, first and foremost, part of a community and concepts such as individualism, freedom of choice, and equality are absent. The community always comes first. This doctrine has been widely explored in many States and it views any impositions of western values as cultural imperialism. However, such States seem to have forgotten that they have indeed adopted the western nation States and its economic prosperity. Cultural relativism is in itself a very weak idea. Cultures are, in effect, widely unified on different issues. It is always those who hold the microphone that do not agree. Whenever one group denies certain rights within a culture, it is usually for the benefit of the group itself. Therefore human rights cannot be truly universal because they are linked to cultural decisions that are often not met unanimously and thus cannot represent every individual that these rights apply to. Even though cultural relativism has great problems and it could lead to abuse, universalism, in its current state, is not a viable solution. Universalism is used by many western States to negate the validity of more traditional systems of law. You cannot impose a concept of universality of human rights in a society in which such concept is not understood or, even worse, rejected. In non-western societies, industrialization, capitalism, and democracy may not be the natural outcome of the cultural evolution. Nonetheless, today’s world shows signs of

positive progress towards the universal system of human rights. The declaration of human rights occurred immediately after the atrocities committed during WWII under Hitler, and demonstrated the need for a more universal system of accountability and responsibility. Through forums such as the United Nations, cultural differences are better resolved, thereby paving the way to universalism while at the same time recognizing and compromising on the needs of certain cultures. As the world becomes a smaller place through globalization, universalism makes more sense as the philosophy of human rights in the world. A world in which people are not constrained by national borders and are entitled to fundamental human rights instead of being bound by a certain culture that claims to provide a mystical solution. Thank you.

Mr. Salah Abdullah AL-SHAREKH, Director of the Human Rights Commission, Saudi Arabia: Thank you. It is an excellent thing to pursue this constructive dialogue on such essential matters. Human rights are intertwined with politics. However, leaving aside politics since this is a legal debate, let me ask a legal question, related to the death penalty. Given that the law is an expression of the will of the society, how can I convince people in a country which wants the death penalty that we should abolish it? How can I convince the parents, the relatives of someone who was murdered that we should not have capital punishment? If I did so, I would be going against the will of the people. I would like thus to hear your opinion on why we should maintain or abolish the death penalty. I believe that this concept has not been studied extensively enough from the legal perspective of Sharia. Personally, I have learned that the death penalty in Sharia is based on a principle different from other criminal principles: the death sentences obtains because public law prevails over private law, even if the relatives of the person murdered are against the law. The Sharia has not really favored the death penalty, and the same applies to other religious institutions. I do believe that the international legislation treaties regarding capital punishment insist on procedural matters. They have not eradicated the death penalty completely and in the Arab Charter, we have expressed this view. We can discuss that issue and try and agree. Thank you.

Mr. Delevoye, MFR: What I can say about France is that, when the death penalty was abolished, political courage prevailed over public opinion. Public opinion, at the time, was largely against the abolishment of the death penalty. However, populations and societies are often guided by emotions rather than beliefs. Also, people might be afraid. But taking decisions based on fear is not how you reach wisdom. Despite the public opinion, M. Badinter, together with President François Mitterrand, took the decision to ban the death penalty with some elected representatives of the opposition in favor of the abolishment, such as Mr. Chirac. This is precisely the role of the Ombudsman: how can we advocate human rights and resist popular emotion? It seems to me this is the introduction to our last round table discussion: the role of NGOs, the role of civil society and the role of jurisdiction.

Ms. Alshejni, League of Arab States: Thank you Mr. Chairman. I am not a legal expert on human rights like the prestigious participants here. However, I believe that the work of the Arab League in the field of human rights is a work in progress. The Arab Human Rights Charter is a great step in the right direction. A giant step, regardless of any criticism. So let's look at the situation at hand. We have a Charter that is an improvement with regards to the previous one,

with stipulations in it for further development in Article 50, 51 and 52. We have an implementation mechanism, albeit weak. We will soon have the State reports and the comments by the Committee. We also have ten States that have ratified the Charter. This implies a commitment to harmonize national legislation with the provisions of the Charter. Furthermore, most Arab States have ratified the basic instruments of human rights at the international level. We have article 43, stipulating that: "... nothing in the Charter may be interpreted as impairing the rights and freedoms stipulated in the international treaties that the Member States have ratified." The League also has a regional array of human rights mechanism adopted through its summits: we have the Arab Reform Declaration that was adopted in Tunisia a few years back and that includes a duty to submit country reports; we have the Arab Plan for the Education on Human Rights which was adopted few summits ago and we have an Action Plan for the years 2009-2014; and the upcoming summit will be adopting a draft Action Plan proposed by the Kingdom of Morocco for the promotion of the culture of human rights in the Arab world. Now, with regard to the judicial protection mechanisms and national institutions on human rights, we are familiar with the Paris principles that encourage and call on countries to establish these organizations. In the Arab region, we have ten that have been established: in Algeria, Egypt, Mauritania, Morocco, Tunisia, Jordan, Palestine, Qatar, and Saudi Arabia. The Kingdom of Bahrain has recently announced that it is on its way to establishing one. Needless to say, jurisdiction of these national human rights institutions varies from country to country in the Arab region. It is a fact that recommendations of these institutions are not legally binding to the relevant government entities, and frequently their opinions and recommendations don't coincide with government policy approaches. I believe that, one way to improve human rights protection, is to encourage the establishment of these institutions that act as quasi-governmental, non-judicial bodies and also act as mechanisms for domestic implementation of international human rights treaties, including the Arab Human Rights Charter. Another way is to improve the legality and fairness of government administration in Member States, thereby increasing government accountability. With regard to civil society, we have a number of mechanisms within the League of Arab States. The main Committee in the Arab League is the Permanent Arab Committee for Human Rights, which is represented by Member States and it grants NGOs observers' status according to a set of specifications and criteria that, I think, do not differ from those within the UN. NGOs also have observer status within the Economic and Social Council of the League of Arab States. The Arab League is also encouraging the dialogue between civil society, NGOs, and the Arab government. In 2007, we hosted a workshop on reforming the laws entitled "Between reality and ambition: how do we reform the laws to support the NGOs work within the region." The following year, in January, we organized another workshop called "Strengthening Law Reform Dialogue between Governments, NGOs, and Civil Society." Another workshop will be held in the course of these two coming months to develop a set of recommendations for Member States regarding the strengthening of the role of NGOs and civil society in the Arab region. One of the main observations regarding the role of civil society and NGOs in our region is that the relationship with the governments is—to state it mildly—tense. I do not believe that the type of dialogue that NGOs have been pursuing in the region is conducive to change. I don't put the blame on NGOs, and I do not put the blame on the governments, but both do carry a share of responsibility. We have to find constructive ways to bridge the gap between the two. The type of dialogue of the NGOs within the Arab region is a militant one. It is very easy to point out

violations. However, only constructive dialogue can bring about concrete steps forward and effectively encourage governments to be receptive and listen to civil society and NGOs. NGOs must look at the efforts that governments are doing in a more positive light. A lot of NGOs in the Arab region come up with the annual reports, citing various violations: which we are not denying. Human rights violations occur globally and not only in the Arab region. We have witnessed this with the war on terrorism and Israeli violations in the Arab Palestinian occupied territories. During this round-table discussion let's therefore try, with the participation of all representatives from Europe and the Arab world, to identify ways to promote better dialogue between government and civil society. The Arab governments have a sincere desire to cooperate with civil society. However, civil society seems to be more on the defensive. Instead, NGOs should concentrate on finding ways to cooperate towards the achievement of a common goal and implement the international instruments on human rights and the Arab Charter. Thank you.

Dr. Decaux, UPA: Thank you. I have a question about the definition of human rights. Of course, from the philosophical point of view and a historical cultural point of view, each and every one of us may have our own definition of human rights; we may have as many definitions as we have participants here in the audience. However, for legal experts, the simplest solution is to resort to positive law. Within the framework of the UN, there are clear references based on moral values translated into positive law. Let me therefore refer back to the 1948 Universal Declaration of Human Rights. It was adopted by 50 countries but, if you look at the *travaux préparatoires*, you see that all continents contributed to it. The *rappporteur* of the Commission of Human Rights, who was also the Chairman of the third Commission of the General Assembly, was Mr. Charles Malik, the famous Lebanese diplomat. Other outstanding of the Arab world participated: Sir Zafrulla Khan was the representative of Pakistan and then became the President of the International Court of Justice and his speech on the link between Islam and human rights is well known to all. In 1948, a real convergence of all civilizations on human rights took place. This convergence was strengthened during the Tehran conference in 1968—after the process of decolonization—and then again in 1993 in Vienna—after the collapse of the Berlin Wall. During each of these historical events, the international community reverted to the UN Universal Declaration. This declaration led to two international Covenants and several specialized treaties. I am not going into the technical detail. However, I will just mention that the Committee on Human Rights outlines the irreversible character of the commitments made by Member States within the framework of the Covenants. Therefore, the rules of positive law are stable, they do not withdraw and they correspond to values common to all regions and civilizations. Having said this, one of the fundamental aspects of the Universal Declarations of Human Rights is not just to talk on behalf of States. The Declaration is actually for all people, for all individuals, and for all bodies of society. That leads us to the subject of the final round table today. In regards to the protection of human rights against violations committed by States or their agencies, we can look at various best practices, including mediators, national commissions, and education. Indeed I was very interested in what Professor Mattar had to say about education in the area of human rights. I have just been to Geneva, where the Advisory Committee of the Human Rights Committee is working on a draft declaration on Education and Training in the area of Human Rights that includes, of course, traditional education, informal education, but also vocational training. This plan was initially put forward by a quite disparate group of States, including Switzerland,

Morocco, Slovenia, Costa Rica, and the Philippines. I hope that text will be adopted by the Human Rights Committee and, possibly, by the General Assembly. That is to say that education and training in the area of human rights is the way forward. In other words, we must prevent human rights violation. Raising awareness on human rights violations is a responsibility of each one of us. We are all stakeholders, not just States or regional bodies. Businesses, for instance, have a crucial role to play. As well as companies, starting with multinationals. It is therefore our own business, each and every one of us, to make prevention of human rights violations our priority, in a concrete way.

Dr. Mattar, JHU: I would like to start with the issue that Ms. Alshejni covered, that of civil society. When we talk about civil society, we do not mean only NGOs. We also mean trade unions and academic institutions, like The Johns Hopkins University. I define myself as civil society. I also mean the media and business and corporations. The question that I would like to pose is the following: how does the Arab Charter on Human Rights define the relation between civil society and the State? Unfortunately, it does not. The term civil society appears once in the preamble—talking about the objectives of the Charter to make sure that a citizen is living in a civil society—but references in the Charter itself are limited to the right to assembly and the right to form an association. This, unfortunately, is already present in all Arab constitutions where you find something on the right to assembly, right to association, but the term “civil society” itself does not appear. The only exception is the Iraqi Constitution which, in article 45, makes it a duty upon this State to enforce and enhance the role of civil society in a State. That is important because without such a provision, States unfortunately do not leave room for civil society to function. Therefore, if you are seeking foreign funding, you consider that a violation of the law of establishing an NGO. The State arrives itself to terminate an NGO for any reason—sometimes illegal and unjustifiable reasons. I would have liked the Arab Charter to define for us more clearly, the relation between the State and civil society. Having said that, I think I still see a role in the Charter for NGOs and other members of civil society. Let me start with the Committee. Will the Committee allow NGOs to submit shadow reports when the Committee will be looking at State reports on the status on human rights in the country one year upon ratification and after that every three years? For example, under the UN model, NGOs submit shadow reports which are well-taken into consideration and carry weight. I would like to see the Committee doing that. Not necessarily bringing NGOs and making them represented in the Committee. Unfortunately, it’s too late for that because the Arab Charter did not allow NGOs or other members of civil society to be members of the Committee. That is what I call the Representation model. We missed the Representation model. At least let’s go for the Consultation model: the Committee shall consult members of NGOs and other elements of civil society. I believe this would be a good thing to do. I agree with my good friend from Morocco, that not every national law in every country is the same. Some Arab States made progress. Some States made less progress. The idea here is to review the existing national laws to make sure that they are in conformity with the Charter itself. You mentioned the Moudawana, the family law in Morocco. This is something good. How about nationality? As you mentioned, it is now possible to get nationality through the mother. That is the case in Morocco. But it’s not the case in Bahrain, in Lebanon, the United Arab Emirates, in Saudi Arabia, in Iran, in Jordan, in Syria. Therefore, domestic laws in these countries must be reviewed to bring them in compliance with article 9 of CEDAW. My good

friend from Kuwait is still pessimistic. You mentioned human trafficking. In this regard, I would like to tell you that there has been good legislative improvement in many Arab countries. I am proud that many Arab countries now have laws on trafficking. Bahrain, Oman, United Arab Emirates, Saudi Arabia, Jordan all have laws on trafficking. The Egyptian Parliament is now considering a draft law. Qatar is considering a draft law. Kuwait is considering a draft law. So to come to me and telling me it is not working. No, it is working and I think with good intentions and good work, things are happening, good positive things are happening in the Arab world. Anti-trafficking legislation is just one example.

My good friend from Libya mentioned self-determination. I agree with you 100%. The Arab Charter is very clear in article 1, talking about the right to self-determination. So if you are focusing on such a right, I think it is part of the Charter and also the right of the person to control the wealth and resources in the Arab world. Representative from Qatar, you took us back, providing us insights in the history of the drafting of the Arab Charter. We want to thank you for that. You mentioned the role of NGOs. What is important now is to find this role not in drafting—the drafting period of the Charter is over—but in the implementation of the Arab Charter, especially with the work of the Committee. One has to wait and see whether the Committee will include the NGOs in their work. Now, a word for my good friend from Sweden. As you all know, in the anti-trafficking movement, Sweden is our best model. Why? Because if you are in Sweden buying sex is a crime, selling sex is not a crime. We call that the Swedish Model and we in the United States keep pushing for the Swedish Model: do not punish women in prostitution; just punish the client, the customer. I am unhappy that my good friend from Sweden doesn't like too much my proposal. Let me explain very quickly where I am coming from. The idea of the explanatory notes is a basic idea in every law at the national level. When we have a national law, we have a law out and then we have binding rules. Binding. However, I am not talking about a binding document. I am talking about a non-binding document. That is the difference between a parliamentary handbook and the exploratory notes. This is also the difference between the parliamentary handbook and the court decisions. When we have a court decision, the court decision is binding, at least in that particular case, like you mention case-by-case. I am not looking for that. I am looking for a parliamentary handbook like the parliamentary handbook written on CEDAW, written on the CRC, on corruption and on gender. How is a parliamentary handbook written? Two things: first, you emphasize international standards so that all States, Sweden, Egypt, Qatar, Bahrain, and Saudi Arabia are on the same page and all comply with international standards. Second, we provide comparative models based on best practices. That is what I want to learn from your Court—the European Court on Human Rights. The principle is the same. One example: rights of victims of human rights violations to compensation. You and I will agree on the fact that a victim should be entitled to compensation. The question here is how? There are five models around the world: you can go for what we call mandatory restitution—the judge gives the victim a compensation as part of the criminal sanction—you can file a civil suit; you can go for punitive damages; you can do forfeiture of assets—you take the assets from the criminal and compensate the victim; or you can do like Europe and establish a State fund. That is what a parliamentary handbook would provide for: if I were to cover compensation in a parliamentary handbook I would describe these five best practices. I love Sweden. I love Algeria. I would take something from Qatar, and I will provide best practices based on international standards. That is the purpose of the parliamentary handbook. It is a guide. It is

non-binding. It will help those in the field, advocates of human rights. It will help the judge the legislator in writing or interpreting a law.

Finally, I agree with Saudi Arabia. The issue of death penalty requires further research. I don't want to rule Islamic law out. You cannot. You cannot go to an Arab country and ask to outlaw Islamic law and adopt international law. You must reconcile principles of Islam with principles of international law. You also mentioned the concept of waiver. You mentioned procedural safeguards, guarantees. You mentioned a limited application of the penalty only for the most serious crimes. That is what the Charter does. The Charter reserves the death penalty to the most serious crimes. This is not really international law. International law calls for abolishing the death penalty and, until you do so, reserve death penalty for the most serious crimes. Ms. Elham, I am with you 100% and I would certainly like to work with the Arab League and your department. Thank you.

Mr. Zaalani, Arab Committee for Human Rights: I would like to thank Professor Mattar for pointing out ways in which the NGOs could cooperate with the work of the Committee. I have prepared a small document which will be in the dossier summing up the work of this meeting. In that document, I described the historical background of the drafting of the Charter, from 1968 to today. As our friend from Qatar reminded us earlier on, when the Charter was drafted, there were consultations with national and international NGOs, including the UN High Commissioner on Human Rights and various Arab experts of the UN. Since the Committee was set up other consultative meetings between NGOs and the Committee have taken place. At the end of the document, you will find an extract of what I wrote following the drafting meeting in Geneva in which I report that the delegates of the Committee were all in favor of a strong cooperation with the UN bodies, with civil society and NGOs with a view to promoting the Charter and the work of the Committees. Openness is a necessary requirement. Within the Committee, we need to open up and accept criticism. Without constructive criticism, we cannot move forward.

Mr. Alvaro Gil Robles, Former Human Rights Commissioner of the Council of Europe, former Ombudsman, Spain [Mr. Robles, Spain]: I listened very carefully to the discussions. I fully agree with the fact that the struggle for human rights is one that you fight every day. No single country can claim to have an ideal situation. However, what matters is what we will do with the Charter in the future? How will we interpret it, with its limitations and shortages? We have to be very realistic. What is not clear to me, yet, is whether the Charter has become positive law, like the European Convention in the Spanish law. It is essential to demand the States to enforce the principles of the Charter in all national legislations and to trigger change in the legislation if the legislation is in contradiction with the principles of the Charter. This leads us to the second problem: the States might say, "Since I am allowed to interpret the Charter, I can declare that my legislation is not, strictly speaking, contrary to the provisions within the Charter." This is why we need a frank discussion on what is the main content of each provision of the Charter. This is key, because, if the essential content is violated by the legislation, then we have to change legislation, we have to comply with the main content. Defining the essential content is a challenging work of interpretation that is generally done by the European Court of Justice, the American Court of Human Rights, and ordinary courts as well. We all interpret constitutional principles and the principles of the Charter. This is why we should have a Court

that interprets the Charter. However, this is not going to happen overnight, given this current situation. In the meanwhile, we can work on what is possible. What is possible for me is the Committee. The Committee will have a huge responsibility in analyzing the content of the Charter and providing the normative framework for the Member States. The Committee can supervise the behavior of the States and monitor the enforcement of the Charter, in compliance with the essence of each provision. The Committee may thus develop—if it maintains its independence from the legal and political point of view—its jurisprudence of the Charter through its reports. In order to do so, the Committee must not work in isolation. The Committees should work with mediators, with national associations of human rights, and with NGOs. The ombudsmen around this table have a lot of work to do. This is my personal vision. The ombudsman is not just an institution that looks at the individual case of the violation of a right. The ombudsman needs to draw general conclusions to see whether the normative framework of the States corresponds to the respect of human rights and whether this framework promotes legislative changes when necessary. It is important to promote normative changes. This is a fundamental role of the mediators. There is an important link between the Committee, public opinion, the media, parliament and the executive powers. I will conclude by talking about the death penalty. When we say to people that the death penalty is useless we need to justify this position. If, for instance, my brother, my son, my father is killed, I would react emotionally and I will call for the death penalty. However, in a democratic State, justice means that we have to give up vengeance. Justice is a public service for the benefit of the whole society that aims at finding the adequate punishment in case of illegal, criminal conduct. Here, the personal emotions should not interfere. On behalf of the society, we establish the punishment which corresponds to the crime and the death penalty is not necessarily the best punishment. The problem with death penalty is that there is no repair. If you kill an innocent instead of a guilty person, it is terrible, there is no repair. Justice is not vengeance. We saw that in the United States a lot. Therefore, all those components are to be incorporated. It is a complicated issue also because there is a cultural component to it. However, Islamic law is not in contradiction with the eradication of the death penalty. If I understood correctly, there is no imposition. It's on a case by case basis, on a country by country basis to decide whether to impose the death penalty. The door is open. We have to think over this, knowing and thinking that the human life is the main value to defend. Thank you.

Mr. Alhussami, Syria: Let me comment on what Dr. Mattar said on civil society and the fact that it is not mentioned in the Arab Constitutions. The reason there is no reference is that this expression is not appropriate in some Arab countries. It is a question of semantics. For instance, in parliament we use another word for civil society. Let me now comment on what was said on death penalty. In the Arab countries, we have the honor crimes, as we call them. They are quite common and sometimes the laws reduce the penalty if the man kills his sister for an honor reason. However, in Syria, some activists were able to change an article in the Criminal Code so that such reduction of the penalty for honor crimes is not longer included. This is a positive step forward towards the eradication of the death penalty.

Mr. Ihor Turianskyi, Ombudsman, Ukraine: Dear Chairman, I would like to associate myself with all of those who already expressed their profound gratitude for organizing this conference,

especially to you. With regards to the death penalty, I came to the conclusion that this problem exists and is not as simple as one can imagine. In 1995, before being admitted to the Council of Europe, Ukraine had an obligation to eliminate the death penalty from its criminal code. At the first beginning it was postponed and, after the bureaucratic procedure, it was eliminated from our law. Today, there are about 2,000 people who have life sentences, and among them are 20 women. I fully agree with those who said today that it is very difficult to explain to the mothers, fathers, and relatives of the victims that death penalty is not in accordance with international law. They have so much pain in their hearts. It is impossible to persuade them. Even today we have groups in our society who advocate for the reestablishment of the death penalty. We even have some parliament representatives who are working on a draft law. It is difficult to predict development of this situation. Nevertheless, I would like this conference to take into account these problems. Allow me to say a couple of things about freedom of speech—a question that unfortunately today has not received the appropriate attention. Freedom of speech is, as an organizing principle of a democratic society, its main essence. In fact, the right to information is proclaimed in resolution 59 of the United Nations General Assembly to be one of the basic human right and criterion for all other freedoms. In Ukraine, article 34 of the Constitution guarantees the right to freedom of expression, thought, words, free collection, use and distribution of information. This is in full compliance with article 19 of the Universal Declaration of Human Rights. Finally, I would like to highlight the importance of the media. The media is an expression of public opinion and a mediator between the authorities and the people. I would like the conference to include these issues in its agenda.

Mr. Abdelilah Al-Kurdi, Ombudsman, Jordan: Allow me to thank the Mediator of the French Republic, the University of Paris, and the Johns Hopkins University for this invitation. This symposium allows us to examine in-depth the international and regional treaties on human rights. As you know, the Kingdom of Jordan was one of the first countries to ratify the Arab Charter on Human Rights. We also ratified the Covenant on Civil, Political and Social Rights and the Covenant on Economic and Cultural Rights, as well as a large number of treaties on the protection of human rights. Although the Jordanian Constitution has not taken onboard all values enshrined in such international treaties and it has not incorporated all the laws into its jurisdiction, the courts have nonetheless taken those treaties into consideration. When there is a claim for a violation of a human right, an investigation takes place and the courts often look at international treaties, such as the Arab Charter and other human rights instruments, to make sure that justice is being done and to support freedom of speech, equality in front of the law, and other rights. Similarly, in cases of maladministration, the administrative courts often resort to international law. The Arab Commission on Human Rights can play a major role in enforcing international treaties. Although its scope is limited, the Committee may persuade Arab countries to encourage their courts to deal with human rights case. We could also create independent institutions within the State and ask them to produce reports on the status of human rights. As mentioned, the Arab Committee on Human Rights could take up the responsibility of interpreting the text on the Charter of Human Rights so that the national court could look at those interpretations when deciding a case involving human rights violations. We could also organize a symposium to discuss the difficulties faced by States in complying with human rights standards and carry out a comparative study with other international and regional bodies, following the

implementation of this Charter. We would be honored to host all of you in Jordan to organize this type of events. To conclude, may I once again thank you all for organizing this very useful and interesting meeting. Thank you.

Mr. Al-Tabtabae, Kuwait: One of our previous speakers said that Islamic law does not permit a ban on the death penalty. Indeed, Sharia does not call for the abolition of the death penalty. This is provided for in the cases of premeditated murder. However, Sharia does allow the relatives of the victim to abandon revenge and forgive the murderer, if there is some other type of compensation, such as monetary compensation. Indeed, death penalty is designed to dissuade people from committing murder, because, if you kill somebody else and you know you can end up dead yourself, you will think twice about committing the murder. Hence, this might save two lives—the potential victim and the perpetrator. That is what we see in the Qur’an, with regard to the death penalty. It is used to dissuade people from committing murder. Death penalty cannot be inflicted for misdemeanors or small crimes. Its aim is to stop people from committing murder. However, if the murder is committed and the perpetrator is given the death sentence, the family of the victim is encouraged to forgive the perpetrator and to call for another type of compensation. God encourages forgiveness and other types of compensation, so that the perpetrator will not be executed. Finally, I would like to mention that there are different interpretations of human rights, and different situation with regard to human rights in the Arab world. There are practically no human rights in the Arab world. There is no political freedom. There is no freedom to found or create political parties, nor any freedom to criticize those in power. In fact, the dentist may be the only place where Arab citizens can open their mouths.

Mr. Ibrahim, Libya: First of all, may I congratulate those who have spoken before me and the organizers of this event. I think that there’s a real problem with regard to pushing human rights forward in the Arab world. I’m not pessimistic. Things are progressing little by little. However, we need to put more strength and energy into this. But the real problem with regard to promoting human rights in the Arab world has to do with the lack of political will in some Arab regimes. Nonetheless, I think we have some shared values, and I think that we have to see how we can maintain these shared values. I think that’s the real question. What is the best way to promote human rights in the Arab world through better involvement of civil society? Perhaps also by investigating the links between some regimes in the Arab world and some regimes at an international level. Thank you.

Mr. Al-Maqtari, Yemen: I’d like to make a remark with regard to the right to life and the death penalty. Many speakers from the Arab world spoke about the death penalty as if it were something unequivocal. In fact, there are lots of different laws in the Arab world in this area. For example, in Yemen, the death sentence can be inflicted for over 380 different crimes, including the sharing of military secrets and State security issues. Of course, there are also dictatorships that use the death sentence to get rid of their political opponents. Sharia is not simply used to justify revenge but is sometimes also used by authoritarian regimes to hide their political crimes. Thank you very much.

Mr. Delevoe, MFR: Thank you. Now, I would like us to discuss the final resolution. I think that you can find an answer in paragraph four, highlighting the significance of ombudsmen, the mediators, and the goal of this declaration is to highlight the part played by the mediators. They are the guarantor of human rights, and of course, we have to establish a dialogue. It is to strengthen or create institutions to promote human rights. You have the declaration and then you have the mindset you express.

Ms. Emily O'Reilly, Ombudsman, Ireland: Thank you Mr. Delevoe for your hospitality and for organizing this conference which I have found fascinating. In many of the conferences I go to at the European level, with other ombudsmen from Europe, we tend to share the same space of comfort in terms of what we do and in terms of beliefs. It is thus fascinating to hear views from other cultures. I was also very interested to hear that you intend to continue this initiative. With respect, if this initiative is to be continued, I think it would be valuable to hear more women's voices, especially the voices of the women from Arab countries. Throughout this day, much of the talk has been about gender and about women equality or inequality. So much of the troubles that plague the world today are about the clash of cultures and civilization. I think that initiatives like this, where we come together and talk to each other and begin to understand each other, is very valuable. But I would underscore the importance of hearing more voices from more women. I am sure my office—and I am certain other colleagues as well—will be very happy to help in that. Thank you.

Ms. Addie Stehouver, Deputy Ombudsman, The Netherlands: Thank you very much Mr. Delevoe. I would also like to thank all the organizers of this interesting event. Today, I learned something. As an ombudsman, my day-to-day work is to handle individual complaints. That means, meeting the needs of people that come to the ombudsmen's office because they have a problem with the government. The question is: what is the effect of talking about human rights on the individual? In this regard, I have learned something from my colleague from Saudi Arabia. He asked: how can I tell the family of a victim of the crime that the death penalty is not allowed for that crime? I know nothing about death penalty because the death penalty was abolished in my country even before I was born. However, as an ombudsman, I have learned a lot about dialogue—dialogue between the citizens and the ombudsman and dialogue between the citizens and the government. My experience is that people who are invited to speak with the government on human rights issues, in the way described by our colleague from Saudi Arabia, greatly benefit from this exchange. We learned—from handling individual cases—that having this dialogue is the first and most important step to solving the problem. I hope that, as our experience in handling human rights cases grows, in all of our countries, we learn from each other how important dialogue is, how difficult it is, and what are the most effective ways to have these dialogues. Thank you.

Mr. Vladimir Lukin, Ombudsman, Russian Federation: First, allow me to express my gratitude for the invitation to this enriching and interesting conference. To some extent, this conference is not very close to Russian day-to-day reality because it is more about the European and Arab experiences in human rights activities and legislation. Nonetheless, I can relate what is being discussed today to the Russian experience in terms of clash of different sets of values. In

fact, Russia embodies two separate sets of values. On the one hand, we see modern European values. On the other, we see more a traditional set of values. It would be too ambitious of me to pretend to be able to explain in detail our experience in dealing with the mediation between these two sets of values. However, I would like to express our desire to actively cooperate with our Arab friends and participate with them in joint activities as we have been doing with our European colleagues. As you know, Sharia is not unknown in Russia. We have some sad and painful experiences due to the inability to mediate between these two sets of approaches to life. Now, I would like to say a few words about the issue of death penalty in Russia. When we entered the Council of Europe, we ratified the European Convention and we set up a moratorium on the implementation of capital punishment. However, although we signed, we did not ratify Protocol 6 which directly speaks about the elimination of capital punishment. We did not ratify the Protocol because public opinion was opposed to the idea. We have unfortunately a very high level of criminality in Russia and a big majority of our population is firmly against the idea of taking a final decision on the issue of capital punishment. At the same time, however, many enlightened forces in our country understand the need to tackle this issue. Fortunately, our 1993 Constitution opens an opportunity to do so. According to the Constitution, the international conventions ratified by Russia have priority over national law. Hence, if a domestic law is in contradiction with international law, the latter prevails. This is why, recently, our Constitutional Court discussed the issue and acknowledged that, even without ratification of Protocol 6 on capital punishment, Russia has no legal right to implement the death penalty. This is because Russia signed—although not ratified—protocol 6 and according to the Vienna conventions on the implementation of international conventions, those States who have signed an international convention but have not ratified it, are still bound by its provisions until ratification. Only after ratification the State can decide to stick to it or not, depending on the vote. Therefore, in this manner, in Russia we in practice settled the problem and abrogated capital punishment. This is an example of how you can find legal foundations to resolve important issues, even if public opinion is opposed. This is how, I believe, we should try and deal with other similar issues, like the ones we face in the southern regions in Russia, where populations abide by some traditional values which often contradict constitutional values, always however, in respect of all values. Thank you.

Mr. Delevoye, MFR: Thank you for your contribution. I would like my assistants to hand out the draft declaration, we will read it out together. Now, I would like to give the floor to our representative from the United Kingdom.

Mr. Nick O'Brien, Policy and Human Rights Advisor, Parliamentary Ombudsman, United Kingdom: I am speaking on behalf of the UK Parliamentary Ombudsman, who is in fact a woman, Ann Abraham, and therefore conscious of Emily's intervention [Ms. Emily O'Reilly, Ombudsman, Ireland, NT] which I very much support – I am sure – that Ann Abraham herself would very much like to be here to speak. I certainly support Emily's encouragement to those women representatives here and indeed who aren't here to play in future occasions as full a part as possible. My observation is in connection with what—I think—was a very rich presentation of the Arab Charter. What struck me about that, in way of comparison with the European Convention on Human Rights, is that the Arab Charter very much covers what I would regard as

social rights as well as civil rights so right to social security, health care, housing, rights of disabled people. It occurred to me that, although the discussion today is concentrated—understandably—on some of the most contentious issues such as the death penalty, what would also be very interesting and would unite ombudsmen’s experience both east and west, would be to give equal weight to the role ombudsmen can play in promoting and protecting social rights. I think that in Western Europe, certainly in the UK, the part that social rights can play is very important. I believe this Charter to be a very strong representative of that sort of instrument that combines both and I simply note that and pay complement the drafters for that. Thank you.

Mr. Delevoeye, MFR: Thank you very much for your contribution. Indeed, we talk a lot about human rights and violations of freedoms but we don’t really talk much about the lack of respect of human rights through the economic system. Mr. Decaux mentioned that with the intervention of the trade unions and economic interests.

Ms. Chaabane Farouk, Tunisia: Thank you. I would like to suggest a slight amendment to the resolution to highlight the important part played by the mediators in the protection of human rights. In particular, I would like to include an article that allows mediators to make recommendations if there is a dissonance between national law on human rights and international law, especially the Arab Charter of Human Rights. In Tunisia, for instance, we recently presented a project to abrogate the code of nationality and give Tunisian women the right to grant their nationality to their children if they are born outside the country. Originally, this right was reserved to Tunisian men. The abrogation put forward by the mediator helped to combat such discrimination. Similarly, some time ago, we proposed an amendment of the Criminal Code of 1905 aimed at fighting corruption within our country. Mediators have a major role to play in raising awareness among citizens, especially on the issue of women’s rights. In Tunisia, we have family courts and, within the next five years, we will also have family mediators whose task will be that of raising awareness on women’s rights. The aim is to make women more aware of their rights and encourage them to take part in the decision making process in all fields and to better integrate them in the system.

Mr. Enrique Mugica Herzog, Ombudsman, Spain [Mr. Mugica Herzog, Spain]: Thank you Chairman for your invitation to this conference. In Spain, we have a holistic approach to human rights. We believe that all human rights’ issues are intertwined and this is why all sectors of society must take active part in the promotion and protection of human rights. Just a few comments on the situation in my country: with regards to legislation on capital punishment, after a long period of debates, Spain has made some major step forwards. Today, the death penalty is abolished—and even life imprisonment is different now—despite the fact that Spain suffers from terrorism and other severe crimes, including kidnapping and sexual harassment. As far as gender discrimination is concerned, our legislation favors women and I believe we can talk about positive discrimination in favor of women. Of course, domestic violence does occur and unfortunately we have cases in which women have died as a result of it. However, we see a steady decline in the number of death and public opinion is more and more aware of this problem. As to the freedom of speech, even if in certain instances we do not authorize some demonstrations, we nonetheless try to show as much tolerance as possible toward all opinions,

and people are aware of the crucial need for freedom of speech. Hence, overall, I believe that in Spain the right to free speech is respected. Thank you.

Mr. Delevoye, MFR: Thank you. This brings us to the last part of this conference. I would like to thank the translators and the team of the Johns Hopkins University and the Assas University. I would also like to thank Mr. Magazzeni, from the United Nations and Mr. Jaeger from the Council of Europe for their contribution. When we organized this conference, we were aware of the importance of human rights and of the need to promote dialogue between Arab world and Europe. However, we did not know what the approach would be here nor did know if the meeting would trigger much interest. Clearly, all the observers and participants have been impressed by the frankness and truthfulness that we have heard here today. Of course, we ombudsmen must be diplomatic when carrying out our tasks. Nonetheless, although we do not have an answer to all the problems, we must continuously strive to find credible solutions to real problems. The situations we face might be different and we certainly need to continue our discussion on religious law versus civil law, on respect of minorities, on women rights, on children rights, on the role of media, on the arbitrary nature of power and the like. Debate is necessary to get things moving. This is why we drafted this declaration to stress our will to continue this vital and constructive dialogue. I will now read the declaration and I will be happy to hear any amendments you may have.

[Please see Annex 1]

Mr. Alhussami, Syria: Thank you Mr. President. This is a fantastic text. We have no problem with it. My only suggestion is to include in the fifth paragraph of the first page, when we emphasizes the Paris principles, also a reference to the Arab Charter on Human Rights in order to emphasize both groups represented here today. Also, who will be in charge of the creation of a permanent forum and the other initiatives outlined in the declaration? Thank you.

Mr. Delevoye, MFR: With regard to the Arab Charter, I think all participants in the symposium agree on the importance of the Arab Charter. Your suggestion to include an additional emphasis on the Charter is a good one. However, I would not include it next to the Paris principles—maybe we should explain what the Paris principles are—but we could include it in another paragraph. With regards to the second question on who will direct the proposed initiatives, I think what is important is that we all agree that we want something really practical and that there is a joint desire to get things going.

Ms. Alshejni, League of Arab States: I have some suggested amendments to make to the declaration. With regards to point number 3, I think it is more advisable that we say that the guide will provide suggesting on how to review existing national legislation in the Arab States instead of saying that the guide will include interpretation of the various provisions of the Arab Charter. With regards to number 5, the fourth line, taking into account the Arab Action Plans, and declarations pertaining to human rights adopted by the League of Arab States. Thank you.

Ghada Moussa, Governance Center Director (National Management Institute, Ministry of State for Administrative Development), Egypte: Thank you for giving me the floor and for

this declaration. However, I would have wished this draft to represent the contribution of all participants and not just a part of them. I think we should expand article 1 and 2 and explain how we will organize the forum. Also, since in both Europe and the Arab world many studies have been carried out on the promotion of dialogue between the Arab world and the Western world, I suggest we gather all such studies, put them in a CD and distribute them to all participants to favor the advancement of our dialogue. Thank you.

Mr. Iraki, Morocco: We think we should better highlight in the declaration the part played by the mediators in protecting and promoting human rights. It is important to have the support of international institutions. As you know, the objective of the mediator is to promote dialogue between different systems and we should try to motivate Arab countries who do not have a mediator yet to establish it. Thank you very much for your excellent chairmanship.

Mr. Melin, Sweden: Just few comments: I understand this declaration to call upon all of us present here today to strive, firstly, to create this permanent forum—whether or not we will succeed, and how we will succeed, that remains to be seen. Secondly, it also calls upon us, everyone present here today, to support the other forums of actions that are proposed in the following paragraphs. That is not necessarily a task for the forum—once it exists—but it’s possible for us to start to follow these other articles even without the forum. With regard to the actual drafting: firstly, I would like to support the amendment to point 3 and speak about “improving legislation” rather than “interpreting the specific provisions of the Arab Charter.” I think that is a well-founded suggestion. Secondly, I would like for us to concentrate on the very issues which we are actually in a position to take action on. Finally, with regard to encouraging research mentioned in paragraph 6, I would like to suggest to completely suppress such paragraph. I believe, based on the experience of my organization, that it is very hard to take action when you rely on the research of independent researchers.

Mr. Delevoye, MFR: Thank you. We can open the debate on that. However, I think that, although difficult, it is important to encourage debate on, for instance, issues that we discussed today like the possible creation of an Arab Court and the link between the supranational jurisdiction and domestic law and the role of civil society. The Johns Hopkins University has a whole series of valuable contributions to offer us in that field of research. Hence, I would be tempted to retain paragraph 6, knowing that no declaration is perfect.

Mr. Al-Marri, Qatar: Thank you, Chairman. I would like to tell you how valuable this effort is. I would like to make some comments. First, maybe we could merge the first and the second paragraphs as they both seem to be aimed at promoting a more in-depth dialogue between the two regions. The second proposal is on paragraph 6. I agree that we need to encourage research. However, we should also encourage the distribution of the results of such research. Otherwise, the studies will remain confined to a community of experts. Thank you.

Mr. Delevoye, MFR: Yes, we could encourage the research and the circulation. I do agree.

Ms. Catherine De Bruecker, Federal Ombudsman, Belgium [Ms. De Bruecker, Belgium]: Thank you for giving me the floor. The encouragement of research is not part of the mandate of the European Ombudsmen. Therefore, we also have a problem with paragraph 6. If we are to retain such paragraph, I would like to eliminate the reference to “the values and belief of Islamic law.” Let me explain to our Arab friends that, we adopted the Charter of the Fundamental Rights of the European Union, we discussed whether to include in the preamble a reference to the Christian values. After lengthy debates, we finally decided to only include a reference to the spiritual and moral heritage of the European Union. In the same spirit, I think we should delete in paragraph 6 the reference to Islamic law and replace it with a reference to “the spiritual and moral heritage of the Islamic world.” Thank you.

Mr. Delevoye, MFR: Although Dr. Mattar might be able to explain this point in more detail, I would just mention that, contrary to Europe, in the Arab world, there is a mixture of different jurisdictions, especially with regards to personal status, that must be taken into account. In Europe, the temporal and spiritual powers are separated. In the Arab world, life is guided by both State law and religious law and we should ask our Arab friends how can we assure that human rights are respected under this double legal system. This is something we cannot ignore when discussing human rights in the Arab world. Also, due to cultural specificities in the Arab world, the concept of universality is sometimes complex; less so in Europe. This is why research is important. With regards to the difficulties inherent in committing to research, this declaration will not bind our institutions to conduct research but simply to support an active partnership with the academic institutions, like Assas University and the Johns Hopkins University, and others. In France, we partner with many academic institutions that assist us in promoting an interdisciplinary approach to our work and take into account the ethical, economic, financial, and political aspects of human rights. We nonetheless understand your reservations and we should continue our discussion on this point.

Mr. Mugica Herzog, Spain: We suggest to slightly change paragraph 6 and delete, in the English version, the word “beliefs” and leave only “... the values of Islamic law.” In this way, we will avoid getting ourselves into a difficult theological debate. Thank you.

Judge Ahmed, Sudan: I think it is too soon to agree on a joint declaration. The issues of universalism and relativism of human rights are essential and complex issues and I think this forum was very successful in gathering so many of us and in offering a chance to hear so many opinions. However, it would be premature to agree on a declaration, if we consider that most Arab countries are yet to sign the Arab Charter on Human Rights. I believe we should first have more in-depth debates and invite other institutions to take part in this discussion. We will then be in the position to pass a resolution that will be binding on all States. Thank you.

Mr. Delevoye, MFR: The goal is quite simply to continue the momentum of this symposium, we could only have just one sentence: “all the participants at the symposium wish to continue this dialogue”. Full stop.

Mr. Zaalani, Arab Committee on Human Rights: Thank you. First of all, I have a question about drafting and publishing the parliamentary handbook. I'm not really sure who has been given that job of publishing and drafting that guide. Also, with regard to the possible role of the Human Rights Committee of interpreting the Charter, I believe we have to ask ourselves the following question: "Do we have the right to interpret the Charter or is it up to the heads of State in the Arab world?" My opinion is that we're going beyond our mandate. If we have a guide on the Arab Charter on Human Rights, the second part of the paragraph is not necessary. I think we could cut down the declaration to parts one and two regarding the creation of a permanent forum, and number five on education and promotion of the incorporation of human rights into educational curricula.

Dr. Mattar, JHU: To ensure success, you need continuity. If you hold an event or a forum and stop there, nothing will happen after that. And that is the idea of a declaration. A declaration, by definition, is not binding. I understand the tension. I come from a world which is different from your world. I do not represent a State and I thus have less constraints. I represent a university. I am probably freer to propose than you. However, the declaration does not bind any Member States. We're basically talking about research. We're basically talking about having a similar forum in a similar room. Continuity is the key to success. If we come together today and then leave without making a commitment to have another workshop, or conduct research or write a guide, I don't think that we have succeeded in our work. This is a general observation. I think the first provision of the declaration is really important. It is paramount that we think together about creating a forum. Does the provision bind us to create a forum? It does not! How would the forum look? We don't know! The parliamentary handbook is an idea that does not bind anybody. How? This is a handbook for parliamentarians. Which parliamentarians are you talking about? Are we talking about the Arab parliamentarians? Are we talking about the Inter-Parliamentarian Union? Well, the Inter-Parliamentarian Union is in the business of drafting handbooks for parliamentarians. We have two possible routes. Route number one: we have a guide to interpretation. Route number two: we go to the Inter-Parliamentarian Union and we say, "Okay, we are thinking about a parliamentary handbook on the Arab Charter on Human Rights. Would you like that?" Nothing decided yet, but the idea of having a guide, I think is a good idea. What is a guide? For instance, if I were to analyze article 6 on the death penalty, I will relate the article to all the international conventions that talk about death penalty like the Covenant on Civil and Political and Rights and the UN Declaration. Then I'll provide models and I'll say, "Here is the status of death penalty around the world. Here's how the UN defines the most serious crime." Nothing more than that. You are providing international standards, educating everybody. And you are providing comparative models, helping everybody. It is not a document coming out of the Arab League. Again, do we have to do it? No, but we are considering doing it. That is the purpose of a declaration such as the one we are discussing here today. Islamic law is always a problem. Every time we say Islam, it raises questions. Again the idea is very simple. When you talk about the Arab Charter on Human Rights, you cannot do without Islam. Every national legislation in Arab countries is based on Islamic law one way or another. You will not be able to change national law except if you address issues of Islamic law. How do you address that? Research. We talked about death penalty today. We will never be able to abolish or restrict death penalty in the Muslim world, in the Arab world, except if we address issues of Islam. The

idea is to encourage research. If there is an academic institution that would like to research the issue of death penalty and then, based upon this research, conduct a workshop on death penalty, that will be a good idea. You cannot do training without research. You cannot do a workshop without research. In the Muslim world, in the Arab world, no change can be made except if you look into concepts of Islamic law because Islam is often the source of legislation.

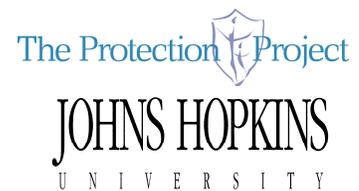
Ms. Johanna Hawari Bourgely, Director of the Center for Mediation of Saint Joseph University, Lebanon [Ms. Bourgely, Lebanon]: Thank you Dr. Mattar. With regard to what you said, I'd just like to remind you that in Lebanon, we have 18 religions. And there are as many Muslims as Christians, so that's important to remember. I am in favor of research, and I am for the promotion of human rights. But there's also a clause on training of magistrates and I think that we have to train players in civil society and NGOs, because those are the people on the ground. I think that this is something that we need to add and encourage. Thank you.

Dr. Mattar: The Charter mentions Islam and other divinely-revealed religions. But the problematic issues are related to Islamic law. But we'll follow the wording of the Arab Charter. We'll say Islamic law, and we'll say other religions as well. So that is a good suggestion.

Mr. Melin, Sweden: I feel there is some generalized reticence to some of the points. I perfectly understand the problems of, for example, the Committee on the Arab Charter regarding the interpretation of the Charter. I also understand Dr. Mattar when he says that, in order to discuss human rights within Arab States, you need to deal with the issue of Islamic law and Islamic traditions. Nevertheless, the wording in this paragraph is such that the concepts of human rights and Islamic law appear as opposites. I find that to be problematic. I perfectly understand that we should not discuss this at great length, and I commend of course the organizers for drafting this declaration. For my part, I will propose to simplify matters and agree on the first two articles of the draft declaration—to have the intention to create a permanent forum for the continuation of the dialogue between the European and Arab areas within the framework of human rights. To try and establish a continuation of this fruitful dialogue is already an enormous ambition by itself.

Mr. Ibrahim, Libya: Thank you, Chairman. I support your proposal. However, I have some reservations. Is this a declaration or is it a resolution? This is important because our stance may differ accordingly. There are other pending points. Are we referring to Sharia or to Islamic law? The two concepts are different because with the term Islam we refer to all the monotheistic religions. Islam is the last religion. Finally, the international instruments should be global and not specific to one region and should take on board the human dignity. Thank you.

Mr. Jari Pirjola, Legal Advisor, Parliamentary Ombudsman, Finland [Mr. Pirjola, Finland]: Well, I have a couple of points. I think we have all agreed that this is a nonbinding document, neither legally nor politically which sets very important goals and aims. All participants seem to agree that the paragraphs which list the future goals of this declaration, are very interesting and important. The problem is in the wording. Therefore, I fully support the proposal by our Swedish colleague, who suggested that we drop the paragraphs which are



somehow problematic due to the wording and we move on with the creation of the forum which will encourage the realization of all other goals listed in this declaration in the future. Thank you.

Mr. Alhussami, Syria: Thank you, Chairman. I agree with the Swedish colleague and all the delegates who said we should stick to the first two paragraphs. With regard to the sixth paragraph, we can talk about the values and cultural specifics instead of the beliefs of Islamic law. In this way we would include beliefs and also traditions.

Mr. Delevoye, MFR: It is now time to conclude. I think our world today is characterized by a paradox: on the one hand we are more and more powerful in terms of collective richness; on the other hand, we are more fragile on an individual level. This is why ombudsmen have a very important role to play in mediating between the citizens and the religious, economic and financial powers. It is only through continual dialogue with such powers—but also among our institutions across the continents—that we can find the necessary strength and resources to take action. Today's meeting has been very successful in bringing all of us together. Our dialogue has been rich. We want to continue this dialogue and continue sharing our thoughts and experiences. I would like to thank you very much for participating in this event. I hope you will have nice memories of this meeting. The Eiffel Tower was a utopia and became a reality. Mediators, by definition, must transform dreams into reality. Thank you very much for the dreams we share today and for the realities we will build together, in the future.