

ARAB COURT OF JUSTICE

**EGYPT V. LEAGUE OF ARAB STATES (AS REPRESENTED BY MAURITANIA) OVER THE FAILURE OF THE LEAGUE TO ESTABLISH A PAN-ARAB POLICY ON THE LEGALITY OF RADICAL/FUNDAMENTALIST ISLAMIC POLITICAL PARTIES AND MILITANT GROUPS**

(THE ARAB REPUBLIC OF EGYPT vs. THE ISLAMIC REPUBLIC OF MAURITANIA)

2008 General List No. 003

**COUNTER MEMORIAL**

**OF THE GOVERNMENT OF THE ISLAMIC REPUBLIC OF MAURITANIA**

filed in the Registry of the Court

on 14 March 2008

**I. COMMENT ON FACTS STATED IN THE MEMORIAL OF THE ARAB REPUBLIC OF EGYPT**

The representative of the Arab Republic of Egypt is correct in asserting that the preamble of the Pact of the League of Arab States (1945) advocates Arab unity. However, the aforementioned pact does not indicate that a promotion of Islamic fundamentalism between willing member nations would undermine this objective. Arab unity and Islamic unity are not mutually exclusive ideals, as can be noted by the wording of The Arab Convention for the Suppression of Terrorism of 1998 which states that the Arab league will remain “committed to the highest moral and religious principles and, in particular, to the Islamic Sharia” in order to “promote peace.” This phrasing does not indicate a hostile sentiment towards Islamic belief, or towards parties who adhere to fundamentalist Islamic beliefs.

Furthermore, the representative has suggested that certain political parties located within member States that promote Islamic fundamentalism will negatively influence the judgment of their national governments concerning the acceptance of new League member States by causing their decision to solely be based on the applicant’s Islamic character. However, the League would argue that the continued exclusion of Iran, a non-Arab but primarily Islamic nation, from the League is evidence that the organization will hold to its original ideals. In addition, the acceptance of a potential Arab League member

state, in accordance with the charter of 1945, must be approved by the Permanent Secretariat and the Arab Council, of which Egypt and other states of varying interest are apart. If these states desire to withhold membership from particular states they may do so and in turn will prevent the possibility of states being integrated solely due to their Islamic character. This method of organization will work to prevent the occurrence of the “Pan-Islamic Caliphate” so feared by the representative of Egypt.

Also, while the League does understand the honorable representative from the Arab Republic of Egypt’s concerns regarding what he has called “Islamic extremist political parties” the League is not in any way certain that these organizations clearly threaten the sovereignty and/or independence of Arab League member States. Many of the organizations mentioned by the representative are considered valid political parties by their host nations, and therefore are sovereign components of their respective national governments. The purpose of the League, in accordance with Article 2 of its charter, is to “draw closer the relations between member states and co-ordinate their political activities” not to assimilate all political ideas into a unified League statement. Co-ordination implies cooperation despite differences, not a lack thereof and Article 2 of the Joint Defense and Economic Cooperation Treaty Between the States of the Arab League may only be activated if these Islamic groups are truly considered a threat to the member states they reside within; the League does not currently feel as if the representative from Egypt has adequately prove that such a threat is present.

In addition to the fact that the charter requires cooperation between members in regards to political affiliation, the Pact of the League of Arab States mentions in no less than three clauses that the political sovereignty of nation states is to be protected. As many, if not all, of these aforementioned Islamic fundamentalist parties are considered to be political parties within their host nations they in turn fall under this protection. This concept is first brought forth in the charter’s preamble which states the “close relations and numerous ties which bind Arab States” will be made “on the basis of respect for the independence and sovereignty” of these member nations. Furthermore, within Article 5 of the same pact, it is noted that the League may not interfere in any State conflict without the consent of the State itself. Therefore, unless these nations ask for assistance in regard to the “inner turmoil” within their boundaries the League may not intervene, and declaring certain national political parties to be a threat is a form of interference. This sentiment is again enforced in Article 8 which states that “every member State of the League shall respect the form of government obtaining in the other states of the League, and shall recognize the form of government obtaining as one of the rights of those States, and shall pledge itself not to take any action tending to change that form.” Therefore, unless the aforementioned Islamic political parties are officially proven to be separate from the respective governments they are currently affiliated with, the League may not interfere regarding them without permission of the member state within which they reside.

Finally, in regards to the delegate's assertion that these Islamic political parties should be considered terrorist organizations, the League would like to point out two key components to the definition of terrorism as stated by the Arab Convention for the Suppression of Terrorism. The first being that a terrorist organization must have a "criminal agenda," an organization can not be criminal in nature if it is declared legal by its national government and political parties are indeed legal. Furthermore, the "violent" efforts of these organizations must be proven to be separate from the qualifications stated under Article 2 of the convention treaty which proclaims that "all cases of struggle" in order to achieve "liberation and self-determination, in accordance with principles of international law" "shall not be regarded as an offence." The representative has declared that these groups to be terrorists and yet has not specified as to exactly how they deserve to be defined by this term.

## II. ADDITIONAL FACTS

In regards to the Sadrist Movement, this is another party whose government officials are protected under the Arab League charter. However, those factions of this party that conduct actions that fall under the definition of terrorism perhaps should be considered separately from those that represent the organizations ideological goals in the legislature. Hezbollah is another example of an organization that entrenched itself within the government of Lebanon but also contains factions that may have conducted what may be deemed to be "terrorist offenses." However, the fact remains that the portion of Hezbollah that is formally recognized by the Lebanese government must be respected and protected as such. The representative from Egypt is right in asserting that violent actions have been conducted in the past in the name of Islamic fundamentalism but the situation has not been clearly defined enough to declare the entirety of the mentioned organizations to be destructive to the Arab League, only certain factions of these parties are destructive.

The Arab Republic of Egypt demands that the League develop a unified policy in regards to radical/fundamentalist Islamic political parties, however, the representative's desire for this policy stems from a desire to curb violent incidents that seem to stem from the ideology of these parties rather than the actual representatives themselves. This indicates that the Arab Republic of Egypt may accomplish its objective by acting against violent incidents rather than against the parties as a whole. Due to certain articles within the Arab League Charter that protect the sovereignty of individual member State governments, a declaration condemning certain national parties would be completely adverse to League policy. However, as the League has already established a universally accepted definition for terrorism and terrorist offenses it would be more efficient to simply declare separate incidents, rather than parties, as having terroristic tendencies. As the definition for terrorism is already defined and accepted it would be far easier to

condemn violent actions through this venue rather than through desiring a unified statement against the organizations themselves.>

### III. OBSERVATIONS CONCERNING THE STATEMENT OF RELEVANT LAW IN THE MEMORIAL OF THE ARAB REPUBLIC OF EGYPT

1. The Pact of the League of Arab States
  - a. Preamble

“A view to strengthen the close relations and numerous ties which bind the Arab States, and out of concern for the cementing and reinforcing of these bonds on the basis for the independence and sovereignty of theme States.”

Nowhere within this clause is there mentioned the concept of Islamic fundamentalism, nor is there any indication that Islamic fundamentalism or Islamic political parties should conflict with the desire for further Arab unity. Therefore the representative’s assertion that “Islamist political parties threaten the foundations of the Arab League” cannot be justified under the preamble. It may even be argued that, as Islam is a component of many aspects of Arab culture, Islamist political parties may work as a way to further unify Arab nations rather than destroy the foundation the League was created upon. Also, while this clause does support unity, it also supports the “independence and sovereignty” of States, and thereby supports the sovereignty of their governments and of the political parties within them.

- b. Article 2:

“The purpose of the League is to draw closer the relations between member States and co-ordinate their political activities with the aim of realizing a close collaboration between them, to safeguard their independence and sovereignty, and to consider in a general way the affairs and interests of the Arab countries.”

This article does indeed state that League States should “co-ordinate their political activities” but mentions nothing specifically of political policy. Furthermore,

coordination does not necessarily indicate full agreement, it simply means they will not necessarily hamper each other through conflicting political maneuvering. The aforementioned article also states that the objective of this co-ordination is to “safeguard their independence and sovereignty” and the “interests of the Arab countries.” Religion and political workings can easily be classified as “interests” and are certainly apart of the “independence and sovereignty” of member States, thereby this clause actually protects individual interests while encouraging cooperation rather than demands political unity.

## 2. Treaty of Joint Defense and Economic Cooperation Between the States of the Arab League

“At the invitation of any one of the signatories of this Treaty the Contracting States shall hold consultations whenever there are reasonable grounds for the belief that the territorial integrity, independence, or security, of any one of the parties is threatened.”

The Arab Republic of Egypt indeed has the right to hold a consultation, but only if the member State may provide reasonable grounds for doing so. The League has found that the representative’s presentation of arguments does not contain within it reasonable proof that the “territorial integrity, independence, or security, of any one of the parties has been threatened.” The member mentions the “violence” associated with Islamic political parties, yet gives no specific examples of this violence, nor has the representative satisfied the definition of a “terrorist” organization as defined by the Arab League’s summit concerning the issue in 1998.

## 3. The Arab Convention for the Suppression of Terrorism

### a. Part 1, Article 1, Section 2:

“Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty, or security in danger or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resource.”

Again, the League feels that there is insufficient evidence within the representative of Egypt’s statements to testify as to why Islamic political parties fall under this definition.

There is no specific mention of any instance in which a political party has violated one of these clauses, only that they commit acts of “violence.” Also, a key term within the wording of this section is the word “criminal.” The definition of a political party is an organization which is acknowledged by the nation government, and thereby is not criminal in nature and cannot be acknowledged as a terrorist organization under this definition. Also, as all states would have to agree to this declaration and it is apparent that the national governments that host these parties do not, the act of declaring a universal policy against Islamic political parties is a moot one.

b. Part II, Chapter 1, Section 1, Article 3. Sub-Clause 1, Paragraph 2:

“To cooperate and coordinate action among Contracting States, particularly neighboring countries suffering from similar or common terrorist offences.”

While this is a valid statement, under Article 5 of the Pact of the League of Arab States, the League may only interfere in conflicts between a nation and another party if the nation so desires this interference. Also, an action must first be confirmed to be a “terrorist offence” before this clause may come into affect, and the representative has not yet properly accomplished this.

#### IV. STATEMENT OF RELEVANT LAW

1. The Pact of the League of Arab States (1945)

a. Preamble

“A view to strengthen the close relations and numerous ties which bind the Arab States, and out of concern for the cementing and reinforcing of these bonds on the basis for the independence and sovereignty of theme States.”

Closed relations and numerous ties must be strengthened, but not at the expense of the “independence and sovereignty” of member States. Urging the establishment of a

universal policy against fundamentalist political parties would infringe on the individual sovereignty of nations who support these parties.

b. Article 5

“The recourse to force for the settlement of disputes between two or more member States shall not be allowed. Should there arise among them a dispute that does not involve the independence of a State, its sovereignty or its territorial integrity, and should the two contending parties apply to the Council for the settlement of this dispute, the decision of the Council shall be effective and obligatory.”

By urging for the establishment of a unified policy against Islamic political parties, conflicts may arise between nations that support these parties and those that do not. If such a conflict arises the League has no authority to resolve this conflict without the permission of the nations themselves. It is clearly stated that should a dispute arise, the League may not intervene between the “two contending parties” without the permission of the governments involved. This includes conflicts that may have been instigated by the influence of existing Islamic political parties.

c. Article 7

“The decisions of the Council taken by a unanimous vote shall be binding on all the member States of the League; those that are reached by a majority vote shall bind only those that accept them.”

The approval of new members must be passed by the Council, therefore a lack of consent by these members, including Egypt, may prevent the acceptance of nations into the League on the sole basis of their Islamic integrity. This would assist in the prevention of a “Pan-Islamic Caliphate.” Also, due to this article, should nation-states disagree on the subject of creating a declaration involving Islamic political parties, those states would simply be exempt from following such a declaration, thereby working to undermine Arab Unity.

d. Article 8

“Every member State of the League shall respect the form of government obtaining in the other States of the League, and shall recognize the form of government obtaining as one of the rights of those states, and shall pledge itself not to take any action tending to change that form.”

A political party is a component of the government of a State of the League. By issuing a unified offense towards said political party, an offense is in essence being issued against the member State itself. The League has pledged to take no action towards changing the form of a member nation’s government, and therefore cannot issue any proclamation that would alter components of said government; ex. Islamic political parties.

2. The Arab Convention for the Suppression of Terrorism (1998)

a. Preamble

“Being committed to the highest moral and religious principles and, in particular, to the tenets of the Islamic Sharia, as well as to the humanitarian heritage of an Arab Nation....”

This clause clearly connects the concept of Arab culture with the Islamic faith without denoting a negative relationship between the two. Therefore, it may be stated that religious intent behind the formation of Islamic fundamentalist political parties do not necessarily undermine Arab unity, but rather are simply a component of it.

“Affirming the right of peoples to combat foreign occupation and aggression by whatever means, including armed struggle, in order to liberate their territories and secure their self determination, and independence and to do in accordance....”

The representative of Egypt must clearly indicate as to why the actions of certain Islamic fundamentalist political parties would fall under the definition of terrorism rather than

under the definition of “armed struggle” in order to secure their member state’s “self-determination, and independence.” As this was not clearly indicated in the representative’s statements, the League is not able to form policy regarding these groups as their actions are affirmed by the League itself.

b. Part 1, Article 1, Section 2

“Any act or threat of violence, whatever its motives or purposes, that occurs in the advancement of an individual or collective criminal agenda and seeking to sow panic among people, causing fear by harming them, or placing their lives, liberty, or security in danger or seeking to cause damage to the environment or to public or private installations or property or to occupying or seizing them, or seeking to jeopardize a national resource.”

In order for a party to be considered a terrorist organization, they must have an “individual or collective criminal agenda.” As political parties are recognized by the national governments they reside within, their agenda is not criminal and thereby does not fall under this definition.

## V. CONCLUSION

Accordingly, on the basis of the facts and arguments set forth in this Counter-Memorial, and without prejudice to the right further to amend and supplement these submissions in the future, The Islamic Republic Of Mauritania asks the Court to adjudge and declare that:

The argument presented by the Arab Republic of Egypt does not present sufficient evidence to convince the Arab League of a need to establish a Pan-Arab policy in regards to the legality of radical/fundamentalist Islamic political parties and militant groups.

The Government of The Islamic Republic Of Mauritania has designated the undersigned as its Agents for the purposes of these proceedings. All communications relating to this case should be directed to these Agents.

Respectfully submitted,

X \_\_\_\_\_.

X \_\_\_\_\_.

Agents of The Islamic Republic Of Mauritania.