THE UNIVERSAL CHARACTER OF HUMAN RIGHTS AND MEDITERRANEAN REGIONALIZATION[1]

MILENA MODICA

The article focuses on these investigations:

1. Which objectives are addressed by the regionalization of human rights in relation to their universal character in an area like the Mediterranean?
2. Which major chapters regarding human rights should be incorporated into the planned process of legal infra-Mediterranean convergence?
3. How are we to build an international framework purposely set up for countries which belong to different international zones or regions?

To these investigations the author responds that the regionalization of human rights has been justified in preference to universalism on the basis of practicality. Rights are more easily guaranteed at the regional rather than at the global level. The real and effective application of human rights, which by their very nature cannot allow exclusions or restrictions of any kind, can only be promoted by identifying and enforcing the core chapters concerning human rights which are shared by all countries. There is an urgent need to identify an appropriate forum in which the question of the affirmation and effective application of human rights can become an integral part of the reciprocal commitments signed by the Mediterranean states, as well as an area of mutual control.

1. Introduction

At the beginning of the third millennium the protection of human rights is not only achieving unanimous consensus all over the world but in the development of international relations it has

[1] This article is a reworking of a paper read by the same author at the international meeting on "Mediterraneo Terzo Millennio", organized by the President's Office of the Sicilian Regional Authority and by COMEN (Mediterranean Conference) at Palermo, Castello Utveggio, 11 – 13 November 1998.

Mediterranean Journal of Human Rights, Vol. 3, No. 2, pp. 543-558

unprecedentedly taken pride of place. This fact is certainly encouraging to all those who work in the field of human rights or support them, but it still does not solve the often disheartening problems concerning their operative legal framework or of their global application. International treaties of a universal or regional character have still not been ratified by many states, even though they are members of the UN, or else they are actually ignored, left unapplied or severely restricted by a variety of repressive political regimes.

While on the political plane, states seem to be finding it more difficult to maintain an indifferent attitude to the internationalization and globalization of human rights, on the institutional and juridical level the path to their effective application and protection seems to be tortuous and fraught with obstacles. From the legal perspective, especially, their protection clashes with conceptual suspicions nurtured about the international legal system[2] by countries whose culture and civilization are alien to traditionally Western principles and juridical concepts. Furthermore, there are objective difficulties which hinder the harmonious and coherent reception of these principles by national legislatures, as well as the deficiencies of control mechanisms of the legal or "quasi-legal" type on a universal level and the almost total lack of these same mechanisms in the Mediterranean region.

I believe it is proper to set off by observing how the legal aspect of human rights, together with the socio-cultural aspect, has been rather neglected by the processes geared towards infra-Mediterranean common action, and lately from those launched by the European Union starting with the Euro-Mediterranean Conference held in Barcelona in 1995[3]. This is not so much to

---

[2] On the debate about the cultural inevitability of human rights, invoked by some people to relativize them, see *L'Islam e il dibattito sui diritti dell'uomo*, Andrea Pacini (ed.), "Dossier Mondo Islamico 5", Ed. Fondazione Giovanni Agnelli, Torino, 1998.

[3] One must remember that of the three cornerstones or *volet* of the final document of the conference (Barcelona, 27-28 November 1995), wherein the 15 member states of the EU and the 12 third world countries pledged to establish a global Euro-Mediterranean partnership, the third one, the "Partnership in the social, cultural and human fields" does not mention human rights in its text, nor any

underline the political difficulties that hinder full inclusion, as to focus attention on their fundamental importance for achieving any kind of Mediterranean integration. In other words the assumption on which this contribution is based and will develop is that one cannot build a stable and developed area without establishing principles of freedom and fundamental rights which can be shared by all the Mediterranean countries and which can be enjoyed by all their populations. The "new frontier" of the respect for and effective protection of human rights in the Mediterranean as the foundation for coexistence and integration constitutes today's newest and most challenging task that local and international political figures have to take up. The way in which this challenge will be tackled will have a conclusive influence on the chances that the countries on the southern coast of the Mediterranean will have to win their battle against every type of integralism as well as against the dangers of a dramatic authoritarian isolation of their political systems, and to contribute in this way to the evolution of the concept of democracy, placing it within reach of the populations which have developed outside Western culture.

The following reflections of a legal nature on the universality of human rights compared to the hypothetical and ever more strongly desired Mediterranean regionalization, although they are related to strictly political aspects, derive from the need to clarify a number of crucial problems that keep coming up when discussing the process of concerted action or integration in the Mediterranean area that also concerns the human rights issue.

For this aim the present paper shall investigate:

(1) Which objectives are addressed by the regionalization of human rights in relation to their universal character, in an area like the Mediterranean which is far from homogeneous from a legal perspective.
(2) Which major topics or chapters regarding human rights should be incorporated into the planned process of legal infra-

---

formula of compromise which had however been adopted, with many difficulties, in the Helsinki document way back in 1975, in the process of the CSCE and the East-West Cooperation agreement, in which the third title named "Cooperation in humanitarian and other sectors".

Mediterranean convergence; and lastly (albeit only briefly, considering the complexity and vastness of the problem and its possible solutions)

(3) How to build, and before all else imagine, an international framework suitable for countries which are situated in a well-defined geographical area which does not, however, exist as a political entity.

2. The relationship between universalism and Mediterranean regionalism in human rights

First of all I feel that I must stress how a possible convergence on a number of fundamental principles regarding human rights which can be shared by the countries on the shores of the Mediterranean automatically implies questioning the relationship between universalism and regionalism of human rights. One must seriously ask what the objectives of a regionalization of human rights in an exclusively Mediterranean environment should be.

When the *Universal Declaration of Human Rights* was adopted on the 10th December 1948, just over fifty years ago, the universalism of human rights was effectively affirmed. It has already been authoritatively pointed out that this universalism is subjective, and not objective or absolute. Since 1948 the international community was endowed with a decalogue of rights which are in principle valid for all humanity, which today comprises almost six billion people, notwithstanding that it is impossible (and this was already clear then) to anchor them all to an ontological foundation which could be considered valid by the different cultures, civilizations, and ideologies, or to deduce them by means of a logical-rational process from an untouchable and aprioristic human nature. The foundation can only rest on the factual evidence that the fifty-year-old Universal Declaration exists today, and on the *consensu omnium gentium* that it has obtained about its own validity and that of the values it contains. Therefore these values are shared in actual fact and not only in principle[4]. It is precisely this trend that

[4] Here I fully accept the school of thought which besides defining universality as an inter-subjective datum, tackles the problem of the foundation instead of ignoring

promoted the idea that universalism, being an inter-subjective datum, cannot recognize frontiers, nor differences or discriminations of any kind between the geographical zones of the world or between countries that belong to different geographical areas.

The Universal Declaration itself, which is defined in its Preamble as: "*a common ideal to be reached by all peoples and nations through education and teaching [...] and by means of progressive measures of a national and international character*," has generated the grand legal structure of human rights, a great system of protection which is summarized in the *International Bill of Human Rights* which usually is seen as comprising the Universal Declaration and the two Pacts with the attached Protocols which in 1966 helped to give juridical force to the principles which are only proclaimed in the Declaration. That Preamble also generated the grand juridical structures which consist of the regional systems for the protection of human rights. Regionalization of human rights has been justified in preference to universalism on the grounds of their application, which is better guaranteed at sub-regional level than in a universal context, and the old conflict between regionalism and universalism has been solved in practice by entrusting to the one the application and supervision, to the other the juridical definition of human rights, the so-called *standard setting* which can only be universal.[5]

---

it by historicizing it, anchoring it to the hard and tragic objectivity of historical experience, which is in a position to reveal to us that the catastrophes that humanity has gone through in its history and still goes through are precisely a direct consequence of the non-observance of the basic principles of freedom and human rights. See particularly Norberto Bobbio, *L'età dei diritti*, Einaudi, Torino, 1990; Antonio Cassese, *I diritti umani nel mondo contemporaneo*, Laterza, Bari, 1994; and in part Gregorio Peces-Barba, *Teoria dei diritti fondamentali*, Giuffré, Milano, 1993. A partly different interpretation of the problem of the foundation can be found in Franco Viola, *Diritti dell'uomo, diritto naturale, etica contemporanea*, Torino, 1989; in Francesco D'Agostino, *Filosofia del diritto*, Giappichelli, Torino, 1996; as well as in the teachings of the Catholic school which are based on the so-called personalistic theory or "principle of personality" whose founder may be Sergio Cotta (see especially his *Diritto, persona, mondo umano*, Giappichelli, Torino, 1989).

[5] See Claudio Zanghi, *La protezione internazionale dei diritti dell'uomo*, Presidenza del Consiglio dei ministri, 1979, pp. 91-99; and "Protezione internazionale dei diritti dell'uomo", in *Digesto*, IV ed., vol. XII Pubblico, UTET, 1997, pp. 150-201.

Besides the more well-known Latin-American and African regional systems, a special system has been established for the Arab world, prepared by the *League of Arab States* (L.A.S.)[6] from 1968 by the creation within the same organization of a *Permanent Arab Commission for Human Rights*, formulated during the First World Conference on human rights held in Teheran by the United Nations in the same year, in collaboration with, or at least under the auspices of, the specialized organs of the United Nations. From then on a series of juridical instruments concerning human rights were initiated (the first systematic project of the Arab League dates back to 1971), which were followed by drafts of the *Organization of the Islamic Conference* (O.I.C.)[7] or those written under its patronage

---

[6] The most important organization of the Arab world was founded by the Pact of Cairo on the 22nd March 1945, that is a few months before the United Nations Organization. Its membership actually comprises 22 Arab-Muslim states (the Republic of Comore joined in November 1993) and includes the Palestinian National Authority (called the "State of Palestine" by the League). Its headquarters had been moved to Tunis for more than ten years but returned to Cairo in 1991.

Here are a few indispensable bibliographical references. Boutros B. Ghali "The Arab League (1945-1970)" in *Revue Egyptienne de Droit International*, XXV, 1969, pp. 67-74; Ghali B. "La Ligue des États Arabes" in Karel Vasak (ed.), *Les dimensions internationales des droits de l'homme*, Unesco, Paris, 1978, pp. 634-644. R.A.H. Gibb, "The Future of Arab Unity" in Philip W. Ireland (ed.), *The Near East: Problems and Prospects*, Chicago, 1942; Ahmed M. Gomaa, *The Foundation of the League of Arab States. Wartime Diplomacy and Inter-Arab Politics 1941 to 1945*, n.p., Longman, 1977; Cecil A. Hourani, "The Arab League in Perspective", in *The Middle East Journal*, vol. I, n. 2, April 1947, pp. 125-136; Philip W. Ireland, "The Pact of the League of Arab States", in *American Journal of International Law*, vol. 39, n. 4, October 1945, pp. 797-800; Majid Khadduri, "The Arab League as a Regional Arrangement", in *The American Journal of International Law*, vol. 40, 1946, pp. 756-777; M. Nouskheli "La Ligue Arabe", in *Revue générale du droit international publique*, 1946, p. 112; Pontificio Istituto di Studi Arabi e Islamici (Roma), *Etudes Arabes - Dossier: La Ligue des Etats Arabes*, n. 77, 1989/2; Idil Al Zaim "Quarante ans après l'institution de la Ligue des Etats Arabes" in *Etudes Arabes - Dossier*, n. 77, 1989, Pontificio Istituto di Studi Arabi e Islamici, transl. by M. Borrmans, pp. 123-147.

For a complete list see the bibliographical section in Paolo Ungari and Milena Modica (eds.), *Per una convergenza mediterranea sui diritti dell'uomo*, vol. I, Le Carte delle organizzazioni araba, islamica e africana, Euroma, Roma, 1998, pp. 109-120.

[7] The O.I.C. was founded by the first Conference of the Kings and Heads of States and Government in Rabat 1969 by 26 Muslim countries. However only after a

such as the *Universal declaration of human rights in Islam* of the *European Islamic Council*, as well as the documents belonging to the African continent which produced the *African Bill of human rights and peoples' rights*[8] as well as other documents made by Research Institutes and Centres or scholars' associations, among which the most active is the Istituto Superiore di Scienze Criminali of Syracuse whose head is Prof. Cherif Bassiouni.[9] The majority of

---

Secretariat and other permanent structures were set up, in 1970-71, the third conference of Ministers of Foreign Affairs adopted the Treaty of institution of the Organization on the 4th March 1972, and this became effective after the sixth ratification in January 1973. The O.I.C. presently embraces 52 Islamic states of Africa, Europe (Albania) and Asia (including the 22 states of the Arab League), apart from a variable number of observers and invited participants at the summit conferences. The permanent headquarters of the O.I.C. and its innumerable specialized organizations (except for ISESCO, which is parallel to the UNESCO, and has its official address in Rabat) is Jeddah in Saudi Arabia, the country which has the uncontested leadership of the Organization. Its principal organs are: the *Conference of Kings and Heads of State and Government* which meets every three years, the *Conference of Ministers of Foreign Affairs* which meets every year), and the *General Secretariat*. For the relative bibliography see P. Ungari and M. Modica, *op.cit.*, p.109 ff.

[8] This was adopted unanimously by the XVIIIth Conference of Heads of State and Government of the *Organization of African Unity* (O.A.U.) which met on the 27th June 1981 in Nairobi (Kenya). Better known as the *Banjul Bill*, after the city in Gambia where the two sessions of the Conference of Ministers of Justice of the O.A.U. was held and during which the definitive project was finalized, it came into force in October 1986, three months after the 26th ratification instrument was deposited, or rather (as prescribed by article 63) "with the ratification or the acceptance by the absolute majority of the member states of the O.A.U." which were then 50 states. The *African Bill of Human Rights and of Peoples' Rights* constitutes the largest regional system for the protection of human rights within the United Nations, having been ratified by 51 states out of the 53 making up the whole continent (54 if one counts the Saharouhi Arab Democratic Republic) excluding Eritrea and Ethiopia alone.

[9] A *Bill of Human Rights and of Peoples' Rights of the Arab World* has been drafted by a committee of 76 experts in Muslim law who met at the Institute from the 5th to the 12th December 1986 under the chairmanship of the Lebanese jurist Cherif Bassiouni, but it does not enjoy official recognition up to now. During the meetings in plenary session and in the committees, account was taken of the instruments on human rights of the United Nations, the Council of Europe, the Organization of American States, the Organization of African Unity as well as, particularly, of the LAS and OIC projects. The Bill as drafted stands out for its

these texts are commonly called "Bills" but a second look will show that they are texts that are different in character and different in content. Some are actually conventions, veritable agreements regulated by international law, others are simply declarations of principle, (as those of the O.I.C. usually are,) intended primarily to clarify the import and the extent of human rights in a specifically Islamic context rather than to establish binding legal obligations.[10]

Besides texts of infra-regional significance, whether official or not, and the more authoritative contributions of research bodies, one must not forget other types of documents which have an extraordinary political and social importance. These often give legal weight to principles concerning the observance and protection of human rights and when adopted by Mediterranean Non-Governmental Organizations (NGOs) like the various Human Rights Leagues or professional associations of magistrates, lawyers, journalists, etc., constitute parameters of behaviour and action which are binding for all the members. Although their binding nature is limited to the respective organizations, their adoption often has practical repercussions that concern civil society, as well as government policy. They also serve to increase awareness of such matters within civil society.

---

systematic structure and completeness, and although it was intended as a conventional instrument at the disposal of the Arab states which would have wanted to sign a proper agreement as well as of the LAS directly in a period when it had abandoned all its projects on the matter, today it is still admirable when compared to the official texts which were finally adopted. Besides, it is the only project which provides for the institution of a Commission of human rights which has the legal capacity to take cognizance of violations brought to its attention by member states as well as by individuals or organizations.

[10] For a chronological analysis of the various projects see section II of the study by P. Ungari and M. Modica, *op. cit.*, pp. 99-106 where general information with brief comments and relative bibliographical references of the sources are given for every text. For a very recent juridical analysis of the most important texts see Maurice Borrmans, "Convergenze e divergenze tra la Dichiarazione Universale dei Diritti dell'Uomo del 1948 e le recenti Dichiarazioni dei Diritti dell'Uomo nell'Islam", a paper read at the international seminar on "Diritti dell'Uomo e profili etnico-religiosi: una prospettiva globale" (Human Rights and ethnic and religious profiles: a global perspective), Università Cattolica del Sacro Cuore, Milan, 3-4 December 1988 (by the author's kind permission).

In the Mediterranean basin therefore there is a multitude of legal texts on the protection of human rights. Besides those which have just been mentioned, one must name the international conventions of a general character drafted by the United Nations which have been ratified by many Mediterranean countries on both the northern and the southern shores, as well as those concerning the European continent, starting from the smaller Europe of 15 countries and moving on to the 41 members of the Council of Europe, all of whom have ratified (or are in the process of ratifying) the *European Convention of Human Rights and Fundamental Freedoms* and have automatically recognized the jurisdictional competence of the new Court[11]. Finally one must mention the more than 50 participants of the Organization for Security and Cooperation in Europe (O.S.C.E.).

Because of the mixed legal systems of the countries of the Southern Mediterranean, problems obviously arise concerning their integration and coherence with international Conventions of a universal nature, although these have been ratified by many of these countries. With respect to the first question regarding the objectives of Mediterranean regionalization, the problem may be considered from the point of view of the identification of a possible juridical harmonization of the various texts, or rather of the underlying values, since by merely taking into account or passively accepting such a multiplicity of 'competing' "Bills" will only lead to a confirmation of the theory of those who believe that there is irreconcilable incompatibility between the different legal cultures and of the different theories and methods of application of human rights. On the one hand one notes that, in spite of the sharp increase in documents and conventions for the protection of human rights, in actual fact one cannot say that there has been any improvement in their protection, nor a decrease in their violations. In his introductory speech at the 2nd World Conference on Human Rights in Vienna in 1993, the Secretary General of the UN, Boutros Boutros Ghali stated that at present it is not so urgent to define new rights as much as to adopt the existent documents and apply

---

[11] Established by Protocol n. 11, which entered into force on the 1st of November 1998.

them effectively. The Final Declaration of the said Conference, which was not free of controversy about the real universality of human rights, notably raised by the delegates from Asia and the Middle East, strongly stressed the *universality, indivisibility, interdependence and interconnection* of all human rights. On the other hand, however, the non-adherence or diffident approach of the Arabo-Islamic countries to the instruments of international protection not only expressed reserves of a political nature but also emphasized the cultural difficulty of accepting juridical concepts which are seen as the result of the historical and political experience of the West.

What is necessary, therefore, is not the production of new declarations or conventions to the already complex panorama of juridical instruments which exist in the Mediterranean basin, nor the division of human rights into "Islamic", "African", or "European" types, but the identification of topics and principles which in the meantime could form a hard core, albeit a small one, around which Mediterranean convergence on human rights could be built. For this purpose one must point out that the contrasting current views on the subject do not present essential divergences in principle, with respect to the main issues. No present Mediterranean culture today questions the right to life, the prohibition of slavery and torture or other inhuman or degrading treatment or punishment, the inalienable equality of all human beings, whatever the differences between them, the freedom of thought, expression and communication by all the means that are available today, to mention only a few.

All these documents, and in particular the African Bill, (which is the only Convention concerning the States of the southern shores which is in vigore today) do not simply bring about the mere acceptance of the principles ratified by the Universal Declaration but they actually tend to produce elaborations on these principles in the light of the culture and traditions which are typical of their own specific region. However, with regard to this question and to the arguments raised by those who fear that this road may harm the uniformity of the definition of human rights some degree of flexibility should be left for autochtonous and autonomous elaboration, so long as these are absolutely in conformity with the principles of the *International Bill of Human Rights* and never in conflict with them. Consequently one must avoid drafts that, under

false pretexts, are nothing more than negations of those principles or else seriously reduce their scope.

3. Limitations and obstacles to the full integration of Human Rights in the process of infra-Mediterranean convergence

The problem of what topics should be included in the process of Mediterranean convergence has up to now been generally tackled in a narrow perspective which only admitted topics of a specific Mediterranean interest. This attitude was formed essentially from two factors carried over from the past which continue to reinforce a perception of the Mediterranean which is today limiting or at least arguable.

In fact on the one hand dialogue and the first forms of cooperation were prompted by the need to tackle problems of common interest that concern the whole region through collaboration. On the other hand the paradigm of non-interference in the internal affairs of each state and the political instability of the region which is the epicentre of international controversies (the Lockerbie case, the Israeli-Palestinian conflict, the Algerian crisis and the Western Sahara question), has for many years fostered a fragmentary kind of cooperation which is wary of intruding into sensitive areas or of upsetting delicate balances.

As a consequence, dialogue on human rights has been adversely affected. It has been generally ignored by international tribunals and relegated to a dialogue between religions. When it has been taken up in academic circles, at universities or research centres, it has focused on those "chapters" of human rights which are deemed to possess a specific meaning and value in the Mediterranean context, like those touching sustainable development, migratory flows and the environment.[12] This attitude, however, does not give sufficient consideration to the fact that perceptions on the problems

---

[12] This is Zanghi's point of view, particularly in his introduction, "Presentazione della Conferenza" in C. Zanghi, L. Pannella, R. La Rosa (eds.) *I Diritti dell'uomo nel Mediterraneo*, Atti della Conferenza Mediterranea sui diritti dell'uomo, Taormina, 12-15 March 1993, Giappichelli Editore, Torino, n.d., pp. 35-42.

that affect both the northern and southern shores can diverge significantly according to the various priorities and interests, and that therefore, rather than constituting a basis for agreement on which legal convergence of principles could be built, it in fact results in disputes and misunderstandings.

A viewpoint which comprises the real and effective application of human rights, which by their very nature cannot allow exclusions or restrictions of any kind can only be promoted by the inclusion of all the important areas concerning human rights which have been previously recalled as examples, and which are shared, or at least could be shared, by all countries. The different degrees or yardsticks of their application actually derive, ultimately, not only from social and political factors, but also from practices and standards determined by state or economic interests that are hardly disguised by both sides, on the pretext of specific views and different legal systems. If we keep avoiding critical examination of these specific elements on the pretext that they have in fact been denied by statements of principle upholding the indivisibility and the uniformity of human rights, or if we keep ignoring them because they dent their universality, we shall actually be embracing them and consolidating them.

In order to overcome the various misunderstandings that keep circulating around the two shores of the Mediterranean when problems concerning the observance of human rights and fundamental freedoms arise, it is necessary to adopt an all-embracing approach. This approach will make it possible to tackle topics on which it is easier and more realistic to have a common vision and common principles (although these must never be taken for granted), as well as more sensitive areas on which divergent views abound. In a gradually evolving perspective it should be possible to ultimately overcome the knottiest problems that are still unsolved today, even if their extent is already different to what it used to be in the past. This is particularly true of the legal equality between the sexes; women's rights and the rights of the child, religious freedom (but only so far as changing religion is concerned). These topics must not be left out, passed over or side-lined. On the contrary they deserve to be discussed openly and frankly and a conceptional analysis of them should take place in order to eliminate the many misunderstandings, mystifications and distorted habits that have tended to multiply.

4. The actual prospects of establishing a Conference on Security and Cooperation in the Mediterranean.

The process for concerted action and cooperation in various sectors and on various levels, including institutional ones, between the Mediterranean coastal states has undergone a slow but undeniable evolution. However it is still difficult to achieve its concrete implementation.[13] While in the recent past this process was seen from the viewpoint of a "moderate Arab partnership", which could stem the flow of migrants towards the Northern shores and resist radical Islamism (these objectives were presented as being of common interest), nowadays attention is focused on a kind of partnership (which is often as "global"), in the sense that due consideration is taken of the problems and priorities of both the northern and southern shores, without sacrificing the individual's rights to live in an area that guarantees freedom and the observance of fundamental human rights. Attention has finally been given to this last topic within relationships for cooperation, both in the economic and financial sectors as well as those of security and peace. However one must add that an appropriate institutional and political framework which could unite all the countries bordering the Mediterranean in dealing with issues and problems which concern them does not exist. The absence of an appropriate headquarters where an effective political will for concerted action, which would include human rights, could be nurtured and the incoherent fragmentation of the general or regional strategies and initiatives undertaken by the principal international organizations in this direction, seem to be the main obstacle to Mediterranean integration based on the protection and observance of human rights and fundamental freedoms.

It is enough to reflect that East-West détente, the progressive

---

[13] The idea of the Mediterranean as a "lake of peace" is both ancient and modern since it is a classical idealistic image which has been revived in the form of a new international and interregional political project which is often attempted in different ways. Cfr. K. Josephides, "Géopolitique d'une coexistance, l'avenir des relations Europe-Maghreb", in M.L. Dumas (ed.), *La Méditerranée Occidentale: sécurité et coopération*, Paris, Fondation pour les études de défense nationale, 1992.

crumbling of the Iron Curtain and the democratization of the East European countries, have been greatly simplified, and in a certain sense guided, by the existence of a pre-planned framework for concerted political action. The setting-up of the Conference for Security and Cooperation in Europe (CSCE), nowadays the OSCE, in 1975 turned out to be particularly useful in introducing the theme of human dimension, first by means of the prudentless ambitious title on "humanitarian questions" and then, from 1989 onwards, of "human rights", and progressively making it an important hobbyhorse in the process of rapprochement with the Soviet Union and its satellite states.[14]

With regards to the Mediterranean, although proposals, initiatives and strategies are not lacking, particularly from the European Union, these tend to develop unilaterally and only in specific cases are they complementary, while more often than not they overlap in mutual exclusion or create useless duplication. On the one hand there are the strategies of the Council of Europe, the European Union and, in part, the Organization for Security and Cooperation in Europe (OSCE),[15] as well as those of NATO and

---

[14] For a critical analysis of the similarities and differences between the two processes, the oriental and the Mediterranean ones, see Nadji Safir, "Se l'Europa non rispetta i Musulmani ...", *Limes. Mediterraneo, l'Arabia vicina*, n. 2, aprile-giugno 1994, pp. 69-80.

[15] In the Final Act of Helsinki, 1st August 1975, the 35 participating states, though recognizing the importance of the Mediterranean region in the context of world security and peace, did not move further than the level of good intentions: to promote good relations among neighbours; increase mutual trust; encourage cooperation in the economic, scientific, technical and environment sectors; maintain and increase contacts and dialogue started off by the CSCE with non-participating Mediterranean states. See Giovanni Barberini, *Dalla CSCE alla OSCE. Testi e documenti*, Edizioni Scientifiche Italiane, Napoli, 1995, pp. 62-64. Over and above the initial but steady opposition of the United States (which, although it is outside the European framework, was involved in the CSCE process together with Canada, from its inception and with full rights), the European states themselves, by giving priority to the building of the "common European House", formed by one history and by shared cultures which, although different, can become homogeneous at least with regard to values and traditions, have remained till now reluctant to widen the OSCE to include also the Mediterranean countries. The six Mediterranean countries present at the Conference since its inception (Algeria, Egypt, Israel, Morocco, Siria and Tunisia)

WEO on the military and strategic plane, on the other hand there are Organizations like the Maghreb Arab Union, the Organization of African Unity,[16] the OCI and the LSA. Up to the present concerted action is not only lacking between the two parties, but neither is there any, (apart from a few rare exceptions), within each of the said groups.

For these reasons there is an urgent need to identify an appropriate forum where the question of the affirmation and effective application of human rights can become an integral part of the reciprocal commitments entered into by the Mediterranean states, as well as becoming, at a later stage, an object of mutual control. Besides being included in the agenda of a political forum where all the Mediterranean states would be represented, human rights could in this way finally benefit from institutionalized control mechanisms which no state could disregard by putting forward various arguments, the most typical of which are being those highlighting Western desire for hegemony in the guise of a new form of colonialism based on the exportation and imposition of alien legal standards.[17]

Besides, the institution of procedures of control, of commitments reciprocally undertaken would be the first step to achieve legal

---

were called "non-participants", precisely so that they could be excluded from any form of commitment or declaration of will among the parties, even regarding matters which concern exclusively the Mediterranean. The observer status, rather *sui generis* considering the possibility of presenting written as well as oral contributions, that they still keep within the OSCE process was at first intended to be a transitory phase which would later have led, in conformity with the developments of the OSCE system, to their full and effective participation. But it is inevitable to point out that this has remained a mere intention, albeit with some partial and restricted exceptions.

[16] The OAU was instituted by the Conference that in Addis Abeba (Ethiopia) in May 1963 gathered the Heads of State and of Government of the 32 African countries which were then independent, and presently includes all the states of the continent with the exception of Morocco, which left the Organization in 1984 following the admission of the Arab Democratic Republic of Saharoui. Its permanent headquarters is in Addis Abeba.

[17] See, particularly, P. Ungari, "Una conferenza per la Sicurezza e la Cooperazione nel Mediterraneo: la concretezza di una suggestione", in *Atti del convegno "Monitor Europa-Africa 1992. Il richiamo di Cartagine*, Associazione idea-cultura, 1993, pp. 105-108.

protection of human rights, bridging the gap which today seems to be, in the light of the European experience, one of the most serious failings in the system of the protection of human rights set up by the mechanisms of the southern shore which generally simply establish weak commissions mainly entrusted with tasks of promotion and popularization. In truth, the recent adoption by the Conference of Heads of State and Government of the OAU on the 9th June 1998 of an additional Protocol to the *African Convention for the Rights of Man and Peoples* which sets up a Court to complement the African Commission for human rights in its task of protection seems to augur well. However, such an organ, when it starts functioning[18], will simply stress the fragmentation of the mechanisms and the forms of protection that concern the Mediterranean, since the African Court will have continental jurisdiction, and will then only include the African Mediterranean countries.

[18] The Protocol (the Document has not been published yet, but we have been kindly provided with a copy by the Italian Embassy in Ethiopia) for its entry into force sets out the achievement of fifteen ratifications. Out of 30 signatories, up to now only Senegal has deposited, on the 30th October 1998, its ratification instruments.