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Human Rights Between Universalism and Cultural Relativism

Summary. There is a serious discrepancy between formal and actual observance of International Law of human rights, and this is often masked as “regional approach”. Several governments claim to apply universal standards by their own particular methods, pretending this is consistent and required by any regional, local or religious tradition; but no tradition should be used as a justification to authoritarianism and abuse. Meanwhile, large scale migrations urgently need from the host states to strengthen their capacity to ensure equal rights for each individual, independently from his or her native country or ethnic, religious, or other most familiar community. Acceptance of sectarianism would imply different levels of human rights protection within the same state – which, in essence, means the denial of rights. Strengthening international law by progressively reducing the areas of misapplication under “regional approach” is key to avoiding this phenomenon.

Key words: universalism, relativism, human rights, regionalism, cultural values, migrations, horizontal effect

Introduction – From Force to Law: The Tragic Origins of Modern Human Rights

One hundred years ago, the outbreak of World War I marked the beginning of a long period of humanitarian catastrophe, which led to redefining the entire system of international relations. It was not just through a cold-minded elaboration of ideas and theories by scholars and philanthropists that the United Nations, the Universal Declaration of Human Rights, and all the following conventions and

other documents, aiming to avoid further massive crimes against humanity and severe violations of human rights were developed, signed and ratified. All of them were built on the material and moral ruins left by the world conflict, and on the tragically painful memory of tens of millions of victims.

For thousands of years, the “international law” had been nothing more than a simple series of agreements between independent units, being that of empires, kingdoms, tribes, or city-states like in the ancient Greece; but its fundamental principle was mere force. This was clearly stated by Thucydides in the fifth century BCE: „where force can be used, law is not needed” and „the weaker must give way to the stronger”¹. He also made a sounding example of this concept by narrating the fate of the inhabitants of Melos: “the Melians surrendered at discretion to the Athenians, who put to death all the grown men whom they took, and sold the women and children for slaves, and subsequently sent out five hundred colonists and inhabited the place themselves”². The same would be applied – and often on a much larger scale – by warriors in every part of the world over the centuries that followed.

However, while Thucydides said, “of men we know, that by a necessary law of their nature they rule wherever they can” and “we found it existing before us, and shall leave it to exist for ever after us”, Romans had already tried and even elaborated on some of the limits of this custom. Cicero’s *De Officiis* included exhortations to moderation in war, as well as a clear warning to act with justice even to the slaves: “Meminerimus autem etiam adversus infimos iustitiam esse servandam”³.

Both Alberico Gentili, who first published his *De Jure Belli (On the Law of War)* in 1589, and Hugo Grotius, who published *De Jure Belli ac Pacis (On the Law of War and Peace)* in 1625, largely quoted Thucydides as a reporter of what was, and Cicero as a teacher of what should be. Regrettably, this dichotomy has not yet been overcome. Force is still a key element in regulating international controversies or even conflicts within a state; but, at least, nearly no one would dare to openly refute the idea that customary and conventional international law must be a universally binding general framework, and that failing to respect it should result in consequences.

1. Formal vs. Actual Observance of International Law: The “Regional Approach”

Certainly, showing a formal observance of the law is very different from actually complying with it. If this is true for what concerns the states in terms of relations

¹ Thucydides, *The History of the Peloponnesian War*, trans. R. Crawley, www.gutenberg.org/files/7142/7142-h/7142-h.htm [30.03.2014].

² Ibidem, Chapter XVII – “Sixteenth Year of the War”.

³ “Let’s remember that justice must be observed even to the lowest people”. Cicero, *De Officiis [On Obligations]*, Book I, paragraph 41, The Macmillan Co., New York 2014.

between each other (“in war and in peace”, as Grotius would say), this is even more true with regard to the relations between the powers of a state and the individuals that fall under its jurisdiction. The point of contact between the two issues is precisely the new dimension of international law developed after World War II, which has its fulcrum in the International Bill of Rights: peace and security can be guaranteed when not only the states, but also the individuals, as rights-holders, become relevant for international law. Under this concept, states are duty-bearers, and, if they don’t fulfill their obligations towards their own citizens, in serious cases other states and the competent institutions of the international community have the right and the duty to assist or intervene.

Moreover, a state that does not respect the human rights of its own population is not trustworthy, and a government that does not abide to the international law is to be treated like a pariah by the other members of the international community. Therefore, each government has just two alternatives: either actually implement the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Social, Economic and Cultural Rights and all the other conventions it has signed and ratified (or that it is otherwise required to comply with under customary international law), or claim to apply universal standards by its own particular method, pretending this is consistent and required by any regional, local or religious tradition.

Far from being an innocent principle, the second way is the single most dangerous attack to the concept of universal human rights and to modern international law as a whole. Theorists of this specific wave of cultural relativism point out that the Universal Declaration reflects a liberal-democratic point of view, mainly based on part of the Northern American and Western European experience. According to them, the main values and rights of human beings are neither interdependent nor universal, but are the result of different cultures in different societies – therefore not being the same for all. This is in contrast with the text itself of the Universal Declaration (which, according to the solemn Declaration of the UN International Conference on Human Rights convened in Tehran in 1968, “states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community”⁴).

Based on this approach, some people arrive to define the Declaration as a “Western imperialist document”. Besides the fact that in the so called “West” the most diverse ideologies and regimes have developed, we can rather consider that, generally speaking, a certain stream of European and Northern American history gave a great role to the individual dignity, while several Asiatic or African societies

⁴ *Proclamation of Teheran*, in: *Final Act of the International Conference on Human Rights*, United Nations, New York 1968, untreaty.un.org/cod/avl/pdf/ha/fatchr/Final_Act_of_TehranConf.pdf [20.04.2014].

gave usually more importance to the collectivity. This is particularly true, for instance, as for the Chinese tradition. However, exactly the example of China shows that the same specific traditions can evolve in different ways in different states and, even in the same country, in different periods. The Taiwanese experience remarkably diverges from the mainland; and in Taiwan itself the very same people, with the same average traditional and cultural background, faced a long period of authoritarian regime before entering a new age of political and social transformation, towards a fully participated democracy. We can recall also that the same Korean people have been living under two very different social and political systems for more than 60 years, notwithstanding their identical ancient national culture.

2. The Diverse Roots of the International Bill of Rights

It is also worth mentioning that the Universal Declaration was not just drafted and voted by “Western” states. Its editorial board, established by the UN Commission for Human Rights and operating in 1947 and in 1948, was chaired by Eleanor Roosevelt and the main drafters were the Canadian Law professor John Peter Humphrey, the French Jewish jurist René Samuel Cassin, the Lebanese philosopher Charles Habib Malik – an orthodox Christian – and the Chinese philosopher Peng Chun Chang – a strong supporter of the universal value of Confucianism and an expert on Islam. The board included also the Chilean social democratic judge Hernán Santa Cruz, the British trade unionist Charles Dukes, the Soviet ambassador Alexander Efremovich Bogomolov, the Australian diplomatic and former military officer William Roy Hodgson, and among those who contributed to its work was the representative of India Hansa Mehta – a Hindu woman who had been a nonviolent militant for the independence of her country, and particularly active for the rights of women. The diverse roots of the Declaration were confirmed during its final review: this was made by representatives of all 58 states then members of the United Nations, including some with a predominantly Buddhist or Muslim population. Finally, when the UN General Assembly, meeting in Paris, approved it on December 10, 1948, there were 48 votes in favor, 8 abstentions and no vote against⁵.

⁵ Honduras and Yemen were absent. The Soviet Union, Byelorussia and Ukraine (which were founding members of the UN, notwithstanding their being part of the Soviet Union), Czechoslovakia, Poland, Yugoslavia, Saudi Arabia and South Africa abstained. According to Eleanor Roosevelt, the Soviet Union did not like in particular Article 13, stating the right of each individual to leave his or her country; Saudi Arabia had objections on religious freedom and family law (while all the other States with Islamic tradition voted in favor); South Africa was drafting its apartheid legislation (which would be declared a crime against humanity in 1973 by the International Convention on the Suppression and Punishment of the Crime of Apartheid). See M.A. Glendon, *A World Made New: Eleanor Roosevelt and the Universal Declaration of Human Rights*, Random House, New York, NY 2001.

The Universal Declaration included also several points that were the result of a non-liberal, non-western approach – such as the mention of social and economic rights, although not prevailing. This giant effort to put all human rights under the same, universal system of protection continued in the years following the adoption of the Declaration, and led to the specifications, with more formal juridical value, of the two Covenants of 1996, intended to have the same importance: The International Covenant on Economic, Social and Cultural Rights is a part of the International Bill of Rights as much as the Universal Declaration and the International Covenant on Civil and Political Rights.

In 1993, the Vienna World Conference on Human Rights, which I had the privilege to attend, clearly stated that human rights are indivisible and underlined the duties by the states, whatever may be their political, economic or cultural system, to promote and protect all human rights and fundamental freedoms. Article 4 of the UNESCO Universal Declaration on Cultural Diversity, adopted in November 2001, states: “No one may invoke cultural diversity to infringe upon human rights guaranteed by international law, nor to limit their scope”. Furthermore, according to Article 6, “Cultural rights are an integral part of human rights, which are universal, indivisible and interdependent [...] and all persons should be able to participate in the cultural life of their choice and conduct their own cultural practices, subject to respect for human rights and fundamental freedoms”⁶.

3. Who Actually Wants Relativism?

Having regard to the above-mentioned process that led to the International Bill of Rights, which consistently intended to assign the same precise obligations to all the states, confirmed in several relevant acts of the international community, a feigned contrast between the so called “Western” countries (actually including also some very Eastern ones, like Japan, Taiwan, or South Korea) determined to stress the civil and political rights, and the developing countries concerned of economic and social rights, should be considered as a mere political stand. A simple list of all such statements made in the last 25 years – after the fall of the Berlin Wall – would show that the idea of a cultural relativism reducing the universal validity of human rights come from authoritarian regimes that have no intention of improving neither the social, nor the economic conditions of their fellow citizens – or subjects.

Michael Ignatieff has explained this dynamic in his Princeton lectures in 2000, later collected in *Human Rights as Politics and Idolatry*:

⁶ portal.unesco.org/en/ev.php-URL_ID=13179&URL_DO=DO_TOPIC&URL_SECTION=201.html [31.04.2014].

The conflict over the universality of human rights norms is a political struggle. It pits traditional, religious, and authoritarian sources of power against human rights advocates, many of them indigenous to the culture itself, who challenge these sources of power in the name of those who find themselves excluded and oppressed. Those who seek human rights protection are not traitors to their culture, and they do not necessarily approve of other Western values. What they seek is protection of their rights as individuals within their own culture. Opposition to their demands invariably takes the form of a defense of the culture as a whole against intrusive forms of Western cultural imperialism, when in reality this relativist case is actually a defense of local political or patriarchal power. Human rights intervention is warranted not because traditional, patriarchal, or religious authority is primitive, backward, or uncivilized by *our* standards, but because it oppresses specific individuals who themselves seek protection against these abuses. The warrant for intervention derives from *their* demands, not from ours⁷.

At the 1993 UN Vienna Conference, among the states that tried to define many human rights as essentially Western were the People's Republic of China, Cuba, Indonesia, Iran, Malaysia, Pakistan, Singapore, Syria, Vietnam and Yemen. They had no common position about free market or communist economy, nor about religion; but they simply shared an authoritarian concept of the state, presented as beneficial for their peoples. "From Singapore's view, it was legitimate to note that certain Asian countries were so crowded as to call into question the wisdom of pursuing a highly individualistic human rights orientation that might jeopardize the welfare of the community as a whole"⁸.

Eventually, consensus was reached on universality; but the idea of "different values", which would hamper the effective application of human rights, has later returned to surface many times, and also has been used by governments of states, that during the Vienna Conference had not yet decided to make it their own.

In this frame, a particular debate concerns the so called "Asian values", in which Confucianism has a relevant influence – but this should not be a reason for violations of individual rights:

it advocates ethical properties to private and public relationships which appear to suggest an acceptance of hierarchy and the need for social harmony, respect and reverence for family and benevolence in government. In political terms this might appear to consolidate the state's authority in the interests of the "common good" and create a submissive population which accepts hierarchy and seniority. The extent to which East Asians are consciously influenced by Confucianism in this way is most questio-

⁷ M. Ignatieff, *The Tanner Lectures on Human Values*, delivered at Princeton University on 4–7 April 2000, tannerlectures.utah.edu/_documents/a-to-z/i/Ignatieff_01.pdf, pp. 336-337 [30.04.2014]. See also idem, *Human Rights as Politics and Idolatry*, Princeton University Press, Princeton 2001.

⁸ D.P. Forsythe, *Human Rights in International Relations*, Cambridge University Press, Cambridge 2012, p. 59.

nable. Skeptics regard it as a part of a “top-down” promotion of an East Asian cultural renewal to resist Western criticisms of authoritarianism. Some have argued that it is an “invention of a tradition”⁹.

Amartya Sen put it even more clearly, also extending his observations to other regions and highlighting the fact that we have to recognize the diversity within a same “culture” – which is at the basis of individual human rights and fundamental freedom:

The recognition of diversity within different cultures is extremely important in the contemporary world, since we are constantly bombarded by oversimple generalizations about “Western civilization”, “Asian values,” “African cultures,” and so on. These unfounded readings of history and civilization are not only intellectually shallow, they also add to the divisiveness of the world in which we live.

Authoritarian readings of Asian values that are increasingly being championed in some quarters do not survive scrutiny. The thesis of a grand dichotomy between Asian values and European values adds little to our comprehension, and much to the confusion about the normative basis of freedom and democracy¹⁰.

He also emphasizes the importance of freedom in another of the main Asian philosophical – and religious – traditions, while reminding that Confucianism should not be used as a justification to authoritarianism:

In Buddhist tradition, great importance is attached to freedom, and the part of the earlier Indian theorizing to which Buddhist thoughts relate has much room for volition and free choice. Nobility of conduct has to be achieved in freedom [...]. The presence of these elements in Buddhist thought does not obliterate the importance for Asia of ordered discipline emphasized by Confucianism, but it would be a mistake to take Confucianism to be the only tradition in Asia – indeed even in China. [...] Indeed, the reading of Confucianism that is now standard among authoritarian champions of Asian values does less than justice to the variety within Confucius’s own teachings [...]. Confucius did not recommend blind allegiance to the state¹¹.

A more difficult issue to deal with is the so called “Islamic approach” to human rights. While, as we noticed, the International Bill of Rights has been drafted and approved by states whose population is predominantly Muslim, and even by states that define themselves as Islamic (thus rejecting the principle of separation of state

⁹ T. Inoguchi, E. Newman, *Introduction: “Asian Values” and Democracy in Asia*, proceedings of a conference held on 28 March 1997 at Hamamatsu, Shizuoka, Japan (Part of the First Shizuoka Asia-Pacific Forum: The Future of the Asia-Pacific Region), archive.unu.edu/unupress/asian-values.html [20.04.2014].

¹⁰ A. Sen, *Human Rights and Asian Values*, Carnegie Council on Ethics and International Affairs, New York 1997, p. 31, rare.org/documents/sen/Sen-%20Human%20Rights%20and%20Asian%20Values.pdf [20.04.2014].

¹¹ *Ibidem*, p. 17.

from religion), many regimes inspired by Islamic formulas explicitly affirm that they consider human rights to be limited by their own interpretation of Islam.

The Cairo Declaration on Human Rights in Islam¹², proclaimed on August 5, 1990 by the Nineteenth Islamic Conference of Foreign Ministers, includes several such limitations. While, according to Art. 1, “All human beings form one family whose members are united by their subordination to Allah and descent from Adam” and “The true religion is the guarantee for enhancing such dignity along the path to human integrity”, other articles leave the governments with the possibility of voiding the very rights they refer to:

Art. 2 – (a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, and it is prohibited to take away life except for a Shari’ah prescribed reason.

Art. 6 – (a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage, (b) The husband is responsible for the maintenance and welfare of the family.

Art. 7 – (b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari’ah, (c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the Shari’ah.

Art. 9 – (a) [...] The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of the society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind, (b) Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man’s faith in Allah and promote man’s respect to and defence of both rights and obligations.

Art. 10 – Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

Art. 22 – (a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari’ah. 1. Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari’ah, (c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith.

¹² *The Cairo Declaration on Human Rights in Islam*, www.oic-oci.org/english/article/human.htm [30.04.2014].

Such formulations leave the states free to “take away life” if they deem it prescribed by Shari’ah (art. 2) and to enact many forms of discrimination: against women (second paragraph of art. 6), non-Muslims or anybody who would dare to speak or act against the official “values” – not to mention blasphemy or apostasy. Should anyone still have doubts about the fact that all human rights, according to the Cairo Declaration, may not be applied, the last two articles further clarify:

Art. 24 – All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari’ah.

Art 25 – The Islamic Shari’ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.

One might perhaps try to be optimistic, imagining anyway there is progress towards a commonly shared understanding and protection of human rights. However, in reality it is quite different. In the last decade, we have witnessed positive developments in this direction only in a few countries, while in many more the governments have strengthened their relativistic approach or have returned to assert their own pretended national, cultural or religious values that had not been exhumed for a long period of time.

This is the case, for instance, of the Russian Federation, where freedoms of association and expression have been severely limited, while the ideology of defending “traditional values” is being translated into laws and administrative measures, which according to many of the observers and activists constitute undue restrictions of human rights.

Although purportedly aimed to “protect children from information harmful to their health and development”, the amendment to the Russian federal law under the same title approved by the State Duma on June 15, 2013 (with one abstention only) and signed by President Putin on June 30, that year is indeed intended to persecute any information or demonstration related to homosexual, bisexual or transgender relations, rights and culture. This is in the general frame of a campaign against the so-called “non-traditional sexual relationships”. To better evaluate the gravity of such a trend, we shall consider that international law (art. 26 of ICCPR, as well as several specific conventions) prescribes not only the “negative” obligation by the states not to discriminate through their own legislations and bodies, but even their “positive” obligation to actively fight against any discrimination that may take place in the society among private actors¹³.

¹³ While this law by the Russian Federation might in the future be found in contrast with the European Convention of Human Rights by the European Court, the Parliament of Kyrgyzstan, which is not a state party of the Convention, is going to discuss a draft bill that would imitate and worsen it.

At the global level, in more than 70 countries people can still be imprisoned because of their sexual orientation, and in Iran, Mauritania, Saudi Arabia, Sudan, Yemen and in some regions in Nigeria and Somalia homosexuality is punished by death. Nor can we say that, once sexual orientation has been decriminalized, freedom to choose what to do with one's sexual life among consenting adults is guaranteed forever: India returned to criminalize it in 2013, when its Supreme Court overturned a 2009 sentence by the High Court of Delhi that had declared unconstitutional an article of the 1861 colonialist Indian Penal Code that punished the acts "against the order of nature".

4. Non-State Actors and Large-Scale Migrations: New Challenges to Universalism

One of the emerging issues in human rights is the increasing role of non-State actors as perpetrators of human rights violations. International law in this field is normally intended to have "vertical effects" from the state to people, in order to protect them against abuse by public authorities. However, what can the international community do when a state is not able or is not willing to force, for instance, an ethnic or religious community – let alone a terrorist group – within its territory or jurisdiction, to respect individual human rights? While academics debate how it's possible, if at all, to apply international standards and conventions to protect private citizens against one another ("horizontal effect") as a matter of fact the intra-communitarian abuse is an extremely serious threat to human rights.

The European Court of Human Rights (ECtHR) highlighted in several sentences that "States must adopt all legislative and administrative measures in order to protect individuals under their jurisdiction against acts which violate human rights committed by individuals or by other entities not acting as State bodies"¹⁴.

In my opinion, international instruments and institutions of jurisdiction (the ECtHR in its area, the International Criminal Court, and the *ad hoc* criminal tribunals) and of "quasi-jurisdiction" (such as the *United Nations Human Rights Committee* or, in its region, the African Commission on Human and Peoples' Rights) should pay more and more attention to this specific type of human rights violations. States may need international support if they act against such abuse with insufficient means, or should get international censure and sanctions if they don't act at all.

There are several regions in this very moment where ideologically motivated armed non-state groups perpetrate massive, systematic violations. This is the case,

¹⁴ A. Cassese, *I diritti umani oggi* [*Human Rights Nowadays*], Laterza, Roma-Bari 2005, p. 126.

for instance, in Iraq, in Syria, in various Central African countries (notwithstanding violations carried out by government forces too) and even in Eastern Ukraine, albeit Europe is theoretically over-protected by international law mechanisms – such as those provided by the OSCE and by the Council of Europe. And then, there are a number of regions where violence, deprivation of individual liberty, contempt and suppression of human dignity are a widespread social evil: in tribal areas of India, Pakistan, the Middle East and Africa, local communities compete with the cruelest regimes for the dubious primacy of these crimes, which in some cases amount to reduction into slavery and extra judiciary executions. Women and minors are most often the victims.

If this has always been happening in particular zones, the relatively new phenomenon is that, through large-scale migrations, serious intra-communitarian abuse is spreading in other countries, and mostly in Europe. This implies an urgent need for the legal and judiciary systems of the host States to strengthen their capacity to ensure equal rights for each individual, independently from his or her native country or ethnic, religious, or familiar community. Never should a state downgrade the level of rights acquired in view of a misunderstood sense of respect for “other” cultures or habits, if these are in contrast with the historically conquered and internationally stated rights and freedoms. To mention just a few examples: female genital mutilations are not to be allowed in any country, and it would not be acceptable to tolerate them within any community; submission of women is in open infringement of international standards, notwithstanding the “regional” approaches implemented by some authoritarian regimes under any pretext; and the same applies to unequal family and inheritance rights, to child marriage, to forcing minors to beg, as well as performing a hate speech or violently impeding others’ legitimate freedom of expression.

In recent years, the murder of film director Theo Van Gogh in 2004 in the Netherlands after his criticism of the treatment of women in Islam, the riots and the international crisis after the publication of cartoons of Prophet Muhammad in 2005 in Denmark, frequent unrest in immigrant districts in France, in Sweden and in other Western European countries, up to the wave of violent anti-Semitic demonstrations (partly related to the conflict in Gaza) in summer 2014 in France, Germany, Great Britain, Belgium and elsewhere, have been showing that within some immigrant communities there is not full consensus about civil rights stated in international law and in the legislations of the host countries¹⁵.

Social conflict and litigations arise in several European countries, among else, on the use of integral veil in public places, on informal Shari’ah-based arbitra-

¹⁵ The issue had been analyzed by Dutch politician and sociologist Pim Fortuyn, who argued that a sustainable multiculturalism should not jeopardize the level of freedom traditionally existing in the Netherlands – and was assassinated in 2002 by a fellow Dutchman who alleged that his criticism was dangerous for the society.

tion about family and inheritance matters, on ritual slaughter without otherwise prescribed rules for hygiene and against animal suffering, as well as for the ban for women to teach male pupils in schools, the requests of gender segregations in sport or educational facilities, and the requests to censor or cancel shows or other public expressions.

What actually I believe should carefully be avoided is the acceptance of sectarianism, which would imply different levels of human rights protection within a same state according to different ethnic, religious or other communities. It would be a particularly worrying form of acquiescence to the theories of cultural relativism of human rights – which, in essence, means the denial of rights. On the contrary, strengthening international law by progressively reducing the areas of misapplication under “regional approaches” is, in my opinion, key to avoiding this phenomenon, along with updating the host countries’ internal legislative, administrative, educational and social tools.

Conclusions: Human Rights vs a “Community of Non-Democracies”

In the year 2000, when the “Community of Democracies” was founded, as “a global intergovernmental coalition of States [...] to bring together governments, civil society and the private sector in the pursuit of supporting democracy rules and strengthening democratic norms and institutions around the world”, democracy was “growing recognition as the only legitimate form of government, as more and more countries were adopting its norms and practices”¹⁶. High level delegations from 106 countries, convened by the initiative of former U.S. Secretary of State Madeleine Albright and then Polish Minister of Foreign Affairs, professor Bronislaw Geremek, signed the Warsaw Declaration “Toward a Community of Democracies”, and pledged to support democratic values through a variety of initiatives. Things, however, went quite differently.

The aftermath of September 11, 2001 showed that many would-be supporters of democratic freedoms do not intend to actually preserve them, and are rather ready to set them apart when it may look convenient. The October 2001 U.S. Patriot Act, with its limitations to civil liberties in the frame of a strong “war to terrorism”, was instrumentally quoted by authoritarian regimes as a pretext to introduce further severe restrictions in their own countries, officially aimed to fight “terrorism, separatism, and extremism” while *de facto* impeding internal opposition.

¹⁶ *Toward a Community of Democracies*, www.community-democracies.org/The-Community-of-Democracies/Our-Community [18.04.2014].

This is particularly true as for the Shanghai Cooperation Organization (SCO), which includes China, the Russian Federation, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan, founded in June that year and subsequently developed, in my understanding, more to jointly avoid any possible regime change than to ensure a better cooperation. This “Eurasian way”, based also on the remarkable economic development of China and on the vertical growth of the prices of oil and natural gas which benefited the power system in Russia in the decade 2005-2014, has since been increasingly assertive of the idea of “moving toward the establishment of a new, democratic, just and rational political and economic international order”¹⁷ – where the key words are “new” and “rational”, i.e. compatible with the ambitions and ideologies of their leaders.

Meanwhile, the “Community of Democracies”, which was supposed to support an active democratic caucus in the relevant U.N. bodies, has probably lost its momentum. I attended two of its biennial Ministerial Conferences (Bamako 2007, Vilnius 2011), opened to registered NGOs, and I got the impression that they were little more than honest meetings of a club perhaps too large, and probably too weak.

Such impotence is also shown quite clearly at the UN Human Rights Council, which since 2006 has replaced the UN Human Rights Commission and convene for at least three sessions a year in Geneva. When electing the 47 states members of the Council according to the so called “Regional Groups” (13 from the African Group, 13 from the Asian Group, 6 from the Eastern European Group, 8 from the Latin American and Caribbean Group, and 7 from the Western European and Others Group), the UN General Assembly “shall take into account the candidates’ contribution to the promotion and protection of human rights and their voluntary pledges and commitments made thereto”. Additionally, “members elected to the Council shall uphold the highest standards in the promotion and protection of human rights, shall fully cooperate with the Council and be reviewed under the universal periodic review mechanism during their term of membership”¹⁸. However, only few abuser states (such as Iran in 2014) renounced to run or were not elected, while several others who are reportedly abusers had no problem in getting their places in the Council. Its current composition include, among else, China, Cuba, Kazakhstan, the Russian Federation, Saudi Arabia, Venezuela and Vietnam, which definitely have not encouraging human rights records.

While attending sessions or chairing parallel events at the Council in Geneva, on behalf of various NGOs, I often witnessed the intimidation of NGOs speakers by official representatives of some of the above-mentioned states. On a positive note, the Secretariat of the institution is genuinely committed to defend the estab-

¹⁷ www.sectsc.org/EN123/brief.asp [18.04.2014].

¹⁸ UNGA Resolution 60/251, www.un.org/ga/search/view_doc.asp?symbol=A/RES/60/251&Lang=E [18.04.2014].

lished right of accredited civil society representatives to take the floor, provided they respect the applicable written rules.

An undeclared coalition, if not “community”, of non-democratic states has been apparently at work in several occasions in the last few years. One recent case has been the vote at the UNGA on March 27, 2014 on the Resolution 68/262 titled “Territorial integrity of Ukraine”, calling on States, international organizations and specialized agencies “not to recognize any change in the status of Crimea or the Black Sea port city of Sevastopol, and to refrain from actions or dealings that might be interpreted as such”, as well as “to desist and refrain from actions aimed at disrupting Ukraine’s national unity and territorial integrity, including by modifying its borders through the threat or use of force”. The Resolution was approved by 100 votes in favour to 11 against, with 58 abstentions¹⁹. Quite significantly, among those 10 states that flanked the Russian Federation in voting against, were Belarus, North Korea, Sudan, Syria, Venezuela and Zimbabwe.

Also States that for a while have been consistently committed to democracy and human rights may change their attitude, as their democratically elected governments adopt different policies. According to many observers, for instance, Turkey under the premiership of Recep Tayyip Erdoğan has been sliding toward authoritarianism, while – again – resorting to a “relativistic” approach to human rights. And the last follower of such trend is, by his own words, the Prime Minister of a very Central European country, Hungary. Addressing a meeting of fellow Hungarian supporters of his party in the Romanian resort town of Baile Tusnad (Tusnádfürdő) in July 2014, Viktor Orban – who had been previously accused of restricting civil society organizations and independent media – plainly declared, “the era of liberal democracies is over”. He added that “copying Western models is a kind of provincialism”, that 2014 national elections had “restored moral order”, and that he would “try to find a method of organizing society which differs from dogmatic ideologies accepted in the Western world”²⁰. One could hardly find a clearer demonstration of how the universal value of human rights – currently under attack even in places we would not have expected – deserves a stronger than ever support.

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¹⁹ www.un.org/News/Press/docs/2014/ga11493.doc.htm [18.04.2014].

²⁰ budapestbeacon.com/politics/viktor-orban-era-liberal-democracies [30.04.2014].

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Prawa człowieka między uniwersalizmem a relatywizmem kulturowym

Streszczenie. Istnieje duża rozbieżność między formalnym a faktycznym przestrzeganiem prawa międzynarodowego w zakresie praw człowieka. Rozbieżność tę często enigmatycznie nazywa się „podejściem regionalnym”. Rządy niektórych krajów utrzymują, że na swój sposób stosują uniwersalne standardy udając, że takie podejście jest zgodne z wyznawaną religią i lokalną tradycją. Jednakże nie powinno się wykorzystywać religii czy tradycji na usprawiedliwienie autorytaryzmu czy nadużyć. Migracje na dużą skalę sprawiają, że coraz pilniejszą staje się kwestia wzmocnienia przez kraje przyjmujące mechanizmów zapewnienia równych praw wszystkim osobom niezależnie od ich pochodzenia, religii czy przynależności etnicznej. Zgoda na wykluczenie oznaczałoby różne poziomy ochrony praw człowieka w obrębie tego samego państwa, co w praktyce jest jednoznaczne z odrzuceniem tych praw. Kluczem do uniknięcia tego zjawiska jest wzmocnienie prawa międzynarodowego poprzez stopniowe eliminowanie obszarów niewłaściwego stosowania praw człowieka określanego często mianem „podejścia regionalnego”.

Słowa kluczowe: uniwersalizm, relatywizm, prawa człowieka, regionalizm, wartości kulturowe, migracje, efekt horyzontalny