



Doc. 12826

13 February 2012

Reaffirming the universal nature of human rights

Information report¹

Committee on Political Affairs and Democracy

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Summary

The report takes stock of the Council of Europe's action in reaffirming the principle of universality of human rights and discusses the current threats to it in our societies, including cultural and religious relativism and lack of effective implementation of human rights.

It also analyses the recent wave of democratic transformations in the Arab world as a major step towards making universal rights a reality.

1. Reference to committee: [Doc. 12312](#), Reference 3701 of 4 October 2010. Information report approved by the committee on 15 November 2011.

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1. Introduction

1. Universality, the idea that human rights apply to all people, in all places, at all times, was the basic principle underlying the 1948 Universal Declaration of Human Rights.

2. Following a motion for a resolution tabled on 23 June 2010, I was appointed rapporteur by the Political Affairs Committee on 15 December 2010.

3. The committee is discussing the issue of the universality of human rights in the midst of a challenging global situation, which can be conducive to the calling into question or the denial of rights, including political, civil, social and cultural rights.

4. In a report that I prepared in March 2011 upon the request of the French Prime Minister, Mr François Fillon, on France's enhanced involvement in the Council of Europe, I already mentioned that the most difficult and sensitive challenges ahead for the Council of Europe concern the question of the universality of human rights, cultural and religious relativism, as well as the rise of sectarianism. In my report, I argued that the Council of Europe, in co-operation with the European Union, should be at the forefront of this debate.

5. Since 2008, on the occasion of the 60th anniversary of the Universal Declaration of Human Rights and the European Convention on Human Rights (ETS No. 5, "the Convention"), the Council of Europe has been active in reaffirming the principle of the universality of human rights, and all its recent activities, conferences, forums and reports dedicated to this issue have inspired this report.

6. In a declaration published on the occasion of the 119th session of the Committee of Ministers held in Madrid on 12 May 2009, the ministers stated that "human rights are universal. They are the inalienable rights of every person" and added that human rights must respond to the challenges of these changing times.²

7. Furthermore, in a declaration of 1 July 2009 on human rights in culturally diverse societies, the Committee of Ministers emphasised that "in order to reconcile respect for different identities with social cohesion and avoid isolation and alienation of certain groups, it is indispensable to regard respect for human rights and fundamental freedoms as a common basis for all: no cultural, religious or other practices or traditions can be invoked to prevent any individual from exercising his or her basic rights or from participating actively in society, nor shall anyone's rights be unduly restricted on account of their religious or cultural practices".³

2. Document CM(2009)50 final.

3. Adopted at the 1062nd meeting of the Ministers' Deputies.

8. In his address to the Council of Europe on 19 October 2010 on the occasion of the 60th anniversary of the European Convention on Human Rights, United Nations Secretary General Ban Ki-moon declared that “our universal compact on human rights needs to be reinforced. I see two ways to strengthen it, to build on it for future generations. First, by seizing every opportunity to re-affirm the universality and indivisibility of human rights. Universality is the beating heart of the body of international human rights law as it has developed over the past six decades. When it comes to human rights, there should be no selectivity. Human rights are not a menu, from which we can pick and choose.”

9. What are the current threats to the universality of human rights in our societies? Should we, as Gérard Fellous suggests in his work entitled “Les droits de l’homme, une universalité menacée” (“Human Rights, universality under threat”), expect to see these rights disappear in the 21st century, if they were to lose their universal nature? By analysing the recent wave of democratic transformations in the Arab world, can we see signs of a major step towards making universal rights a reality?

10. These are amongst the main issues that I intend to discuss in this information report. I am also indebted to the Conference of International Non-Governmental Organisations (INGOs) of the Council of Europe for organising the Forum on the Universality of Human Rights in Oslo on 21 and 22 October 2010. This report is partly inspired by the valuable contributions made by distinguished experts at this Forum.

2. Topicality of the debate

11. Contention regarding the universal nature of human rights is nothing new and we have seen challenges for a long time, especially in recent times, whether they be ideological, political or religious in nature.

12. The world’s centre of gravity has changed. Within the United Nations system, the non-aligned movement of countries currently includes 115 States, including Cuba and China; the group of Muslim States includes 57 countries, the African Union itself represents a total of 53 countries, and the European Union of 27 member States remains in the minority.

13. In some emerging countries, voices are rising up against an intellectual and moral model which they claim is too “westernised”.

14. At a time when intercultural dialogue is high on the agenda of European and national institutions, it is vital to emphasise the common basis of our society. Human rights are part of that basis. The conviction that everyone is equal in terms of their rights and dignity is, for example, the driving force behind efforts to secure equal rights for women and men and to prevent cultural and religious traditions being used as a pretext for not respecting certain rights.

15. Since the adoption of the Universal Declaration of Human Rights, some prevailing threats to the universality of human rights have been well known for more than sixty years, and still persist, while others have come to light more recently and seem likely to develop further if we do not guard against them.

16. At this very moment, the universality of human rights is being threatened by cultural and religious relativism, sectarian movements and extremists, discrimination, rejection of the “other” brought about by populist political parties, consisting of elected members and even members of governments of several European countries. Racist demonstrations, xenophobia, anti-Semitism, Islamophobia, vandalism and the destruction of religious symbols further darkens the picture.

17. The challenges arising from the resurgence of intolerance and discrimination in Europe, which represent a threat to the universality of human rights, have been thoroughly analysed in the report of the Group of Eminent Persons of the Council of Europe entitled “Living together – Combining diversity and freedom in 21st-century Europe”, published in May 2011. The Parliamentary Assembly has also taken position on the question when adopting Recommendation 1975 (2011) “Living together in Europe in 21st-Century Europe: follow-up to the report of the Group of Eminent Persons of the Council of Europe”.

18. I would like to tackle the topic not as a subject for academic speculation, but rather as a working item which has an effect on people’s lives. The debate is not only theoretical but can and must be illustrated in tangible ways. I would just mention some examples, such as the use of headscarves in some European countries, reproductive health, genital mutilation, abortion and euthanasia debates, freedom of expression and freedom of religion, access to water and climate change, new problems of sharing and protecting information raised in our information society. This is all about human rights law and about our difficulty in coping with the universality of human rights.⁴

19. Where are we in terms of human rights implementation worldwide today?

20. Certainly, much progress has been made since 1948, but we are currently experiencing an unprecedented global crisis. Globalisation, far from encouraging universalism, generates fear, excessive assertions of identity, rising fundamentalism and nationalistic movements. This crisis, also rooted in the upheavals of the international financial system, has had serious economic repercussions, which in turn have led to a weakening of the poorest countries and populations throughout the world.

21. Consequently, the universal nature of human rights, that we thought had been achieved, has been called into question. As Professor Emmanuel Decaux, President of the International Permanent Secretariat of the World Forum on Human Rights, put it, speaking at the Nantes Forum last year (28 June-1 July 2010), "in the face of threats of an identity fallback and cultural relativism, how can we deny that only human rights will enable us to live together at a local level and on a global scale?"

22. Demonstrations of this can be seen at events such as those held at the Conference on Human Rights in Bangkok in 1993, where 44 countries demanded to see human rights rewritten for Asian countries, or more recently, the Durban II World Conference against Racism held in Geneva in 2009, where the extreme intervention of the Iranian President alone succeeded in overturning the initial majority vote of the Organisation of the Islamic Conference (OIC). The OIC arguments considered the universality of human rights as a "product of Western civilisation", imposed on the rest of the world by colonialism and post-colonialism and destined to be destroyed or, at the very least, substantially revised.

23. Intolerance, discrimination against homosexuals and approval of torture remain a reality also in Council of Europe member States. Defined gender roles, female circumcisions, honour killings, infanticide and violence against women are realities in some societies, also in our "advanced" democracies.

24. Combining cultural variability or cultural relativism and human rights has been a long-standing dilemma. For human rights to be a right and not a privilege, I believe that universality is essential and should be firmly reaffirmed as a political necessity for both the Council of Europe and the European Union.

3. Council of Europe's action

3.1. Committee of Ministers

25. I have already mentioned in the introduction recent examples of the Committee of Ministers' explicit commitment in reaffirming the universality of human rights, particularly in the context of intercultural dialogue.

26. The Organisation aims to promote citizenship and human rights education in a very broad sense, as it is defined in the Council of Europe Charter on citizenship and human rights education. However, in reality the concepts of "citizenship and human rights education" – as well as those of "democracy" and "human rights" are often interpreted in very different ways by different people, and can be perceived as something that is alien and/or imposed.

27. On 29 September 2008, the Council of Europe signed a Memorandum of Understanding with the Alliance of Civilisations, a United Nations political initiative, which was launched by Spain and Turkey in 2005 and now numbers more than 90 member States. It aims at countering the idea that civilisations are set on an unavoidable collision course and that world peace and stability are threatened by intractable identity-based conflicts.

28. The Memorandum of Understanding recalled the need for intercultural dialogue to be based on the principles of indivisibility and universality of human rights and on observance of the human rights standards of the United Nations and the Council of Europe. It identified priority areas of co-operation in intercultural dialogue for developing joint activities in fields of common interest.

29. The Committee of Ministers actively participates in the activities of the Alliance of Civilisation, including meetings of the Alliance's "Group of Friends", which took place in New York on 24 September 2010.

4. See also Mr Jorge Sampaio, High Representative of the United Nations for the Alliance of Civilisations, speaking at the North-South Centre of the Council of Europe 2008 Forum on 10 November 2008.

30. Recently, the Council of Europe accepted the Alliance of Civilisation's offer to contribute to its regional strategy for the Balkans, adopted in 2009, and for the Mediterranean, adopted in November 2010. The Council of Europe's North-South Centre is playing a central role in this context.

31. Moreover, on 30 November 2009, the Council of Europe and the MBI Al Jaber Foundation signed a co-operation agreement aimed at strengthening Euro-Mediterranean and Euro-Arab regional co-operation and promoting human rights, rule of law, democratic citizenship and intercultural understanding. The Council of Europe received a contribution of 1 million euros over a four-year period (2010-2013). The North-South Centre is one of the major implementing partners and created a Think-Tank in 2010 to that effect.

32. Following the adoption of the Council of Europe White Paper on Intercultural dialogue in 2008, the Council of Europe has expanded co-operation with other organisations active in intercultural dialogue, including Unesco, the Organization for Security and Co-operation in Europe (OSCE), the European Union and the Anna Lindh Euro-Mediterranean Foundation for the Dialogue between Cultures, as well as other regional organisations, such as the League of Arab States and its educational, cultural and scientific organisation, ALECSO, representing a region with many ties to Europe and a distinct cultural tradition.

33. The Council of Europe also promotes intercultural dialogue on the basis of its standards and values when co-operating in the context of specific projects with institutions such as the Islamic Educational, Scientific and Cultural Organisation (ISESCO) and the Research Center for Islamic History, Art and Culture (IRCICA). The regional focus of this co-operation is the interaction between Europe and its neighbouring regions, specifically the southern shores of the Mediterranean, the Middle East and Central Asia.

34. On 31 March 2010, the Committee of Ministers adopted Recommendation CM/Rec(2010)5 on measures to combat discrimination on the grounds of sexual orientation or gender identity. In the preamble, the ministers recalled that human rights are universal and shall apply to all individuals, and stressed therefore their commitment to guarantee the equal dignity of all human beings and the enjoyment of rights and freedoms of all individuals without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status, in accordance with the European Convention on Human Rights and its protocols.

3.2. Parliamentary Assembly

35. The Parliamentary Assembly has recently analysed the question of intercultural dialogue and insisted on the universal nature of human rights in Recommendation 1962 (2011) on the religious dimension of the intercultural dialogue, adopted in April 2011.

36. When it comes to reaffirming the universality of human rights and the fact that these are not a Western construct, more recently, Assembly President Mevlüt Çavuşoğlu expressed a renewed commitment when meeting foreign ministers from the 57-member Organisation of Islamic Cooperation (OIC) on 30 June 2011 in Astana (Kazakhstan). President Çavuşoğlu said that the group of Islamic States and the Council of Europe have much in common and must work together more closely to head off conflict and counter intolerance. He pointed out that "our two organisations share the same cultural, spiritual and historic references – Islam is part of European history and traditions ... we also face the same challenges in the modern world. Therefore, we have to ... find a common response to these challenges, based on shared values and principles".

37. He then suggested the OIC could contribute, along with the European Union and United Nations Alliance of Civilisations, to a possible "platform for dialogue" between the Council of Europe, the main religious faiths and the main humanist organisations. The two organisations could also make joint efforts to fight intolerance, be it Islamophobia, anti-Semitism, racism or xenophobia in general, by, for example, countering stereotypes in schoolbooks, the media and public discourse.

38. He added that "what has clearly emerged from recent speeches and ensuing public national debates on multiculturalism is a sense of confusion, malaise and often contradictory messages. Policy makers and the general public alike appear to be in the midst of a thick fog that prevents them from understanding and tackling the challenges of individual and collective security within increasing religious, ethnic, and cultural diversity. And so we look for easy answers presented as simple choices, e.g., moderate vs. radical Islam, multiculturalism vs. assimilation, secularism vs. religious fundamentalism, etc. Yet such simplistic naming and categorising further divides people and provokes animosities".⁵

3.3. North-South Centre of the Council of Europe

39. The North-South Centre brings together governments, parliamentarians, local and regional authorities and civil society organisations. Its programme priorities are global education, youth, human rights, democratic governance and intercultural dialogue. It adds an important dimension to the international efforts aimed at the promotion of intercultural learning, understanding and political dialogue within and between the different continents. The issue of the universal nature of human rights is central to its work.

40. The North-South Centre launched the Lisbon Forum in 1994 to create a platform for dialogue and for sharing experiences, expertise and good practices between Europe and other regions of the world, especially the Middle East, Africa and the countries on the southern shore of the Mediterranean.

41. During the 2008 session, a process was launched, in partnership with the Alliance of Civilisations, devoted to "The principle of universality of human rights and its implementation at international and regional level". The 2008 Forum provided a new opportunity to share Europe's experience with other continents and exchange good practices with systems in other parts of the world, in particular those set up by regional organisations such as the African Union, the Arab League or the Organisation of American States. It also constituted a framework for analysing geopolitical changes since 1948 and their effects on the conception, interpretation and application of human rights.⁶ The 2009 session, organised in partnership with the Aga Khan Development Network and the United Nations Alliance of Civilizations, was devoted to the theme "Creating a culture of human rights through education". The 2010 Forum, once again organised in partnership with the Aga Khan Development Network and the United Nations Alliance of Civilizations, was devoted to the theme of "the freedom of expression, conscience and religion". The conclusions have shown that the freedoms of expression, conscience and religion underpin the democratic societies and guarantee their pluralism. Particular attention was given to the protection of religious minorities in the world.

42. The North-South Centre actively participates in the activities of the Alliance of Civilisations, including the 1st Summer School of the Alliance, which took place from 15 to 21 August 2010, and brought together a network of several partners and participants from 44 countries to help build the skills of young people to participate in inter-cultural dialogue.⁷

3.4. Congress of local and regional authorities of the Council of Europe

43. The priorities of the Congress for 2011-2012 have highlighted a new local dimension of human rights.⁸ Human rights are not exclusively the concern of national authorities. The respect of human rights has also to be addressed at the local level. It is a key responsibility of local and regional authorities, interdependent with good local and regional governance. In accordance with its 2008 joint declaration with the Council of Europe Commissioner for Human Rights, the Congress is working to make local and regional authorities aware of their responsibilities for the implementation of human rights. In this respect, the Congress is promoting the implementation of good practices and mechanisms of mediation, such as independent local and regional ombudsmen.

44. I take the view that it is indeed at the local level that universality and cultural and religious "particularisms" can be reconciled and that human rights can be understood, internalised and respected. The Congress could therefore reflect this concern in its dialogue with local and regional authorities.

3.5. Conference of International Non-Governmental Organisations of the Council of Europe

45. In 2010, the INGOs of the Council of Europe organised a Forum on the universality of human rights, which took place in Oslo on 21 and 22 October 2010. The Forum reaffirmed the universality and indivisibility of human rights and underlined the key role played by civil society.

5. See Assembly press release of 30 June 2011:

http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=6831&L=2.

6. See North-South Centre of the Council of Europe, The 2008 Lisbon Forum – The principle of universality of human rights and its implementation at international and regional level.

7. See North-South Centre of the Council of Europe – 2010 Annual Activities report.

8. Congress of regional and local authorities of the Council of Europe, Resolution 310 (2010). See also Resolution 296 (2010) on the role of local and regional authorities in the implementation of human rights.

4. Current threats to the universality of human rights

4.1. Cultural relativism

46. Cultural relativism, a concept born from anthropology, is rooted in the idea that all cultures are of equal value. Certainly the culture of each human being is an important identity component.

47. Some commentators and politicians argue that the Universal Declaration of Human Rights is the expression of the Western culture, based on the primacy of the individual, whereas other societies, especially in Africa or Asia, place greater value on group harmony and the protection of the collective community rights.

48. I take the view that confining and enclosing an individual in his or her community is a divider which only serves to promote stereotypes which are racist and a threat to freedom. The right to difference and tolerance cannot be the pretext for denying dignity and freedoms.

49. Cultural identities can only be admissible on the condition that they do not undermine the dignity and equal rights of all human beings. There is a human essence that transcends any distinctive identity, including those that are cultural and religious.

50. I recall that, on 1 July 2009, the Council of Europe's Committee of Ministers called on opinion leaders to speak out and take resolute action to foster a climate of respect through dialogue based on a common understanding of universally recognised human rights.⁹ This is the way forward.

51. If we take women's rights as an example, we see that universality is not a reality for all. Women are still prevented from being fully fledged members of society. The rights of women are violated on a massive scale, be it in the form of rape as a weapon of war, discrimination at work, domestic violence or, in some countries, the right to vote or stand for elections or even to drive a car.

52. I wish to stress, however, that universality does not mean uniformity. Depending on the society and the culture, particular focus may be placed on certain rights rather than others. Regional, national and cultural particularities have also led to regional systems of protection of human rights, as is the case with the European Convention on Human Rights, which takes into account European values and cultural sensitivity. Furthermore, the Convention has transformed the principles proclaimed in the Universal Declaration of Human Rights into concrete legal obligations for the signatory States.

53. European, American and African human rights conventions clearly show that regional structures are a favoured method for expressing universal values in terms which are conducive to the mentalities and traditions of those people who must respect them.

54. I would even argue that for human rights to be considered truly universal, they must be rooted in different cultures. People, wherever they live, can understand these rights only if they can do so through their own culture and mindset.

55. The universality of human rights therefore leaves room for diversity. They are not a static, unchangeable notion, cast in stone. However, this should not undermine the common nature of principles and values which have been progressively constructed.

56. The notion of human dignity did not arise out of nowhere and the concept of human rights was not established *in abstracto*. These are the expressions of values which fall within the common basis of humanity and therefore the different cultures which constitute its fabric. The argument of cultural diversity should not be considered as a threat to fundamental universal rights.

57. It should be noted that the European Convention on Human Rights does not lay emphasis on cultural and religious particularisms. On the contrary, the signatory States underline what unites them, proclaiming in the preamble that they are animated by the same spirit and share a heritage of ideals and political traditions, of respect for freedom and the rule of law. On the contrary, the Charter of Fundamental Rights of the European Union stipulates that "the Union respects cultural, religious and linguistic diversity" (Article 22).

9. Declaration on "Human Rights in Culturally Diverse Societies", adopted on 1 July 2009 at the 1062nd meeting of the Ministers' Deputies.

58. However, the implementation of rights guaranteed by the Convention, in particular as interpreted by the European Court of Human Rights, is not exempt from these influences. In fact, in several instances, the Court has invoked certain cultural specificities and recognised that, taking into account the circumstances, the cultural characteristics specific to a State, region or a community constitute a pertinent element to take into account in identifying the existence of a violation of the Convention.

4.2. Religious relativism

59. Many governments in the Islamic countries invoke sacred Islamic texts to refute the universality of human rights. Fundamental rights are thus redefined and reinterpreted in the light of the Sharia. This is a recent phenomenon. In fact, in 1948, of the 56 States who voted for the Universal Declaration of Human Rights, eight abstained, amongst which there was only one Muslim State: Saudi Arabia. Afghanistan, Egypt, Iran, Iraq, Pakistan and Syria all voted in favour of it.

60. As from 1966, with regard to various international treaties, particularly those concerning conventions relating to women's and children rights, Islamic countries started to introduce reservations in the name of the Sharia.

61. Moreover, in the last thirty years two declarations were enacted, running in parallel with the Universal Declaration of Human Rights: a first one drafted by the Islamic Council, adopted in 1981, entitled the "Universal Islamic Declaration of Human Rights", and the second adopted in Cairo in 1990 by the Organisation of the Islamic Conference, entitled "Declaration on Human Rights in Islam". The latter proclaims, in Article 25, that "the Islamic Sharia is the only reference for the explanation or clarification of any of the articles of this Declaration". Article 22 stipulates that "Everyone has the right to express his opinion freely in such a manner as would not be contrary to the principles of the Sharia. [Information] may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets ...".

62. The African Charter on Human and People's Rights of 1981 includes the notion of traditional values recognised by the "community" and promotes the rights and duties of the community (family, society, nation, State) in a more communitarian and less individualistic approach.

63. Nevertheless, at the heart of all cultures of the world, in all the main religions and all the major philosophies, the same fundamental concept of the dignity of the human being exists.

64. I firmly believe that human rights transcend all religions. No restrictions can be placed on human rights in the name of religion. No religion may formulate its "own human rights". This also means that every individual is free to practice his or her religion or belief, change his or her belief or choose not to have any religious conviction. Governments have the duty to protect this freedom, both in legislation and in practice.

65. I also firmly believe that extremism is not inherent to any religion. It is a dogmatic practice of religions which can induce extremism and which may drive us out of the scope of human rights.¹⁰ Clear limits must be laid down regarding the manifestation of religious and cultural relativism.

66. Women, in particular, appear to be amongst the main victims of cultural and religious relativism. As Rama Yade, French Secretary of State for Human Rights put it, before the United Nations Human Rights Council in Geneva on 12 December 2008: "Allow me to reaffirm loud and clear: stoning, excision and genital mutilation need to be fought against. Nothing can legitimise or render this practice acceptable. Cultural diversity must be exercised, everywhere and at all times, with respect for human rights. It cannot be dissociated from respect for human dignity."

67. The Parliamentary Assembly has also made its position clear with regard to actions to combat gender-based human rights violations, including abduction of women and girls, by affirming that "member States have a responsibility to do everything in their power to prevent and combat these practices and to protect the victims. No cultural or religious relativism can justify these acts".¹¹

10. See Assembly Resolution 1754 (2010) and Recommendation 1933 (2010) on the fight against extremism: achievements, deficiencies and failures, and Doc. 12265.

11. Assembly Resolution 1662 (2009) and Recommendation 1868 (2009) on action to combat gender-based human rights violations, including the abduction of women and girls.

68. It must be stressed, however, that a country which has to adhere to human rights in the face of harmful traditions also has to respect the ones which are in essence harmless but which are only perceived in a certain way or seen as symbolically constituting a violation.

69. An example of this is the French and Belgian ban on the Muslim veil. To most, the veil is seen as a symbol of oppression and fundamentalism and, in some cases, where women are not given a choice, it can be. However, systematically banning a cultural and religious tradition on the basis of mere representation would be just as much a violation of the rights of those women who wish to wear the veil as is the forcing of the veil on those women who do not wish to wear it. Individuals should have the right to practices that define who they want to be.¹²

70. The Assembly affirmed this principle in Resolution 1743 (2010) adopted on 23 June 2010 on Islam, Islamism and Islamophobia in Europe, when it stated that “a general prohibition of wearing the *burqua* and the *niqab* would deny women who freely desire to do so their right to cover their face”. The Council of Europe Commissioner for Human Rights also pointed out recently that “such laws – so obviously targeting the adherents of one religious faith – would further stigmatise these women and lead to their alienation from the majority society. Banning women dressed in the *burqa/niqab* from public institutions like hospitals or government offices may only result in them avoiding such places entirely. This is not liberation.”¹³

71. Because of the freedom of thought and religion, we cannot deny to anyone the right to participate in public affairs. Having said that, political parties must respect the principals of the basis of democracy in their internal organisation and their programme. Under no circumstances, should the public sphere and the political debate be confused with the practice of religion.¹⁴

4.3. Western “imperialism” of human rights

72. As already discussed above, there is a tendency to say that the West has no right to impose its values and to “export” human rights to other parts of the world which should be free to develop as they choose. This affirmation comes mainly from critics in countries from the Asian and Arab world.

73. In my opinion, this simplistic and dangerous view creates a dividing line between “us” and “them” and overlooks the fact that, when dealing with human rights, we deal with humankind and humankind is universal. Let us not forget that there are now 167 State parties to the International Covenant on Civil and Political Rights¹⁵ and that these 167 countries are not “the West”.

74. Unfortunately, some European and American thinkers and politicians still consider the universality of human rights as a recently created value, developed by Greco-Roman and Judeo-Christian cultures.

75. Indeed, the expression and codification of human rights may be recent but the rights inherent in their content are not; one can easily find traces in ancient Asian and African civilisations, expressing respect for human life, individual freedom, justice, equity and solidarity.

76. Although, the Universal Declaration of Human Rights and the European Convention on Human Rights have what we may call “Western inspiration”, one has to acknowledge that they were founded on ideals and achievements from many different cultures and ancient times. They reflect the concerns and interests of all of us, that is the inherent dignity and equality of all human beings.

4.4. Principle of “non-interference in domestic affairs”

77. Some States claim that the principle of “non-interference in domestic affairs” outweighs the universal protection of human rights.

12. See also Fahima Vakalia, Universality of Human Rights in the face of cultural variability, World Poverty and Human Rights Online, 27 March 2010.

13. The Council of Europe Commissioner’s Human Rights Comments, Penalising women who wear the burqua does not liberate them, 20 July 2011.

14. See Assembly Resolution 1736 (2010) on a code of good practice in the field of political parties.

15. Status as at 10 July 2011.

78. This point of view, which presents a threat for victims of human rights violations, came into being with the Universal Declaration of Human Rights and has still not disappeared. The Declaration established the international community's right to monitor, and even interfere in the case of a violation of human rights and fundamental freedoms. It undermined a type of "realpolitik" which preferred to turn a blind eye to States in violation, in exchange for diplomatic or economic benefits.

79. At European level, the rights and freedoms of individuals are protected by the supervisory mechanism of the European Convention on Human Rights. States parties to the Convention have accepted the obligation to implement the judgments of the European Court of Human Rights, with considerations of national sovereignty being of secondary importance.

80. At any rate, it should not be forgotten that persistent human rights violations always lead to instability in the long run, which may threaten peace and security beyond national boundaries. Countries whose structure and stability are undermined become a haven for international terrorism and crime.

81. Human rights are therefore closely linked to stability and should therefore feature prominently in the international community's efforts to promote peace and security and in the foreign policy of the Council of Europe member States. My fellow parliamentarian, Mr Pietro Marcenaro, is currently preparing a report on this very issue.

4.5. Questioning the indivisibility of human rights¹⁶

82. Universality is closely linked to indivisibility. Already in its Article 2, the Universal Declaration of Human Rights proclaims that "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind ...".

83. The human rights corpus is not a "menu" from which States may make choices that suit them, ignoring certain rights, such as the equality of women, or the prohibition of torture, for example. Indivisibility is the presupposed logic of universality. It is the principle of the indivisibility of human rights which allows any deceiving hierarchy to be avoided, and particularly any hierarchy of exclusion which can only be harmful.¹⁷

84. Admittedly, there is provision, in the international system of human rights, that in certain exceptional circumstances and under some duly justified circumstances, derogations or limitations can be applicable to the exercise of human rights.¹⁸

85. Whilst strongly reiterating the indivisibility of rights, the European Convention on Human Rights and many other international instruments dealing with human rights, have recognised that it is possible to establish a hierarchy of provisions listing in a limited manner those rights which cannot be subject to derogations, whatever the circumstances. This is about the right to life, the right not to be subject to torture or to degrading treatment, not to be held a slave or in servitude and the principle of non-retroactivity of penal law.¹⁹

86. The international system of human rights risks being sapped by the mechanism of reservations. A large proportion of reservations attacks the universality of human rights concerned, either because they merely disregard the application of rights, or because, by referring to the national situation, they empty it of its substance.

87. I agree with many commentators that such reservations should only be considered as temporarily admissible. We must remain vigilant and continue to apply pressure on States which issue such reservations to the various human rights conventions, so as to encourage the trend of universality.

4.6. Lack of implementation

88. Another recurrent threat to the universality of human rights and its international instruments is non-efficacy in the implementation of human rights. There is often a gap between proclamation and effective implementation, even in democratic countries.²⁰

16. See report by Mr Giuseppe Guarneri presented at the workshop "Preferences and conflicts between Rights" at the Forum on the Universality of Human rights, organised by the Conference of INGOs of the Council of Europe in Oslo on 21 and 22 October 2010.

17. Ibid.

18. Ibid.

19. Ibid.

89. States parties to the Convention have accepted their duty to implement the judgments of the European Court of Human Rights. The Convention is now one of the keystones of the European political framework precisely because the execution of each individual judgment in which a State is found to have violated the Convention is closely and systematically monitored by the other States through their representation in the Committee of Ministers.

90. The Interlaken process of reform of the European Court of Human Rights has also promoted a new approach in relation to the supervision of Court judgments by the Committee of Ministers, focused on new working methods, in force since 1 January 2011. This should allow for a more effective and transparent supervision of execution and also for a more appropriate response to the persisting problem of clone and repetitive cases.²¹

5. The Arab spring: a major step towards making universal rights real?

91. The chosen theme for the 2011 Lisbon Forum held on 3 and 4 November 2011, organised by the North-South Centre of the Council of Europe and the United Nations Alliance of Civilisations, was "The Arab spring: a major step towards making universal rights real". I was invited to speak at this event to discuss the issues raised in this report with the Forum's participants. The discussions during the Forum aimed, on one hand, to identify the common points which can be considered as characteristics of the "Arab spring" and, on the other hand, to determine the specificities and the differences which exist between the countries which have lived through major political upheavals since the beginning of 2011. Three countries, considered as being positive examples of changes, have notably been the object of particular attention: Egypt, Morocco and Tunisia.²² As was underlined during the Lisbon Forum, the situation from one country to another is extremely diverse.

92. The recent uprisings in Tunisia and in Egypt and the "democratic wave" that has struck the Arab world have attracted the world's attention. The leaders of these countries have been toppled and their people have begun the long and complex process of building democratic States. Steps in both countries have already been taken to dismantle the structures of the former regime and put in place elements of a democratic political system.

93. The Assembly has promptly affirmed its readiness to accompany Tunisia in its democratic transition by putting its experience of establishing new institutions in young democracies in Europe at the disposal of the transitional institutions and civil society, adopted Resolution 1791 (2011) and Resolution 1819 (2011) on the situation in Tunisia in January and June 2011 respectively, as well as Recommendation 1972 (2011) in June 2011.

94. Morocco has also engaged on a path of constitutional reforms aimed at consolidating democratic transformations, the rule of law and the respect for human rights. In June 2011, the Parliament of Morocco was granted partner for democracy status with the Parliamentary Assembly of the Council of Europe. This will contribute to intensifying co-operation between this country and the Council of Europe and hopefully promoting Morocco's accession to Council of Europe conventions.²³

95. On 23 June 2011, the Political Affairs Committee also adopted a report on co-operation between the Council of Europe and the emerging democracies in the Arab world. The report duly notes that the people who have risen up are drawing their inspiration from the values upheld by the Council of Europe and condemns unequivocally the use of violence against the populations. It also stressed that the Council of Europe could contribute to the progress towards democracy in Arab countries. The report was debated by the Assembly during the October 2011 part-session, following a visit to Egypt by the Rapporteur, Mr Jean-Charles Gardetto, and led to the adoption of Resolution 1831 (2011).

96. Unrest continues to spread far around the Arab world, with Libya still entrenched in conflict and significant protests and crackdowns have been witnessed in Bahrain, Yemen and Syria.

20. See report by Gérard Fellous, Challenges facing human rights in the XXIth century, at the Forum on the universality of human rights.

21. See Committee of Ministers – Supervision of the execution of judgments of the European Court of Human Rights, Annual report 2010.

22. The conclusions of the 2011 Forum are available on the website of the North-South Centre : www.coe.int/t/dg4/nscentre/default_en.asp.

23. Resolution 1818 (2011) "Request for Partner for Democracy status with the Parliamentary Assembly submitted by the Parliament of Morocco", adopted on 21 June 2011.

97. Clearly, these democratic uprisings call for a radical shift in the way in which Euro-Mediterranean relations are formulated and conducted, but they also prove that the values upheld by the Council of Europe resonate among the peoples of North Africa and the Middle East, who belong to different cultures, traditions and religions but aspire to similar “universal” values and rights.

98. The uprisings that have taken place are, above all, a movement of citizens who have taken to the streets to demand respect for the rule of law and democracy. Events have been closely linked to far-reaching generational changes. The Arab and Muslim populations are mainly urban and this populous new generation of young people has had almost universal access to education. They have grown up in a context of multiple social transformations and have proven their readiness to challenge the disregard of their rights and freedoms.

99. In the present situation, respect for human rights, democracy and the rule of law is viewed as a necessary condition for these societies to regain their dignity and there can be no doubt that this concern is essential for the stability of the region.

100. Moreover, the social transformations undergone in these societies have opened the way for these rights to become more firmly established. The prevailing Western image of Arab women is one of passive subjects: veiled women who are victims and who react to events rather than actively participating in them. Empirical evidence reveals that, on the contrary, a profound revolution is taking place. Arab societies find themselves immersed in a process of intense, irreversible change in which women play a crucial role in certain countries, as has been observed in recent popular movements in which they have been very active.

101. I firmly believe that it is an unavoidable fact that current processes of democratisation must take into account the presence of Islam in this part of the world, as is also the case in Turkey.

102. Islamist parties such as *al-Nahda* in Tunisia or the Muslim Brotherhood in Egypt must be considered political actors with a right to participate together with the other parties in the process of democratic transition. Otherwise, such a democratic process would not be credible. What is really significant is the process itself and not the participants. In other words, it is necessary to enhance the functioning of structures and institutions rather than *a priori* selecting actors or leaders. What is needed are stronger governance mechanisms, which are transparent, competitive and subject to democratic laws, irrespective of whether the actors implementing these mechanisms belong to secular or Islamist backgrounds.²⁴

103. In my view, this is the only and true way for human rights to unfold and become universal while adapting to the local context. Universality must go hand in hand with a plurality of identities.

104. The Arab people themselves, not the West, have shown that their greatest and most fundamental ambition is to be respected as human beings with rights and freedoms. Such aspirations are universal.

105. Not all Arab countries are likely to be converted to democracy in the near future. Most probably, only a handful of countries will succeed. Progress is bound to be fitful. It is for the Arab people themselves to create a more promising future.

106. I believe that the mood in the Arab world has changed irrevocably. Whether it takes a year or decades, it is plain that Arab people want a say in choosing who should run their lives²⁵ and seem to be guided by the very same universal values enshrined in human rights law.

107. It is time to cast aside the idea of an unavoidable clash of civilisations and the incompatibility of democracy and Islam, and to replace them with a vision of common humanity based on the shared desire for freedom and dignity.²⁶ These societies must not be abandoned to their fate. They must be accompanied politically and supported financially. The Council of Europe and the European Union must pull their weight in the name of those very values and universal rights that they uphold.

24. See the pertinent analysis “The dignity of the rule of law”, European Union Institute for Security Studies, The Arab democratic wave – How the EU can seize the moment, March 2011.

25. See The Economist, “The Arab awakening, six months on”, 14 July 2011.

26. See “The post-Huntington revolutions”, Alvaro de Vasconcelos, Issues, European Union Institute for Security Studies, May 2011.

6. Conclusions

108. The codification of human rights has meant empowerment. Human rights can empower because they start with the individual: notably, the right to life, the principle of non-discrimination, the right to justice, a fair trial, protection against torture, the right to having an opinion, a faith.

109. The affirmation of human rights is worth the same to everyone, everywhere, or else it is not worth anything at all. In fact, it implicates the inherent dignity to all members of the human family, irrespective of distinctions of race, gender, language or religion. Neither cultural, traditional nor religious values, nor the rules of a “dominant culture” can be invoked to justify hate speech or any other form of discrimination, including on grounds of sexual orientation or gender identity.

110. That said, I believe that we can only reaffirm the universality of human rights if we go beyond the dilemma of relativism and universalism. We will clear out the confusion surrounding human rights through a better understanding of the nuances of identities, of the subjective and collective meanings of religion, the abandoning of dogmatism and a pragmatic approach focused on what we can do together as human beings.

111. In an interconnected world facing complex global challenges, we must nourish an ethos of mutual responsibility towards the common good. This concept resonates with values embraced by the main religions and cultures of the world that are present in Europe, including Islam, which place considerable emphasis on ideas of social justice, solidarity, charity and collective identity.

112. From this perspective a more positive and multicultural-friendly aspect of religion emerges, rather than its intransigent, exclusivist or violent face, which is often condemned for being incompatible with western and democratic secular values.²⁷

113. The Council of Europe remains the main driver in Europe of the universality of human rights and should further promote human rights in the context of inter-cultural dialogue within the member States as well as with neighbouring countries.

114. Its work is not over. Each new generation should acquire human rights once more. Human rights are considered as granted and little or no place is devoted to this issue in educational curricula in many European countries. Education is necessary. However, human rights education is more than just transmitting knowledge of human rights to people; it means transmitting the skills to use this knowledge in order to participate in the life of a democratic and peaceful society.

115. Our governments and parliaments must do more to ensure that education about human rights is included in curricula and that the language and values of human rights in the context of different cultures and religions permeate every level of the school environment, and to identify strategies that empower learners to become actors of social, political and cultural change.

116. Furthermore, territorial authorities and non-governmental organisations remain an essential factor for initiating and disseminating the notion of universality of human rights with a view to reconciling this idea with cultural and religious particularisms.

27. See also United Nations Alliance of Civilizations – Global Experts project – Series “Religion, politics and the public space”.