

Si nolis bellum para pacem The rule of law and NATO's Mediterranean Initiative

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Resumo

Com o fim da Guerra Fria, a região mediterrânica tornou-se mais importante para a OTAN como um todo e não apenas para os países do flanco sul. As razões principais são óbvias: os riscos e os desafios moveram-se para o sul; surgiu a crise nos Balcãs; a UE iniciou o processo de Barcelona; há países do sul que enfrentam transições políticas difíceis: existe a disputa Greco-Turca sobre o Egeu e Chipre e, sobretudo o confronto Israelo-Palestiniano; as ameaças do terrorismo e das AMD pairam sobre a região, aumentando a incerteza histórica da região. Uma política resoluta de segurança necessita de fundamentos políticos muito firmes uma bandeira facilmente identificável: as políticas de segurança e defesa são planeadas para promover a confiança, para construir a paz, e para conseguir a segurança através da cooperação; o conflito é o preço a pagar pelo falhanço destas políticas. Como fortalecer as medidas de criação de confiança (CBM's) no ambiente mediterrânico? A OTAN promove um diálogo com os países mediterrânicos do sul, inspirado pelos princípios do Tratado fundador. Reiterar esses princípios dentro das novas e específicas circunstâncias do Mediterrâneo é a melhor garantia que serão propostas e executadas as políticas de segurança mais adequadas.

Abstract

With the end of the Cold War, the Mediterranean region became more important for NATO as a whole and not just for the Southern countries. The main reasons are obvious: risks and challenges moved south; the Balkan crisis erupted; the EU became increasingly more involved through the Barcelona process; the proliferation of WMD threatens the region; several Southern Mediterranean countries face difficult political transitions: the Greek-Turkish dispute over the Aegean and Cyprus and the Israeli-Palestine confrontation; threats of terrorism loom over the region, adding to the sense of uncertainty fostered by history. A resolute security policy needs a common political ground and an easily identifiable flag to fight for: defence and security policies are devised to foster confidence, to build prospects of peace, and to achieve security through cooperation; war is the outcome of the failure of such policies. How to strengthen confidence-building measures (CBM's) within the Mediterranean environment? As NATO embarks upon a dialogue with other Mediterranean countries, the nature and content of this policy should be inspired by the original Treaty's guidelines. To reiterate "the principles of democracy, individual liberty and the rule of law" as preconditions to security is the best guarantee that adequate policies will be implemented.

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1. "Middle Earth"

Middle Earth should be the name for the Mediterranean region. Nowhere in our planet, is there such a diversity of climate, resources, population, language, culture and religion, nor such a troubled history or such a potential future. The Mediterranean history is a living proof that geography does not determine our destiny: it tells us that nowhere else is so much political acumen needed nor do we find such outstanding leaders confronting such complex situations. Dealing or dialogue was never easy in such a complex environment in terms of space and time¹.

Geographically, the Mediterranean has at least four different regions: Southern Europe, the Balkans, the Near East and the Mahgreb. Historically, there is a process of multiple modernities², to which we are awakened by the difference between Western and Muslim chronologies. In economic terms, North is more developed and South is chronically underdeveloped, the latter faring badly in most socio-economic indicators³. In political terms, there are very different individual styles of life, embedded in diverse societies and ruled by different states.

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- 1 Richard Gillespie, Europe, the Mediterranean and the Islamists, in R. Gillespie (ed.), *Mediterranean Politics*, Vol. II, London, Printer, 1996. For Geopolitics as a regional frame for deliberation, see Zaki Laïdi (sous la dir. de), *Géopolitique du sens*, Paris, Desclée de Brouwer, 1998. A classical study Ferdinand Braudel (1964), *The Mediterranean and the Mediterranean world in the reign of Philip II*, (2 vols.) Fontana Books.
 - 2 Eisenstadt, *Multiple Modernities*, Jerusalem, 1985. Most interesting is Bernard Lewis, *The Multiple Identities of the Middle East*, London, Weidenfeld & Nicolson, 1998.
 - 3 Asli Guveli, Serdar Kilickaplan, "A Ranking of Islamic Countries in Terms of Their Levels of Socio-Economic Development", *Journal of Economic Cooperation* 21, no. 1 (2000): 97-114, A3: Socio-Economic Development List.

How to strengthen confidence building measures (CBM's) within the Mediterranean environment?

A set of preconditions must be fulfilled before embarking on specific CBM's. NATO did just that in its 1949 Founding Treaty, with "the principles of democracy, individual liberty and the rule of law"⁴. The principles exposed in the Preamble and Articles 1 and 2 of the NATO Treaty, provide a common stance regarding the intertwining of internal politics and international relations. They are conceived to settle any international dispute in such a manner that "*international peace and security and justice be not endangered*", and vowing not to be "*inconsistent with the purposes of the United Nations*". NATO is an obvious beacon to new members and an inspiration to whatever partnership it may enter upon, as the Partnership for Peace shows since 1992, and as the Mediterranean Initiative may evolve.

NATO's high-sounding principles won the Cold War. They may now have receded into the background, as the organization became bigger than the concept, and immediate threats were substituted by diffused risks. Precisely, as international relationships are never rigid, principles do matter and *pacta sunt servanda*⁵. As NATO embarks upon a dialogue with other Mediterranean countries, the nature and content of this policy should be inspired by the original Treaty's guidelines. To reiterate them is the best guarantee that adequate policies will be implemented.

Crystal-clear principles do matter but they are to be implemented within specific cultural, economical, and social objectives; they are not a blueprint starting from "ground zero" and directed to the "end of history". Principles must be adapted through compromise; if not the case, they turn to be inconsequential and merely vague ideological concepts.

More than any other security initiative, the Mediterranean dialogue requires a bold shift from current political Western paradigms. National interest is not the paradigm for international relations; if such were the case, international relations would become a province of globalization⁶; the inter-state pyramid of powers would impose

4 Preamble to The North Atlantic Treaty, 1949: "The Parties to this Treaty reaffirm their faith in the purposes and principles of the Charter of the United Nations and their desire to live in peace with all peoples and all governments. They are determined to safeguard the freedom, common heritage and civilisation of their peoples, founded on the principles of democracy, individual liberty and the rule of law. They seek to promote stability and well-being in the North Atlantic area. They are resolved to unite their efforts for collective defence and for the preservation of peace and security".

5 De Leonardi, Massimo, (a cura di) La nuova NATO: i membri, le strutture, i compiti, Bolgna, Il Mulino, 2001.

6 Waters, Malcolm. 1995. Globalization, London and New York: Routledge. xiv+185pp.

on relations among nations; non-state organizations and individuals would be brushed aside; the Hobbes paradigm that "society enchains man" and "the state gives him back his rights" is followed by the Clausewitz paradigm, "war is the continuation of politics by other means"⁷; by "any means", according to contemporary terrorist movements⁸.

In contrast, the most powerful NATO message - despite Western divisionism, its ineffective message to the rest of the world and its unfair reception by part of it - is that a citizen's community must be built "according to the rule of law" and that "war is the failure of politics".

2. Recent Security Initiatives in the Mediterranean

Cooperation between Mediterranean partners must be of multi-religious, multicultural and multi-economical nature; it must be embedded in an ongoing process of modernization in the Southern Mediterranean and a post-modern process of integration in the European Union. The complexity of such cooperation requires the adherence to strict principles and an unyielding agenda, as multilateral approaches are prone to lack of leadership and practicality. NATO's Mediterranean Initiative, launched in 1994, recognised the rising magnitude of security challenges in the region, namely the emergent risks in the Muslim world.

The modernization and democratisation of the Muslim world is a multidimensional process at local, national, and international levels. We must bear in mind the centuries-long Western road to modernization.

The approach to modernization in the Muslim world engages: a) a variety of regional states; b) a variety of shared norms, rules and institutions; and c) a variety of individuals and social identities. The Mediterranean Muslim world has to cope with huge problems which Europe, following the theoretical precepts of Hobbes, Grotius and Kant, answered with state-building, international relations and civil society. Modernization is not a linear process modelled upon voluntaristic efforts. In most cases, this approach failed in the last 50 years. Ad hoc plans of socialist transformation has not encouraged democratisation and

7 The modern metaphor that imposes a virtual "state of society" upon a virtual "state of nature" is studied by Hans Blumenberg in *The Legitimacy of the Modern Age*, 1985 The MIT Press, 728 pages.

8 See Alain Joxe, *L'empire du chaos. Les Républiques face à la domination américaine dans l'après-guerre froide*, Paris, La Découverte, 2004 (1st ed.2002).

has impelled the desperately violent reactions of Muslim radicals such as Salafists and Wahhabists⁹.

Taking into account this panorama, different European international organizations have undertaken a dialogue with their neighbours in the South since the end of Cold War. In October 1990, Spain, France, Italy and Portugal (C4) met in Rome with Algeria, Libya, Tunisia, Morocco and Mauritania and launched the "5+5 Initiative", (Malta was later added); they approved a declaration on dialogue and cooperation in the Western Mediterranean with the principles of globality as a basis for a dialogue on security in the region.

A Conference of Security and Cooperation in the Mediterranean (CSCM) that applied the procedures of OSCE in Eastern and Central Europe was planned and three areas of work were established – security, economic cooperation and human rights – adding other EU members, the Balkan States, Ukraine, Russia, the United States, the Maghreb and Near East. Nevertheless, the diversity and the outbreak of the Gulf War prevented new developments.

The European Union launched the so called Barcelona Process and its Euromediterranean Association project in November 1995, with the fifteen countries of EU and twelve (then) non-community Mediterranean States: Algeria, Cyprus, Egypt, Israel, Jordan, Lebanon, Malta, Morocco, Mauritania, Syria, Tunisia and Turkey, in addition to the National Authority Palestine. The project went on with three baskets: security, economy and social policy. The process continued in Malta in April 1997, with the celebration of the II Euromediterranean Conference. A trend was set: while the countries of the Southern shore put the emphasis in economic development, the European governments emphasized the political aspects and security. Moreover, the usual north-south tension within the EU manifested itself in the northern members' preference for a Mediterranean policy based on trade concessions; the southern members emphasised the need for financial aid. This scenario was set with strong risks for instability in the North-South Mediterranean relationship¹⁰.

The Western European Union (WEU) and the Atlantic Alliance (NATO) favored other approaches to deal with the question of security from a political-military perspective. The

9 Barry Buzan and Richard Little, "Why International Relations has Failed as an Intellectual Project and What to do", *Millennium*, vol.30, n.1, pp. 19-39.

10 "The European Union's Relations with the Mediterranean", European Commission Memorandum 94/74, December 1994; European Commission, "The Barcelona Conference and the Euro-Mediterranean Association Agreements," European Commission Information Memorandum, 23 November 1995; Solana, Javier, "NATO and the Mediterranean", *Mediterranean Quarterly*, Spring, 1997, pp. 11-20.

WEU, in the Ministerial Council of Petersberg of June of 1992, gave green light to open a process of dialogue with the countries of North Africa (Algeria, Morocco, Mauritania and Tunisia). After the Ministerial Council of Kirchberg of 1994, two types of meetings were structured to foster confidence. Inside WEU, by joint proposal of France, Italy, Portugal and Spain, (C4) Eurofor and Euomarfor were specifically asked not to act in the Mediterranean. From 1992 onwards, the WEU dialogue gradually involved six southern Mediterranean partners until 2000, when the WEU became absorbed in the EU¹¹.

The Atlantic Alliance began its dialogue with the "Southern Flank" countries during the EU summit of Brussels in 1994. Since then, it has established contacts with Egypt, Israel, Jordan, Morocco, Mauritania and Tunisia. The so-called Mediterranean Dialogue of NATO has been developed in two levels of meetings. In the Madrid Summit of July 97, the Mediterranean Dialogue was one of the high-priority objectives of the Alliance; policies for the sharing of information and encouragement of mutual confidence were proposed. This was confirmed in the Washington Summit of April 1999¹².

NATO is evolving and transforming itself from a defence alliance to a defence and security alliance. On the other hand, Southern Mediterranean countries have also developed clusters of initiatives of their own, such as the frequent meetings of the Ministers of Foreign Affairs of Islamic countries.

3. Assessment of Trends

The Barcelona Process has so far established socio-economic objectives for the Mediterranean dialogue. Yet, its soft security objectives are not clear. This should be taken into account when seeking a new paradigm for a NATO-Mediterranean security partnership. Before starting a dialogue with almost the same participants, albeit under a different framework, many obstacles need to be addressed.

After the approval of the European Constitutional Treaty, security became a transversal issue and the European Security and Defence Policy is now an integral part of the common foreign policy of the EU. The mechanisms chosen to address the Euro-

11 Vasconcelos, Alvaro, *Européens et Maghrébins*, Editions KARTHALA, Paris, 1993.

12 NATO's Mediterranean Initiative: policy issues and dilemmas, (ed. F. Stephen Larrabee) National Security Research Division, Rand Publications, 1998; Moya, Pedro, *Cooperation for Security in the Mediterranean: NATO and EU Contributions*, Subcommittee on the Mediterranean Basin, North Atlantic Assembly, May 1996.

-Mediterranean issues reflect the technicalities forced upon European policy-makers by the very nature of a union of sovereign states; EU issues are fundamentally different from the security and defence policy of a nation-state. There are tensions within the EU between national sovereignty and collective action – most obviously manifest in the relative weakness of Europe’s common foreign and security policy; an European regional policy can only operate at the level of the lowest common denominator acceptable to member states.

European countries want an increased commitment by Southern Mediterranean countries to build democracy through state and civil society initiatives. Given the desire of Southern Mediterranean states to expand the Barcelona Process, as far as non-European Union member countries in the Mediterranean basin are concerned, this becomes an area of opportunity.

Cultural change is an integral part of this process through influences spread by cinema, radio, satellite television and Internet. All such media stimulate attempts to emulate and to exclude. Europe excludes migrants but exports goods and services. Denial of access by Europe builds a determination to reject from the South; the encouragement of material satisfaction but the denial of access to the Northern countries generates a moral rejection and political opposition in the Southern countries. A scenario is set for the opposition between the West and Islam¹³.

Mediterranean Muslim countries, yet, are conducting the debates of any modern society: production and division of resources; individual freedom and obligation to community; the nature of a just society. The debate process is not easy. There are mutual suggestions and accusations about the role of the people, of social groups and of intellectuals in politics. Frustrated inhabitants take religion as a substitute for social and cultural aspirations. Political and social rights do not accompany literacy. Populism becomes the pattern of the relationship between leaders and society. Modernization is not accompanied by democratisation. The fundamentalists’ violent reactions plague the political will to adapt Islam to new historical conditions¹⁴.

Every political issue is a subject of controversy between authoritarian defenders of status quo, secular modernists, fundamentalists and religious reformists. Radical fundamentalists, like Salafists or Wahhabists, try to cover the internal decadence of Islam

13 For an overview of the rhetoric opposing the West to Islam, see Arkoun, Mohammed e Maïla, Joseph, *De Manhattan à Bagdad*, Paris, Desclée de Brouwer, 2003.

14 Nissim Rejwan, *Arabs face the modern world: religious, cultural, and political responses to the West*, Gainesville, Univ. Press of Florida, 1998.

from long ago, explaining it through Western domination and advocating a return to the pristine principles of Islam. Modernists try to integrate Western political and juridical thought and repudiate the Islamic heritage, with scarce success. Authoritarian leaders practice politics - and business - as usual; make your regime predictable and functional. A new and emerging voice in these debates - reformism - demands a complete overhaul of the formulations of Islamic politics and law¹⁵.

On the other hand, the Mediterranean dialogue is plagued by Western *qui pro quos*.

According to Western culturalism, the failure of the Islamic world to modernize and democratise is due to wrong priorities: putting faith over reason, community over the individual, the Muslims above the non-Muslims and allowing a lack of distinction between public and private, politics and religion. The communitarian characteristics of Islam and its submission to God - the core of Islam as a religion and a socio-political order - would inhibit progress and individual initiative¹⁶. Now, it is intellectually hopeless and politically unacceptable to adopt in the 21st century a stance towards Islam already repelled by European intelligentsia in the 13th century¹⁷.

A troubling issue is American exceptionalism, t.i., the US's perception of itself as being at the end of history, and at the centre of the West. Arbitrarily capitalizing on its undisputed leading rank in the military, economic and technological fields, American exceptionalism legitimates preventive war and interventionism¹⁸. It does not attain the

15 As two major examples, see Abdolkarim Soroush, namely *The Hermeneutical Expansion and Contraction of the Theory of Shari'ah*; and Mahmoud Mohamed Taha's *The Second Message of Islam*. Soroush (1945-) has been called "The Luther of Islam" (Robin Wright, *Journal of Democracy*, January, 1996). The Sudanese Taha (1915-1985) was founder of the Republican Brotherhood, in Sudan; he was publicly executed by order of President Numayry.

16 The best-known proponent of culturalism is Samuel P. Huntington, "The Clash of Civilizations?" *Foreign Affairs* 72, no. 3 (Summer 1993); *The Clash of Civilizations and the Remaking of World Order*, New York: Simon and Schuster, 1996. The same culturalist equivocation also comes out in the writings of the once Marxist Ernest Gellner: "Muslim societies in the modern world present a picture which is virtually a mirror image of Marxist ones. They are suffused with faith, indeed they suffer from a plethora of it..." Ernest Gellner, "Civil Society in Historical Context", *International Social Science Journal* 43, no. 3 (1991): 133.

17 How parochial is such a vision is enhanced by the contrasting position of XIIIth century European political thinkers and leaders, such as Thomas Aquinas and Friedrich II Hohenstaufen, who addressed the Muslim world in plain rational and realistic power terms, as they were aware of the leading role of reason and law in Islam.

18 Exceptionalism is a cultural and political trend not a Government issue. See *What We're Fighting For: A Letter from America*, (c) February 2002, Institute for American Values, signed by personalities such as Jean Bethke Elshtain, Amitai Etzioni, Francis Fukuyama, William A. Galston, Mary Ann Glendon, Samuel Huntington, Daniel Patrick Moynihan, Michael Novak, Robert D. Putnam, Michael Walzer, George Weigel, James Q. Wilson. The letter from America originated several responses in Europe and Middle East.

level of a post-modern paradigm of governance that America helped to foster since 1945. A leading sociologist recently described “bowling alone” as the American civil society’s malaise; consensus is now building that the USA should not “bowl alone” in the arena of international relations. *“Habits of the heart”* was identified some 20 years as a major plus of American civil society; something parallel is needed for its international agenda¹⁹.

European occasional xenophobia, namely islamophobia and anti-semitism, is also an issue. Europe frequently fails to appreciate the perverse consequences of its own phobias and faulty internal policies. The recent French “banning of the veil” is only the tip of this iceberg as European countries experience difficulties to integrate migrants that pay taxes but do not have representation nor participate in the mainstream civic and political activities. Indeed, much violence directed towards Europe and Southern Mediterranean governments stems from the politics of exclusion and resentment. Portugal, a country trying to integrate around 300.000 people from Austral Africa, 150.000 from Brazil and some 150.000 from Slavic countries (Ukraine, Moldavia, East Balkans) today struggles with this significant issue.

NATO’s Mediterranean initiative has kept a low profile, due to several factors. There is no unanimity within the Alliance about the priority of the dialogue; the awareness is less strong among Northern countries; the goals of the initiative remain ill-defined; NATO has its own priorities of enlargement, internal adaptation, partnership with Russia, and Balkan peacemaking.

NATO suffers from an “image” problem as a Cold War institution; the “dialogue countries” are unsure of the purpose and usefulness of the initiative; the initiative is divorced from a broader security and defence agenda in the Mediterranean; most significantly, the USA remains largely unconcerned with a Mediterranean initiative as it could interfere with its “Greater Middle East” roadmaps.

The Alliance’s dealings with Southern Mediterranean countries must stand on a firm ground. Some sources are concerned with a tension, and even a contradiction, between NATO’s comparative advantage in hard security and the primary interests of the “dialogue countries” in soft security issues.

Clandestine migration, smuggling of drugs and people and the associated trans-national problems of organized crime are a current preoccupation of the Mediterranean dialogue

19 Robert D. Putnam, *Bowling Alone: The Collapse and Revival of American Community*, New York: Simon & Schuster, 2000. Robert Bellah, Richard Madsen, William M. Sullivan, Ann Swidler, and Steven M. Tipton *Habits of the Heart* by. 1986. Berkeley, California.

countries. NATO has a bleak image in many of the dialogue countries. As the USA and several partners already have bilateral defence cooperation treaties with the Southern region, the Alliance should concentrate on soft security issues and confidence-building measures rather than undertaking direct defence and military cooperation with the dialogue countries. Other sources mention the need to change the focus of attention from state to people, when talking about security²⁰.

The dilemma between hard security and soft security has a good rationale; as repulsive terrorist acts show, security issues should not be answered *ad hoc* and *post factum*. Most security problems in international relations arise from disturbances of an internal nature; and internal policies need to be settled according to "the principles of democracy, individual liberty and the rule of law", t.i., NATO must address the primary causes of insecurity.

4. Building a consensus around Natural Law

A global approach to security needs to establish preconditions. The renewed interest in natural law, as a precondition for security derives from a concern to promote agreement on normative policy standards about state building and international relations²¹. The impoverished standards of public law in internal policies, as well as the malfunctions of governance in the international arena, require the rule of law as a way to preclude both imperial and parochial policies.

The issue can be variously approached. Massive popular consensus against terrorism is the prime moral expression of natural law. Individual human life is priceless. Every victim of terrorism is a testimony to humanity.

As a conceptual tool, natural law envisions the continuum of politics across the real world of democracy. Its standards to evaluate state building acknowledge the necessity of authority and freedom. You can get a functional state without civil rights, as for instance Chile 1973, or the political beginnings of Zimbabwe, Taiwan and Singapore. You may get

20 We should "shielding people from acute threats and empowering people to take charge of their own lives" (p. IV). Human Security Now, New York, Commission on Human Security, 2003, by Sadako Ogata, Amartya Sen, Lakhdar Brahimi, Bronislaw Geremek, and other members of the Commission for Human Security.

21 Heinrich Rommen, *The natural Law*, Liberty Fund, 1998. See also from the American centre-right political philosopher Leo Strauss, *Natural right and history*, Boston, 1977, (1st edition 1950); and from the European left -centre Blandine Kriegel, *État de Droit ou Empire*, Paris, Bayard, 2002.

formal civic rights without civic duties; for instance, in some Eastern Europe countries political mafias never abandoned power. Beyond internal policy – a functional state with civic rights and civic duties – you may even agree on rules for common intercourse, such as carried on between EU countries. International law backed by sanctions and international power, as enforced by the UN, is sufficient to pacify enfeebled and pariah states. As long as international law is not backed by supranational power, nothing deters massive disturbance by “big powers” or “rogue states”. UN deficiencies in keeping international stability are obvious²². The unique position of the U.S. in supplying strategic balance through a mix of coercion and deterrence is also obvious²³.

Natural law provides a renewed paradigm to counter massive insecurity and sustained violence all along the spectrum of politics. The paradox of asymmetrical threats is that it takes just some hundred fanatics to defy a whole society. Global terrorism knows about the limitations of the international system. Now, if someone wants to stab me in the back, I must have intelligence, security and even preventive defence. It is also advisable to tackle the primary causes of the stabbing and to address the broader issues that nourish terrorism. The triumph of law-abiding states over “big powers” or “rogue states” malfunctions depends upon the predominance of the rule of law.

Natural law is a crucial tool in the often hostile and pluralistic public environment, to which people of all races, cultures, and religions can have access through their rational capacities; it provides moral standards for the political discourse that everyone can grasp; it provides a civic grammar for religious and secular interlocutors. As the Chicago philosopher Leo Strauss noted, if you abandon natural law, cannibalism becomes a question of taste.

Natural law stands as a secular middle ground for religious and non-religious behaviour precepts. A contemporary democracy may, indeed, be defined as a secular society that presupposes the natural rights of its citizens and endeavours to fulfil their prior rights. It cannot, evidently, be based on revelation, inasmuch as revelation is considered an historical event to a uniquely elected community.

As revelation was divisive in the beginning of Modern Europe, religious order was confined to the private sphere. As European nation-states emerged, the issue of natural law took the form of natural rights. To social contract theorists, human beings originally

22 Back in 1966 Martin Wight argued in “Why is there no International Theory?”, that “political theory is ‘the theory of the good life’ whereas international theory is residual, a ‘theory of survival’” (Jackson, p.261).

23 Ruth Wedgewood. “International Law Is not Enough to Stop Aggression” *New Perspectives Quarterly*, Fall 2002, 6 pages.

endowed with rights assemble to form a political community. Both the conservative and pessimistic Hobbes, and the rather progressive and optimistic Rousseau have the same paradigm: human being does not come *from* society but *to* it. The task of the state is to facilitate the exercise of the natural rights. State building and public policy become the main issues.

External factors such as the policies and actions of Western powers may have hindered the twin processes of modernization and democratization of the Muslim world. Turkey is a crucial exception to this rule and Morocco may become another. In the case of Turkey, the NATO membership and the access' process to EU helped the country to modernize and secularise²⁴.

Let me, very summarily, suggest why this secularisation of natural law is crucial for the dialogue between the West and the Islam, and Israel; why it is a common ground for both secular and religious people.

The majority of Muslims still hold *Shari'a* as divine - its moral and pastoral theology and ethics, its ritualistic recommendations and observance; this psychological barrier is reinforced by the threat of criminal prosecution for apostasy. An intellectual critique and a strong campaign in the Muslim educational system and the media is necessary to overcome this barrier²⁵.

Now, the prime effort of reformist Islamic scholars is to show that *Shari'a* as public law is not divine at all; it was constructed by early Muslim jurists, taking *Qur'an* and *Sunna* as a starting point. According to Mahmoud Mohamed Taha, one must distinguish between the real message of the Islam and conjunctural rules in Revelation (*Qur'an*) and Tradition (*Sunna*). The real message occupies a dominant place in the *Suras* of the Mecca revelation about the essence of the faith (the free and responsible human being has been created as an image of the unique and omnipotent God). In the Medina *Suras*, the prophet tells men to organize and manage other men, presenting a better society than contemporary Arabia; it would be able to take some steps towards a more just society. Taha considers the orders given to this society as conjunctural, not the accomplishment of a divine order²⁶.

24 As I write this, (Dec,15-16 2004) the European Parliament and the European Council gave their approval to initiate Turkey's process of integration in the EU.

25 An exhaustive presentation of these issues in: Abdullahi Ahmed An-Na'im, *Towards an Islamic reformation; civil liberties, human rights, and international law*, Syracuse University Press, New York, 1996.

26 See Samir min, ¿Hacia una teología islámica de la liberación?, IGLESIA VIVA, Valencia, nº 209, ene-mar 2002, 120-123.

Koranic moral does not have as its single object the organization of the relationship between man and the divine: every aspect of human activity is under the scrutiny of law, alongside the somehow reduced place of religious practices. Thus the Koran is natural law, because moral sanctions abide inside the individual. The Koran refers unceasingly to the universality of human reason and feelings to justify its commands. And it associates to its moral teaching a complete educational system which one cannot neglect.

The moral of Islam, its rules, precepts, interdicts and commands, do not abolish natural law nor disavow its inspiration or consequences. Appealing to human conscientiousness, the Koran nourishes natural law. Moral law is not a constraint. It is by voluntary acceptance that the divine command can become for the believer a moral obligation: *"the first duty is the faith in the duty"*²⁷.

As this kind of self-critique of Muslim thought develops, the belief-systems, the exegesis' traditions, theology and jurisprudence become liberated from dogmatic constructs. As the time comes for Muslim social groups to acknowledge themselves as "imagined communities", they differentiate themselves from mythical images. Islamic reformists are dealing with topics usually considered as 'unthinkable' in the academic world. The category of revelation in the *Qur'an* is subjected to a comparative study of historic, linguistic, cultural and anthropological roots²⁸.

As Islamic populations engage in a secularisation and modernization process, they must reconcile two apparently incompatible sources of authority: divine will considered as revealed through the Koran, and democracy perceived as the best political regime. Absolute secularism will always be rejected. Islamic Fundamentalism is an escapist political solution. The issue, therefore, is how those who base their behaviour on religious grounds - the vast majority in Islamic countries - can significantly contribute to a modern democracy, apart from mere political and economic expediency. The answer lies in the natural law tradition, and the supervening security it creates. For it is very clear that one is not required to be a secularist in order to be a participant in the secular space created by the rule of law.

27 Muhammad Abdallah Draz, *La morale coranique*, Ar-Risala, 2002.

28 See Mohammed Arkoun. *The Unthought in Contemporary Islamic Thought*, London: Saqi Books and The Institute of Ismaili Studies, 2002. See also Pour une politique de l'espérance dans l'Union Européenne in *Intercultural dialogue. Dialogue interculturel Proceedings of the Congress held in Brussels in 20-21 March 2002*.

The Muslim Mediterranean world, thus, urgently needs a vocabulary (and a grammar) to read current political events; its vocabulary to qualify events is submerged in pseudo-history and myth-ideology²⁹.

The reformist proposals may occur within Shi'a Islam, where there is a close approximation to formal hierarchy of authority, or in Sunni Islam³⁰. The more the Islamic and Western definitions of human rights coincide, the more natural law and its civic values will be established as the common ground of the political secularist and of the "Religions of the Book"³¹.

Judaism is also receptive to the idea of natural law. The foundation of the Israeli state and its acceptance of the San Francisco Charter is its best guarantee. For religious-minded Jews, whatever role tradition attributes to universal human reason, the Torah and commentators believe in a universal reality called "creation". Commitment to Jewish tradition, yet, compels the assertion that revelation grasps more of the truth of creation than human reason and natural law could ever know. At first sight, a Jewish believer seems to have only two options when it comes to natural law; he may affirm natural law and allow Judaism to be swallowed up by a more universal instance; or he may deny natural law and deal with all social relations at the level of pure power politics. There is a third option, yet, a legitimate and operational place in Judaism for natural law; "the Torah is not in heaven"; Jewish believers are responsible for bringing wisdom forth from it on earth³².

A regards Christianity, natural law plays an essential role in social ethics. Churches apply variously the insights of Christian moral tradition to pressing issues of domestic governance and foreign affairs. Ecumenic engagement by Roman Catholics and Protestants led to an endorsement of natural law. The Concilium Vatican II sustained natural law against those who deny the existence of transtemporal and transcultural moral goods³³.

There may be a 'credibility problem' with natural law; a culturalist would attack it for relativism in national or religious identities; a multiculturalist would dismiss it as an elimination of particularities. Against these two opposing and self-defeating views,

29 Mohammed Arkoun. *The Unthought in Contemporary Islamic Thought*, London: Saqi Books and The Institute of Ismaili Studies, 2002.

30 Of particular significance is the work of Nobel peace prizewinner Shirin Ebadi, a human rights lawyer. See her autobiography in <http://nobelprize.org/peace/laureates/2003/ebadi-bio.html>.

31 The Medieval precedent in the Mediterranean area, is the acknowledgement of natural law by Averroes, Maimonides and Aquinas, t.i., a Muslim, a Jew and a Christian. The Renaissance precedent is Jean Bodin's *Colloquium Heptaplomeres*, (1593) the first treatise on tolerance, presided by Diogo Toralba, the virtual Portuguese Jew in a meeting of Muslim, Catholic, Baptist, and Pagan citizens.

32 David Novak, *Natural Law in Judaism*, Cambridge University Press, 1998.

33 See John XXII, *Pacem in Terris*, IV, p. 47, about the "universal unit of human convivium".

natural law emerges as a precious criterion to international law and as a safeguard against the dislocation of political legitimacy³⁴.

If “good secularisation” allows societies to break out from the confines of religiously sanctioned political order, a perverse secularization creates societies with no defence against “political religions” such as Communism and Nazism. That was not so long ago and not far ago. Germany and Italy, and all Eastern Europe, up to the Urals, became infected with totalitarianism or political religions that can be rightly called “Western fundamentalism”. Auschwitz and the *Goulag* were operated with weapons of mass murder by order of the state³⁵.

Natural law is a ground for modernization and democratisation; it is a bulwark against violations of human rights and a guideline to a pluralist society, without collapsing into the normative graveyard of historical relativism; it upholds the state-building process; it maintains the balance between civil rights and civil duties without which no leadership can find support among citizens; it is a foundation for the enforcement of international law; it is a background to improve the supranational power of international organizations around the model of the “free world”.

Natural law is not the end of troubles but it helps a lot. The World Bank’s latest prescriptions for successful economic development and good governance outstand transparency and accountability as factors to attract the foreign investor and to ensure successful private sector development. Legitimacy, or the rule-of-law, forms part of the new package and there is an irresistible tendency, to extend this economic prescription into the political sphere as well.

5. Short-term perspectives and future studies

Guidelines for a NATO security partnership with the Southern Mediterranean countries should provide a framework for organising cooperation and strengthen existing bilateral ties in the Mediterranean.

34 José Manuel Pureza, “Anarquia ou Direito - Reflexões sobre o Direito Internacional em vésperas de uma guerra ilícita”, comunicação no Instituto Superior Naval de Guerra, Lisboa, 14 de Março 2003.

35 The prime exposé is Eric Voegelin, *The political Religions*, Missouri University Press, 1997(1st ed. 1938). More recently see Jean-Claude Monod *La querelle de la sécularisation - de Hegel à Blumenberg*, Paris, Vrin - collection Problèmes et controverses (2002).

These issues should be taken into account:

- a) What constitutional principles should be observed to ensure the rule of law as the standard for state reforming in the Southern Mediterranean countries?
- b) What tools already exist or should be set in place to foster cooperation in the region?
- c) What institutional arrangements can foster the goals and objectives set forth?
- d) How developed is the dialogue among high-ranking public administration, military, academic and civil society leaders of NATO and Mediterranean countries?
- e) How to build human capital through education? The importance of education in the process of modernization and democratization can never be overemphasized.

A Mediterranean partnership is not an NATO's exercise in soft power projection. A new Mediterranean cooperation process, fostered by NATO and the South Mediterranean countries should not repeat the mistakes of the Euro-Mediterranean Partnership (the *Barcelona Process*). It must not present itself as an exercise in unilateral European policy-making, in which its Southern Mediterranean partners have little choice but to acquiesce³⁶. Nor should it be another futile exercise of a "wasted century" for the Muslim countries, as a recent book put it³⁷. You cannot get democracy instantly; but you can get proto-democracy if you initiate a citizenship process through dialogue among leaders; Loya Jirga is like Magna Carta.

Attempts to organise Europe's southern periphery are not European power projection. Europe's own lack of capacity in hard security terms is obvious. Such issues are currently left to NATO or, in the Eastern Mediterranean and the Gulf, to the United States and its chosen allies. NATO's Partnership for Peace, and the CSCE/OSCE experience in CBM's cannot and should not be mechanically reproduced. To many Arab states CBM's can be introduced only after a Middle East peace settlement. Moreover, internal security problems in the Mediterranean are independent from arms control and confidence-building measures.

NATO is a major historical success. It guaranteed the rebuilding of Western Europe after WW II; it helped foster the European Union; it helped to bring former European authoritarian regimes into the democratic family; it launched a security partnership with Russia, overcoming the end of a bipolar world. Above all, NATO won a war, through containment, against the Soviet Union and its satellites. Yet, as stated in George Kennan's

36 Mohamed Kadry Said, *Security in the Mediterranean*, Lisbon, Nação e Defesa, March 14-15 2001.

37 Jean Lacouture, Ghassan Tueni et Gérard D. Khoury, *Un siècle pour rien*, Paris, Albin Michel, 2002.

Long Telegram, the West contained the enemy and contained itself. It did not embark upon upon an imperial expansion like its former communist adversary.

Evolving from a defence into a defence and security alliance, NATO is keeping “the principles of democracy, individual liberty and the rule of law”, backed by military power. Specific threats are checked by specific dissuasion military capabilities, if necessary carried out on a case-by-case basis. *Si vis pacem, para bellum*. NATO’s Mediterranean initiative is concerned with soft security and confidence-building measures, not defence and military cooperation; as such it may generate a Mediterranean partnership. *Si nolis bellum para pacem*. That could be a new motto for the next step of NATO’s initiative.