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SECURITIZATION AND DESECURITIZATION OF ENERGY RESOURCES: INSIGHTS FROM ALSACE-LORRAINE FOR CYPRUS ISLAND

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Abstract

Energy resources since the industrial revolution have been paramount for both developing and developed countries. Therefore, the urgent need for and control over energy resources in order to have an advantage against rivalries have become a significant part of national security. From the late 18th century to early 20th century, coal and gasoline were major energy resources to make machines operational but they have been gradually replaced by the fossil fuels, oil and gas. While transformation is happening, dependency on energy resources in the fields ranging from housewarming to jet fuels dramatically increased. Having adequate energy resources, in this sense, provides industrially and economically strategic advantages for a country, so military or political struggles over energy resources have been a salient issue in international relations. This paper seeks to examine the struggle over energy resources under the light of Alsace-Lorraine case and to compare the results with the Cyprus case. In doing so, securitization studies facilitate theoretical ground on how energy resources are securitized, which leads to a country to take extreme cautions, including armed conflict and on how energy resources are de-securitized, which leads to changes in foreign policies from conflict to cooperation.

Keywords

Securitization, De-securitization, Energy Resources, Alsace-Lorraine, Cyprus Issue, Germany-France, Turkey-Greece

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Introduction

Increasing energy demand and diversification of energy sources have led to natural gas gaining importance and priority in the last decades. The recent discoveries of a significant amount of natural gas in the Eastern Mediterranean have diversified the source country options in the international gas market; three large fields have been discovered by offshore Israel and Cyprus between 2009 and 2011. These recent developments have raised discussions about the relationship between regional geopolitics and energy. Many analysts have expressed hopes that the Eastern Mediterranean might become a gas exporting region (Christou and Adamides, 2016). Moreover, this newly discovered gas sources could pave the way for a new era of cooperation which has the potential to solve conflicts in the region. However, history shows that disagreements over the sharing of energy resources more prone to conflict. The disagreements on Alsace-Lorraine can be taken as a striking example. Although there were amply reasons bringing the world at the edge of World War II, the disagreements between Germany and France about the sharing of energy resources in the region brought a global dimension to the conflict (Garloch, 1946: 268). Post-war political and military conditions enforced historical rivalries, German and France, to co-operate in terms of sharing energy resources, especially in Alsace-Lorraine. It is a fact that the energy resources in Cyprus and the Eastern Mediterranean have the same potential both for conflict and cooperation. Therefore, a comparison between the Cyprus Island and the Alsace-Lorraine regions can be important examples for the analysis of the conflict and cooperation potentials of energy resources.

An analytical framework of the paper bases on the securitization of the energy resources in the Alsace-Lorraine during both the First and the Second World Wars and desecuritization of energy resources after the Second World War. In case of Cyprus issue, this paper argues that securitization of the energy resources is now getting stronger and suggests that resemblances between the Alsace-Lorraine and the Cyprus issue might be taken as lessons before securitization of the energy resources leads to conflict. In order to do that, desecuritization process of Alsace-Lorraine case between Germany and France after WWII should be examined.



Such a huge argument has to be dealt with eloquently because of current disagreements in the Eastern Mediterranean Sea are getting furious. In order to subsidies the potential of energy resources bringing conflict (securitization) or cooperation (desecuritization) in the EMS region, the resemblances between the Alsace-Lorraine and Cyprus have to be presented. These two cases should be compared in order to increase the robustness of the main argument.

Following a section of the paper explains why these two cases are comparable. The next section provides a theoretical framework to comprehend how energy resources could lead to conflict and then cooperation in Alsace-Lorraine. Right after that, the paper depicts the case of Cyprus issue on which securitization process is in operation. In the concluding section, desecuritization process of the Alsace-Lorraine region is taken as a ground for the Cyprus issue.

What makes the Alsace-Lorraine and the Cyprus Issue Comparable?

The Alsace Lorraine region possessing coal mines and iron ores have had a strategic place during both World Wars. This is because in the early 20th-century coal and iron were important energy sources that were used in the wide range of sectors, including the war industry. On the other hand, hydrocarbon reserves recently discovered by the offshore of Cyprus have made the Island the center of energy conflict between the guarantor states: Turkey and Greece. The analogy between Alsace-Lorraine and Cyprus issues allows us to analyze the conflict and cooperation potentials of energy sources. It is going to be a bold argument that the Alsace-Lorraine and the Cyprus issue are similar to analyze and thus causes and results of both cases would be similar. Not to crash under such a huge burden, it is better to list similarities between the two cases. In this way, analyzing the Alsace-Lorraine case with securitization theory would make much more sense. Similarities are going to be categorized under three subtitles: historical background of remaining in-between two main actors, ethnic, language and cultural arguments of the actors claiming sovereignty over the regions, and possessing rich natural resources.

Historical Background: Changing Sovereignties between Two Main Actors over the Years

The Alsace-Lorraine region, attached to France in 1648 by the Treaty of Westphalia, was subsequently annexed by Germany in 1871 at the end of the Franco-Prussian War and returned to France after the First World War, thanks to the Treaty of Versailles. Excluding the de facto annexation of 1940-45, it had been French territory once again (Glenn, 1974). On the other hand, Cyprus Island was conquered by the Ottomans in the 16th century and became a center of sea trade. It stard under the Ottoman rule for almost four centuries, and Turkish residents settled there and lived together with the native Cypriots. The British Empire took sovereignty in the 19th century. After the decay of the Ottoman Empire, Island remained under the rule of the British Empire as a mandate. With the annexation of Island by the British Empire, the "Cyprus Dispute" was identified as the conflict between the people of Cyprus and Britain regarding the Cypriots' demand for self-determination. Several campaigns against Britain were organized by EOKA (Ethniki Organosis Kyprion Agoniston). In 1950 as a result of the propaganda of Greece,



the Greek Cypriot went for a referendum in which around 97% of the population voted for the 'enosis' (Union with Greece) (Yalçın, 2018). The referendum result was utilized by Greece to get international support for unification. Greece put the referendum results (around 97% vote for ENOSIS) to use for getting international support for unification. So that the international propaganda started to work, Turkey decided to support Turkish Cypriots claim of Taksim (partition of the Island between Greeks and Turks). As Greeks in Cyprus led by the EOKA attacked the British presence, started to organize attacks on the Turkish Cypriots. On these events, the Cyprus dispute shifted from a colonial to an ethnic dispute between the Turkish and the Greek Islanders (Erkem, 2016).

Decolonization process changed the sovereignty of the region, and the Island became an independent country with the agreement among the United Kingdom, Turkey and Greece which are still acting as guarantor states (Karakasis, 2017: 8). For Turkey, the significance of Cyprus increased during the cold war because of its geographical location along energy routes. Moreover, the recent discovery of hydrocarbon resources off the southern shores of Cyprus increased the strategic importance of the Island for Turkey and other parties (Soysal, 2004). Both regions have staged in the center of political and economic quarrels among the actors having national interests over the regions. While Germany and France were claiming their sovereignty over Alsace-Lorraine, Turkey and Greece are now main actors over the Cyprus question.

Both territories have historically been changing hands between two major actors. Therefore, whenever the control of the region changed, then the defeated party articulated linguistic, cultural and ethnic arguments in their efforts for taking it back.

Ethnic, Language and Cultural Arguments of the Actors over both Regions

The boundary between France and Germany was contested from the Middle Ages until the end of WWII. Much of this contestation involved the Alsace-Lorraine region which is located on the French side of the Rhine River and extends north-westward to the boundary between France and Luxembourg. Its population divided among French and German speakers. Alsace and Lorraine were subject to more intrusive assimilation attempts by first the German and then the French central governments. It took until the 1950s for tensions to calm down. With the returning of the region to France, the use of German dialects was suppressed, and people were mandated the use of French in schools and for government business (Glenn, 1974). At this point, it is necessary to address the distinctive approaches to the concept of the nation by Germany and France. It is because of that the differences in perception of the concept of nation reveal the way of how both actors affiliate their relations to the region and people living over there. As an initial example of nationalism in Europe, France took the path for a state-centred and territorial nationalism that includes assimilation of people living in the land under the French authority or claimed to be under French authority. In contrast, Germany mostly focuses on ethnocultural understanding in which linguistic and ethnic origin are key determinants (Brubaker, 2010). As a result, France tried to re-formulize the mind of people living in Alsace Lorraine for that they are French and Germans emphasized Deutsche speaking people lignin in the region.



For Cyprus, as a divided Island into two parts since 1974 similarly to Alsace-Lorraine it has long been viewed largely through the prism of the two ethnic communities, Greek and Turkish. With the decolonization process, the creation of the Republic of Cyprus and the acquisition of independence from Britain did not establish the peace and stability, but instead, the conflict escalated, and acts of violence in the 1960s put an end to the newly formed bi-communal state. The main issues of the dispute were; the organization of the army, proportional public procurement, tax law, and separate municipalities (Erkem, 2016). The emergence of both Greek and then Turkish nation-state and also the process of modernization had a great impact on traditionally co-existent Muslim and Christian societies. It is now a political reality that the era of modernity and nationalism in Cyprus has transformed pre-modern traditional communities into two separate political communities (Kızılyürek, 2002:223). The authority of the Republic of Cyprus extends over the Greek part in the south, whereas the Turkish Republic of Northern Cyprus rules over the Turkish part in the north, which is consisted of 36.2 per cent of the Island. As guarantor states, Greece and Turkey, their ethnic, linguistic, cultural and sometimes religious ties have been instrumentalized to claim their historical bounds, which serves their interests.

Rich Natural Resources Capacity of the Regions

The Alsace-Lorraine region was an interception point between France and Germany and is consequently of major strategic importance; it was also important because of its valuable resources. The region had important forests and valuable minerals. The salt deposits had been mined since the ancient times and between two wars, it was the basis for the important chemical industry. The Alsace-Lorraine region contained 46 per cent of the valuable iron ore reserves of Europe. Coal and Steel had provided both military capacity for occupation, as well as a cause for German and French territorial acquisition. The Alsace-Lorraine and its coal and iron ore deposit changed hands between France and Germany in 1871, 1918, 1940 and 1945. The iron deposits of Alsace-Lorraine were the second-largest discovered deposits in the world in 1918. During the First World War, Germany had 2,800 million tons of iron ore. Lorraine alone accounted for 2,000 million of these tons. After the dephosphorization process was discovered before the First World War, the value of these ore deposits became abundantly clear for both Germany and France. For the Rhine Basin, where Alsace, Lorraine and the German Saarland lay, there were iron and coal deposits that were critical strategic resources for the industry in the industrial era (as they were the basic requirements of steel production). Even today, Alsace and Lorraine are among the wealthiest regions of France, not a small part because of the steel and automotive industries involved in this area¹.

Around the mines have grown-up important industrial centres specializing in the production of iron and crude steel. Another mineral wealth of the region consists of potash mines and coal mines. Especially the potash mines were the second largest deposits of

¹ https://www.cvce.eu/en/recherche/unit-content/-/unit/5cc6b004-33b7-4e44-b6db-f5f9e6c01023/ee53b53d-cdfa-4b9f-a760-6339c851af9d/Resources#d27b6708-a15d-448a-891b-1158baf023a_en&overlay.



this mineral in the World (Garloch, 1946). The exploitation of petroleum on a commercial scale began in Alsace, which led to large-scale modern industries in the region.

The recent discovery of natural gas off the southern shores of Cyprus has added a new dimension to the debates on the "value" of the country. According to preliminary findings, the amount of natural gas found in the Glaucus-1 well (Cyprus' 10th block) is estimated to be between 5 trillion and 8 trillion cubic meters, meaning it could meet the Island's energy needs for up to 200 years. The discovery is the largest amount ever found in the Exclusive Economic Zone claimed by Cyprus. The discoveries have attracted the interest of European countries and Turkey, as well as energy companies, who are looking for supply alternatives outside of Russia (Özekin, 2020). Therefore, the geopolitical and economic importance of Cyprus radically changes and this inevitably impacts on the conflict as well as the terms of its resolution; it may deepen the divide, or it might become a factor pushing toward cooperation. It can be claimed that the strategic significance of Cyprus is redefined in different historical periods.

To sum up, the initial point of the paper begins with the historical experience both regions have gone through. They have been under the sovereignty of different actors overtimes, and by swapping between them, these regions have been under different political, social, and cultural dominance. This interchange of sovereignties turned out to be paramount due to the natural resources they had/have. For instance, at the beginning of the 20th century due to the strategically important coal mines that Alsace-Lorraine contained, the region had been a problem zone that triggered conflicts between the two neighbouring countries: France and Germany. On the other hand, by the early years of the 21st century, Cyprus has the potential to be Alsace-Lorraine of Turkey and Greece in the Eastern Mediterranean region because of the recent discovery of hydrocarbon reserves. These two critical similarities self-reflect another point which is that these regions are directly or indirectly claimed by the two main actors struggling to share the natural resources they had/have. The resemblance of being compressed between the two main actors also leads to another one. The main actors (France and Germany over Alsace Lorraine and Greece and Turkey over Cyprus) substantiate their claims over ethnic, linguistic, and cultural arguments which they had/have established over the centuries.

In general, the Alsace-Lorraine region and the Cyprus Island reflect quite similarities, which can be claimed that they can be compared in terms of energy capacities. The Alsace-Lorraine region changed the course of events then and the Cyprus issue might change now. To see that, the importance of Alsace-Lorraine during the two world wars as conflicting issues over energy resources and also during the formation of European Coal and Steel Community (ECSC) as compromising issue over energy should be taken under close examinations in the light of securitization and desecuritization theories.

Theoretical Framework: Securitization and Desecuritization of the Alsace-Lorraine and the Cyprus Issues

The concept of security has been redefined by B. Buzan, as one of the founding members of the Copenhagen School of security studies in the 1990s. According to the school of thought, "security" is not considered to be a direct consequence of the threat but is rather defined as the result of the political interpretation of the threat, a process called



securitization. The authors of this school point out the need to construct a conceptualization of security that means something much more specific than just any threat or problem. Therefore, security is defined as a non-linear reaction to the threat. After the seminal work of Barry Buzan, Ole Wæver, and Jaap de Wilde (1998), titled as 'Security: A New Framework for Analysis', securitization theory itself and its fundamental concepts have enormously been studied to criticize and so develop new dimensions. Most of the studies basically emphasize underdevelopedness of the securitization theory and thus in order to make the securitization theory more explanatory of current international issues, so they suggest developing basic concepts of the securitization theory (Stritzel, 2007; Wæver, 2011 and 2015, Vuori, 2008; Balzacq, Leonardo, and Ruzicka, 2015). Despite massive salient efforts to meet the deficit of the theory, this paper does not intend to delve into the weakness or strength of it. It is thought that the basic assumption of how an issue is securitized would provide a suitable ground to understand the cases of the Alsace-Lorraine region and the Cyprus issue.

The core argument of the securitization theory is that "it is by labelling something a security issue that it becomes one" (Wæver, 2004: 13). In this way, every possible issue or subject can be turned into a security issue and there will be no limitation. To avoid such endless securitization, the theory suggests three steps which are defining threats, emergently required actions, and effects on inter-unit relations (Taureck, 2006: 55). Regarding the first step, an issue has to be explained by the security keywords. The utterances, including these security key words, prioritize a given issue and aim to present vital importance of it. This first step is actually called a speech act performed by politicians or those who are influential in the decision-making process (Shipoli, 2018: 72). The function of the speech act is to raise awareness of a critical issue which has to be dealt with immediately and extra-ordinary means.

To Buzan and Wæver (2003), for securitization, a speech act is essential, "through which an intersubjective understanding is constructed within a political community to treat something as an existential threat to a valued referent object and to enable a call for urgent and exceptional measures to deal with the threat" (491). This definition of securitization theory opens the door for more debates on whether the security is objective (real threats) or (inter)-subjective (constructed) (Balzacq, 2019; Baele and Thomson, 2017; Stritzel, 2007), democratic and non-democratic regimes (Vuori, 2008; Wæver, 2011), and the concept of security itself (Šulović, 2010; Aradau, 2018; Baele and Thomson, 2017).

As this paper does not have an intention to test the theory's weakness and strength but focus on the case study of comparing securitization of energy resources between the Alsace-Lorraine and the Cyprus issues, fundamental assumptions of the theory will be applied both cases examined in the paper. In the securitization process, starting with the speech act, there has to be a securitizer and the audience whose approval is required. Once the equilibrium is reached among them, then extraordinary moves and policies can be applied for dealing with a securitized issue. Approval by the audience is also another debatable issue in the securitization theory literature as authority to act and to follow a certain policy is still at the hands of politicians or military officers who can try eliminated what is considered to be an existential security threat to the state or society (McDonald, 2008: 564; Roe, 2008: 632). This critic of securitization theory actually fits political



conditions during the two world wars, while France was not a fully-fledged democracy and Germany was ruled with a constitutional monarchy and then fascist regime led by Adolf Hitler. Therefore, the consent of the audience does not seem imperative for a successful securitization process.

Besides, the basic concepts of securitization (speech act, securitizer and audience), the context (McDonald, 2008: 564) or framework (Shipoli, 2018: 76) in which a securitizing speech act is delivered is also quite significant for securitization process. Both McDonald and Shipoli have emphasized, in separate works, the significance of the conditions in and momentum from which securitization process makes much more sense without mentioning referent object together with the security word. In both cases which the paper focuses on, there has been historical, social and cultural symbolism strengthening the securitization process. Thus, context or framework can be facilitator factors to reach a consensus between a securitizer and an audience. Agreeing with their critics, it is better to depict the context in which both cases was\has been securitized. In this way, a speech act employed by a securitizer would make more sense of the process of securitization.

Securitization Contexts of the Alsace-Lorraine and the Cyprus Issue

The need to maintain coal supplies (a primary energy source) had figured in both world wars. As well as energy supply, coal became a very political issue. Until the mid-1950s coal was still the world's foremost fuel, but after this time oil and gas quickly took over. It has been argued that energy is the key "to the advance of civilization," that the evolution of human capability is dependent on the conversion of energy for human use. Therefore, energy plays a fundamental role in shaping state relations.

A country's ability to access energy supplies and how it uses that energy determines the state of its economy, society and national security. A country's production mechanism, international affairs and lifestyle are all determined by fossil fuels. The energy that is so important for countries inevitably causes problems. In international law, many borders were delimited through treaties; however, upon the discovery of new energy sources closer to the border, that border becomes disputed. On the other hand, states have the right to extract resources within their territories. However, when a resource basin stretches across multiple countries' borders, it becomes difficult for a single country to assert its sovereignty over the field (Yergin, 2006).

Taking the theory as a ground point, the need to find, secure and diversified energy supplies have been construed as a leading security concern for actors or entities who see energy security as their national interests. By having a succinct critical framework for analysis, we are better able to understand the actions, reactions, and needs of states who consider their energy security to be threatened. By using cases of Alsace Lorraine and Cyprus, it has been found that certain regions where natural resources buried underneath have been a significant part of national interests. To secure national interests, regardless of constructed by audiences or securitizers, international actors determine a policy to deal with any issues. The importance of any possible issue within the national security framework reveals the level of securitization of the issue. The natural resources have been vital for survival and the development of a country. That is why coal and iron ore in Alsace Lorraine were subjected to the great struggle between



France and German. Relying on similarities between Alsace Lorraine region and Cyprus Island, this paper would argue that the Cyprus issue has a significant potential for being subjected to a great struggle through securitization. As the German and French securitized the issue of being in control over the natural resources, Greece and Turkey would seem to consider Cyprus issue as a security matter via securitizing energy resources in the offshores of the Island. Under these circumstances, securitization of energy resources opens up a new window for grasping the relations between Greece and Turkey towards energy resources in Cyprus Island.

Securitizers' Securitization of the Alsace-Lorraine and the Cyprus Issue through the Speech Act

The Alsace-Lorraine Case

Securitizing actors, to the Copenhagen School, are not limited to politicians but include intellectuals and officers and international actors (Stritzel, 2007). This section of the paper, there should have had archival research for obtaining both French and German documents and statements. Though the paper length is limited, secondary resources describing securitizing actors' understanding and statements seem adequate. To start with,

"As early as the autumn of 1914, members of the French government were defining war aims as the destruction of German industrial power through the occupation and even annexation of the Rhineland's coal regions. The Saar would be suitable for annexation, while the lower Rhine region of the Ruhr would be put under international protection administered by France, with troops present if need be. France could at one stroke destroy Germany economic and military hegemony while reestablishing itself as the greatest continental power. One French minister even suggested the removal of "the population of the Palatinate, who hate France, so as to create a vast area of expansion for the Latin race" (Henze, 2005).²

A prominent historian, Georges-Henri Soutou, who undertook various official positions in the French government suggested that in the First World War, France's major aim to destroy the industrial capacity of German to win the war and also stressed the significance of the Alsace- Lorraine's coal and iron ore resources for heavy industries. In this way, Germans' both economic and military capacities would be eliminated. This statement and the aim of the paper do not imply that the WWI was erupted because of struggle over energy resources but having, keeping, and controlling energy resources were\have been quite a survival in an anarchic world order to protect national interests. In the German side, Baron von Kiihlmann, the German Foreign Secretary, said in the Reichstag, October 9, 1917:

² <https://mandalaprojects.com/ice/ice-cases/saar.htm>.



"After a very thorough investigation of the whole situation, according to information derived from the most diverse sources, I am convinced that the great question around which the struggle of the nations centres, and for which they are shedding their blood, is not, in the first instance, the Belgian question. The question for which Europe is being turned more and more into a heap of ruins is the question of the future of Alsace-Lorraine" (Hazen, 1919: 154).

At the beginning of the First World War, the securitization level of the Alsace-Lorraine containing both coal and iron ores, which were paramount for the economy, military and industry, was also regarded as vital because of that Baron von Kiihlmann, the German Foreign Secretary, matched political and military struggles among European powers with the question of the Alsace-Lorraine. The keywords in his statement of 'more diverse sources' and 'the struggle of the nations' indicate the securitization level of energy resources in the region and thus the Germans were ready to dispose everything they had in order to get control of the region or prevent any other European states from controlling the region. Karl Marx also articulates another securitizing speech act by saying that "If Alsace and Lorraine are taken, then France will later make war on Germany in conjunction with Russia. It is unnecessary to go into the unholy consequences" (Marx, 2019:862). His expectation of France to go war against Germany in lining with another European power (Russia) indicates that securitization of energy resources was not constrained with the two rival states (France and Germany) but also include other European states.

Seeking control over energy resources between the two world wars was securitized by almost all states that were involved in the wars. By speech acts, each one of them stressed the importance of Alsace-Lorraine, if not the only reason but one of the significant factors which were critical to determining the results of the wars. At this level of securitization, as the theory suggests, all democratic norms could be left behind and taken extraordinary measure to achieve the control of the referent object, in this case, energy resources. Securitizing moves to get what the states wanted during the wars can be listed in too many pages, but wars itself show securitization level.

The Cyprus Case

As explained above, the energy dimension of the Cyprus question has been on the agenda of the parties since the early 2000s. Since the Island gained independence from the United Kingdom and emerged as a separate state as the Republic of Cyprus, the guarantor status of Greece and Turkey has given them the right to say something at the national and international level. In light of the fact that Greece and Turkey are directly or indirectly involved in the Cyprus question, the energy issue cannot be understood and analysed separately from the chronic problems of the Island. Sovereignty disputes, which Greece and Turkey have historically claimed on both Island and in the Eastern Mediterranean, have taken on a new dimension with natural gas discoveries.



Although the Cyprus question has many historical dimensions, the date of 2011 -in which parties began to raise dispute aloud with the discovery of natural gas- is taken to make a wholesome comparison with the Alsace-Lorraine region. This is because, in both, disagreements over energy sources have been centred on the conflict. As French and German acted in Alsace-Lorraine, today Turkish and Greek have made the energy a subject of sovereignty, in other words, a referent object in accordance with the securitization theory. In turn, this brings difficulties in solving the question and raising tension is proceeding. Due to the recent discovery of natural gas offshores of the Cyprus Island, the geopolitical and economic importance of Cyprus is radically changing and this inevitably impacts on the conflict potential as much as on the terms of its resolution. In other words, the recent discovery of natural gas can deepen the conflict or can enforce the parties toward cooperation.

Such massive discoveries in the Eastern Mediterranean raised the appetite of the Greek Cypriots to search for energy resource in its economic zone. Thus, it decided to join these exploration activities. In this first period, although they have been negotiating with many US-based energy companies, they did not achieve starting exploration activities as a result of Turkey's pressure until the second half of the first decade of the 21st century. Greek Cyprus later was able to sign an agreement with Egypt, Lebanon and Israel, regarding the Exclusive Economic Zone (EEZ). Turkey claims that Cyprus has obtained unfair interests by ignoring the basic rules of maritime law through bilateral agreements. Cyprus first signed an agreement for delimitation of EEZ with Egypt on 17 February 2003 and reported the coordinates of the agreed region to the UN. Turkey declared that the agreement signed between Cyprus and Egypt was not made with the participation of all countries bordering the Eastern Mediterranean, that it would not be appropriate for Egypt to enter into an EEZ agreement with Cyprus without a limitation agreement with Turkey on the basis of the middle line, and that did not accept the disregard of the TRNC (Yaycı, 2012). Despite Turkey's objections to these agreements, Cyprus immediately declared 13 oil exploration license sites in the Eastern Mediterranean in 2007 to explore for hydrocarbon resources. However, 8 of these 13 announced sites coincide with the TRNC and 5 with the Turkish continental shelf.

In this way, they have delineated the parcels in the Eastern Mediterranean so that they would be in control of the entire energy resources in the offshore of the Island. Unilaterally signing contracts with international drilling and oil companies by the Republic of Cyprus is reacted by Turkey with signing a "Continental Shelf limitation agreement" with TRNC on September 21, 2011, and granting exploration licenses to TPAO (Turkish Petroleum Corporation) in its own economic region in the Eastern Mediterranean and the north and east of Northern Cyprus (Karakasis, 2017: 11). By agreement in the case that the hydrocarbon reserve is found in the region it will be shared between Turkey and the TRNC.

The commencement of the securitization point starts here since the Economic Exclusive Zone is an extension of national sovereignty. Violation of state sovereignty, regardless of the mainland or the sea is seen as *modus operandi* leading to conflict. The Greek side of the Island has been acting on behalf of the entire Island while signing agreements with the international companies and the other states and thus excluding Turkey and Turkish Republic of Northern Cyprus (TRNC). In summary, Turkish Cyprus's argument is that



Greek side is not the sole representative of the whole Island and Turkey argues that some of the parcels in which drilling activities are in operation fall into Turkey's Economic Exclusive Zones, which is around the north-west of the Island. In this case, the referent object is the same as the Alsace-Lorraine case, energy resources.

The most recent speech acts of both sides performed by the politicians and decision-makers provide securitization connotations in their statements. For instance, Turkey's President Recep Tayyip Erdogan articulated that "as we made the terrorists in Syria pay, we will not leave the scene to the bandits of the sea" (4 November 2018, *The Guardian*).³ He, by constructing similarities between terrorists in Syria and the drilling companies and the Greek Cyprus unilateral initiatives, emphasizes the importance of sharing energy resources in the region. Turkey's securitizing move has been military intervention into terrorist hedges in Syria implies that Turkey is ready for military involvement in case of any movements excluding Turkey or what is considered as survival in the region. In the same statement, he also stressed that there would be no resolution without excluding Turkey from the regional dynamics by saying that "Those who thought they could take steps in the Eastern Mediterranean or the Aegean in defiance of Turkey have now begun to understand what a big mistake they were making. It is *absolutely unacceptable* to usurp the natural resources of the eastern Mediterranean while excluding Turkey and the TRNC" (4 November 2018, *The Guardian*). In this regard, Turkey's policy over the energy resources in the offshore of the Island indicates securitization level and Turkey might thus take any precautions to keep its interests intact. Securitizing moves of Turkey is self-reflective for the securitization of the energy resources. Turkey has not only sent its own two drilling ships (named Fatih and Yavuz who were the Ottoman Sultans) but also, they have been accompanied by the warships, named with Barbaros Hayrettin Pasha who was a great admiral in the Ottoman Empire, to prevent possible interference by the third parties (Adamides and Christou, 2016: 90). Even once, one of the warships blocked Saipem 12000 which belonged to Italian International Drilling Company (ENI) from the parcels the Greek Cyprus declared.⁴ After Turkey's intervention, the Italian company halted its drilling activities; Greek Cyprus signed a deal with the US Company ExxonMobil and the Qatar Petroleum. After this agreement, the United States lifted the arms embargo it had imposed on Cyprus since 1974. Turkey argues that lifting the embargo would have a negative impact on efforts to resolve the Cyprus issue. So much so that the historic "Cyprus problem," which existed because of long-standing disputes between Turkey and Greece and Greek Cyprus, has been recharged to extend beyond the borders of the Island to a large area of sea. In fact, the consequences of this dispute directly affected other regional actors, such as Egypt, Palestine, Israel, Lebanon and Syria were also concerned with the political benefits of global actors such as Russia, the European Union (EU) and the United States. In just the same way as Alsace Lorraine, disagreements over Cyprus Island have moved away from being a regional problem and become a global problem.

On the other hand, Greece's argument on the Cyprus issue is mostly affiliated with the legal violations of Turkey and mostly complained Turkey to the international organizations, especially the EU and the UN and also NATO. As referent object remains the same, securitization of energy resources by Greece and the Greek side of Cyprus did

³ <https://www.theguardian.com/world/2018/nov/04/turkey-warns-oil-companies-against-drilling-near-cyprus>

⁴ <https://www.energy-reporters.com/opinion/turkeys-first-drilling-vessel-heads-to-mediterranean/>



not seem to be as much as Turkey at the beginning. By standing international law while articulating their argument implies that they considered the issue within the political realm and that did not suggest they would take military actions toward to the issue. One of the -statement of the Greek side, articulated by Foreign Ministry of Greece, criticized Turkey for violating sovereign rights of Cyprus by arguing that “a slew of violations” against the sovereignty and sovereign rights of Cyprus, international law and the European *acquis* and is in defiance of the calls by the EU and the international community to respect the rights of Cyprus and defuse tensions” (4 October 2019, Ekathimerini).⁵ However, as of late Greece and the Republic of Cyprus’s participation into several joint military exercises with the states such as Israel⁶ and Egypt⁷ in the region might be considered as securitizing move because they might imply and represent a regional coalition against Turkey. Although later than Turkey, Greece has now begun to articulate military options. In this context, Greece has armed 18 Islands in the Aegean Sea since the beginning of 2020 in violation of the Lausanne and Paris Agreements. Greece and Cyprus’s operating military exercises with France and signing air defence agreements could be considered as a securitizing move. Likewise, France's arrangement of joint military exercises with the Greek Cypriot Administration and the deployment of military aircraft on the Island in violation of the 1959-60 agreements indicate that the problem is heading towards internationalization and securitization of energy resources has increased by Greek sides as in the case of Turkish sides.

In general, the Cyprus issue is already securitized by Turkey and Greece. Not to fall into anachronism trap, it has to be admitted that socio-political conditions of the time periods when Alsace-Lorraine was securitized and two major rivals ended up with two subsequent great wars in the world history. In the equivalent of this in the Cyprus case, extraordinary moves which are above politics were not highly likely because of that Greek side -did not totally securitize the issue earlier. However, securitization of an issue by one side, energy resources, in this case, might accelerate the process of securitization of the referent object by the rival side. In practical terms, Turkey seems convinced to take military action to protect its sovereignty claims, with the last developments Greece and Greek Cyprus have begun to go down the same path. In order to avoid possible future conflicts over the energy resources, desecuritization process is urgently needed. After dramatically destructive wars, France and Germany agreed to share energy resources in their common benefits rather than fighting for full control over it. In other words, securitization and desecuritization of the Alsace-Lorraine case for the energy resources present both conflict and cooperation potentials, respectively.

Desecuritization of the Alsace-Lorraine and Its Implications for the Cyprus Case

Ole Wæver (1993: 53-54) brought securitization and securitization process under the light through providing four case studies and suggested that for desecuritization, security issues should be “normalized” by politicians and intellectuals via the speech act. As in

⁵ <http://www.ekathimerini.com/245180/article/ekathimerini/news/greece-turkeys-drilling-plan-in-cyprus-eez-contrary-to-any-notion-of-legality>

⁶ <https://www.jpost.com/Israel-News/Israel-Air-Force-in-Greece-as-part-of-Iniohos-2019-585993>

⁷ <https://www.israeldefense.co.il/en/node/38302>



the securitization process, the speech act is not just words but connotes vital importance of referent objects, in desecuritization process, the speech act can be instrumentalized to reduce tensions on a specific issue. In this way, the securitization issue is leveled down to the political realm. This means that solving a given issue does not require extraordinary precautions and can be sorted out within democratic mechanisms. In other words, "Desecuritization political relations not only allow for collaboration but also increase the likelihood that energy-related developments will enhance their desecuritized status... They [the hydrocarbon and oil] are also used as political tools to enhance political foreign policy influence and empower the political position of state vis-à-vis adversaries, either by forming dependency relations or through alliance formation" (Adamides and Christou, 2016: 87).

In the case of Alsace-Lorraine, there are three striking points which have to be paid attention. That is the fact, the first one, that securitization brought Europe in massive devastation and then de-securitization was followed. It is because the major rival powers, France and Germany, disposed of all their power in the war. Therefore, it was imperative to agree for cooperation in terms of sharing energy resources. Secondly, there was external power enforcing cooperation in exchange for foreign aids, political and economic supports, the US. Thirdly, intellectuals and politicians are encouraging cooperation rather than revanchists policies between the two rivals.

In association with the first point, almost all European powers destroyed their rivals' infrastructure, which had to be rebuilt. To do that, they were all in need of energy resources to process raw materials such as iron and steel. In this regard, reasonable share from the natural resources was essential for all parties to revitalize their own infrastructures and industries. The second point is about external factors. The US needed a revitalized Europe as a market for American exports, and European continental security was also paramount for the post-war international system against the Soviet Union. It was also quite important for France and German to receive foreign aids under the Marshall Plan, initiated in 1948 by the United States (Petzina, Stolper and Hudson, 1981). Regarding to third point, attempts of intellectuals and politicians to convince both rivals that their national interest laid down in sharing the mines and energy resources. For instance, the French government overcame opposition from revanchists and proposed what is known as the Schuman Declaration on 9 May 1950. The Declaration was proposed by French foreign minister Robert Schuman, based on a plan developed by the French reconstruction planning minister Jean Monnet. Robert Schuman himself was from the disputed territory of Alsace-Lorraine. He fought in the German army in 1914-18, had German as his first language and became a French citizen in 1919. His plan offered a specific answer to the struggle for control of coal and iron: the formation of a supranational commission to regulate trade in the two vital war-making resources. Besides, steel was the major element in states' post-war economic reconstruction (needed for railways, buildings, ships, vehicles, machinery, etc.). These three points assisted in coming to an end to a struggle between Germany and France over Alsace-Lorraine and tuned out to be guarantors for stability and prosperity in Europe.

In the light of all these postwar developments, Robert Schuman's plan for the comprehensive organization of the "totality of Franco-German coal and steel productions under a common High Authority" led to establishing the ECSC. It was formally established



in 1951 by the Treaty of Paris, signed by Belgium, France, Italy, Luxembourg, the Netherlands, and West Germany (Spierenburg and Poidevin, 1993). Via this ECSC, development and trade of coal and iron/steel would be determined by the market rather than the national interests (Gillingham, 1991). This would increase efficiency in an industry which was vital to Europe's reconstruction while defusing the tensions created by competition for control of the resources. The precedent of the ECSC can be considered as an example of how practical cooperation in the field of energy can address mutual needs, as well as building confidence and trade between neighbouring states (even adversaries) (Hassan and Duncan, 1994).

The ECSC was the outcome of the practical consideration of how to achieve security through economic cooperation. The transformation in Franco-German relations from conflict over natural resources to cooperative trade of coal and steel reflects a parallel transformation in the way natural resources were viewed. Sharing of natural resources as a cause of the war was replaced by the security of interdependent trade of these resources. While one of the primary causes of both world wars was a conflict between France and Germany over the Alsace-Lorraine, the solution lays in resolving the issue of controlling natural resources. The ECSC was thus the first step into a new world.

The experience of the French and German particularly in Alsace-Lorraine case cannot provide outright answers or an exact blueprint for the resolution or prevention of future conflicts, but it does provide insights what securitization of energy resources caused and how desecuritization of it could be achieved, of course, without launching a war.

Final Remarks and Conclusion

The fundamental aims of the paper are to restrain from the first point which is considered to be the reason of desecuritization process of energy resource in Alsace-Lorraine and to make salient the other two points for desecuritization of the energy resources in the Cyprus issue. As the case of Alsace-Lorraine, disputes over energy resources between two rivals gathered third parties involved in the war in accordance with their national interests. In this way, alliances were established and so turned out to be global level wars. The Cyprus case resembles the Alsace-Lorraine case because both actors, Greece and Turkey are in the process of making allies for how to use and deliver energy resources in the Eastern Mediterranean Sea. In this way, possible conflict between the two main actors might extend and cause at least a regional level conflict, if not global level.

The second point of the Alsace-Lorraine case, enforcement of external power to comprise, seems crucial for desecuritization process. Power relations among the external power, encouraging an agreement between the two rivals is quite detrimental. In this way, an idea of transnational cooperation emerged, and this gave rise to the ECSC. Such an attempt was actually tried by the Turkish side, but the proposal was rejected by the Greek side.⁸ However, the proposal cannot be counted as made by external force because those who proposed it was actually part of the issue. The EU should be the first one coming to mind, but Greece and the Republic of Cyprus, which represents the whole Island are a full member of the organization and Turkey is still in adjustment process as

⁸ <https://cyprus-mail.com/2019/07/16/party-leaders-reject-akinci-proposal-in-joint-statement/>



a candidate. The EU's possible role as external power forcing two sides to make an agreement for sharing energy resources might be possible in case of that Turkey is granted with full membership. Otherwise, securitization of energy resources around the Island transcends the borders and might turn into the EU versus Turkey rivalry. Based on the recent developments, there is another option regarding the involvement of third parties into possible conflict as an external mediator, NATO. Both Greece and Turkey are the equal partner of this international organization might lead to a path for compromise, and it seems better working than the EU in which Greece and Turkey have a different status.

For the last point, having politicians and intellectuals, easing security level of energy issue in Cyprus among the both sides, is another absence for the de-securitization process. Especially in Turkish side, the sovereignty rights are taken as red-lines and do not open for discussion as it is mostly affiliated with national territorial integrity. The Greek side, including Greece and Greek Cyprus, developed a regional alliance with Egypt and Israel⁹ and now obtained military privileges from the United States and France. If it is argued that the politicians and intellectuals could get an opportunity to raise their voices is only possible after a destructive war, this third point might have been invalid. However, in order to prevent such a destructive war, politicians and intellectuals normalizing the issue and taking the issue back into the political realm (Zikos, Sorman, and Lau, 2015: 311) should take the ground and be influential in the decision-making process. That would be exact lessons should be taken from the Alsace-Lorraine case for the Cyprus issue.

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⁹ <https://www.reuters.com/article/us-cyprus-turkey-ship/cyprus-greece-egypt-call-on-turkey-to-end-provocative-actions-idUSKBN1WN1R0>



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ASSESSMENT OF THE RUSSIAN STRATEGY TO CONTRAST TERRORISM AND JIHADIST PROPAGANDA IN THE NORTH CAUCASUS

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Abstract

Terrorism, violent attacks and political Islam have affected the North Caucasus since the disintegration of the Soviet Union. If in the past the Caucasus Emirate was the leading terrorist organisation in the region since 2014 the Islamic State gained popularity and established the Vilayat Kavkaz (Caucasus Province) as part of the Caliphate exploiting the local critical socioeconomic condition and promoting the jihadist propaganda in the Russian language (i.e. the magazine 'Istok') also thanks to the considerable presence of North Caucasian foreign fighters among the ranks of Abu Bakr al-Baghdadi. Although currently the international coalition forces mainly defeated the Islamic State in Syria and Iraq, this organisation still jeopardises the North Caucasus often identified as the most volatile and impoverished area of the Russian Federation characterised by ethnic conflicts, the rise of Salafism, stagnation, and corruption. This study aims at stressing that the Russian government has elaborated a strategy mostly based on special military operations and massive investments in tourism and logistics which can exacerbate more the precarious status quo of the region favouring the dissemination of jihadist propaganda because it does not consider the historical, sociocultural, ethnic, and religious background. The region is not exempt to jihadist propaganda and terrorism and, if the Russian government cannot financially and economically support the regional leaders or will not change its approach, terrorism and political Islam could critically influence the North Caucasus posing a dangerous menace to the stability and security of the Russian Federation and entire Eurasia.

Keywords

North Caucasus, Russia, counterterrorism, security, Islam

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ASSESSMENT OF THE RUSSIAN STRATEGY TO CONTRAST TERRORISM AND JIHADIST PROPAGANDA IN THE NORTH CAUCASUS

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Introduction

The North Caucasus is a geopolitical strategic territory in the south of Russia that links Europe and Asia and splits the Christian and the Muslim worlds. Because of its geographic position and sociocultural background, the region has linkages with the Middle East, the Caspian Sea region, Central Asia, and the Arab-Muslim world. International superpowers (United States, Russia and China) and regional key players (Iran, Turkey, Azerbaijan, Georgia) are involved in the North Caucasian dynamics to control this interconnection centre and influence the international arena's development (Abtorkhanov & Broxup, 1992; Bifulchi, 2018; Gazhiev, 2003, p. 44). The region is also a buffer zone which protects the south of Russia from an external military invasion and provides the Kremlin with access to the international maritime trade thanks to the Black Sea (Friedman, 2008).

After the disintegration of the Soviet Union, the North Caucasus has experienced inter-ethnic conflicts, economic troubles, the rise of Salafism in contrast with the local Sufi community, terrorism, local militancy, unemployment, and corruption. Since the First Chechen Conflict (1994 – 1996) terrorism and local militancy have been the central regional issues: during the first decade of the 21st century *Imarat Kavkaz* (Caucasus Emirate) was the local leading terrorist organisation while in 2014 the Islamic State gained popularity and created *Vilayat Kavkaz* (Caucasus Province) as part of the Caliphate exploiting the regional critical socio-economic situation and promoting the jihadist propaganda in the Russian language (i.e. the magazine 'Istok').

In 2010 the Russian Federation has elaborated and developed a counter-terrorism strategy based on military operations and extensive investments in tourism and logistics whose goals should have been pacifying the entire region, boosting the local socio-economic development and contrasting terrorist recruitment among the young generations.

Although the Kremlin has emphatically described the positive impact of its strategy, terrorism is a threat in the North Caucasus and *Imarat Kavkaz* and Islamic State propaganda can still influence the local population because the Russian military forces have not yet wholly defeated the local jihadist groups.



Method of research and literature review

This investigation seeks to demonstrate why the Kremlin's regional counter-terrorism strategy might only have a limited positive impact in the short-term on the North Caucasian security and stability without dealing with all the troubles which encourage the residents, principally the young generations, to join terrorist groups and the Islamist movement. If the Russian government cannot sustain the local leaders or will not adjust its strategy, terrorism and political Islam could badly interest the North Caucasus threatening the stability and security of the Russian Federation and entire Eurasia.

This paper reviews the academic literature on geopolitics, history, security, ethnography, and strategic communication as well NGO and media reports concerning the North Caucasus, terrorism in Russia and jihadist propaganda in the Russian language.

Academic scholars and regional experts often describe the North Caucasus as the Russian 'inner abroad' or 'domestic abroad' and they differentiate this region from the rest of the Russian Federation and the *blizhnie zarubezhnye* (near abroad)¹ because of its peculiarities. Indeed, the North Caucasus has been described as 'a foreign region' in Russia where local tribal laws and Islam are more important in daily life than the Russian federal law. Due to its sociocultural, historical, and religious background, the ethnic-Russians have often perceived the North Caucasus as a 'foreign' area inside the country closer to the Middle East and the Arab-Muslim world (Halbach, 2010; Malashenko, 2011; 'Chechnya: The Inner Abroad', 2015;).

In terms of geopolitics, the North Caucasus plays a fundamental role in Russian domestic and foreign policy but at the same time, the region is one of the most destabilising elements of the Russian territorial sovereignty. Ethnocultural and ethnolinguistic problems, which have been characterised the region since the fall of the Soviet Union and the birth of the Russian Federation, have been used as instruments to foster conflict and interfere in the macro area Azov Sea – Black Sea – the Caspian Sea which Haushofer and Mackinder delineated as the world's most important areas of contrast. The United States – Russia confrontation still affects this macro area and, according to the concept of 'geopolitical axes' elaborated by Zbigniew Brzezinski, the White House started the prevention of Russian expansion to the south and towards the geopolitical pivots in the second decade of the 21st century through the North Caucasus and the exploitation of ethnic, cultural, and religious differences as an element of instability (Avksentyev, 2016).

There is a general trend in Russian academic literature to underline the possibility that a foreign country, especially the United States, might exploit North Caucasian ethnic minorities and sociocultural problems to destabilise the Russian south, hence undermine the Kremlin's authority (Babayan, 2012; Eneev, 2014; Kolossov & Sebentsov, 2014). The

¹ The Russian term *blizhnie zarubezhnye* (Ближнее зарубежье) is the collective name of the former republics of the Soviet Union, now the Commonwealth of Independent States (CIS), as well as the Baltic republics (Latvia, Estonia, Lithuania), Ukraine, and Georgia. Among the countries referred to as "near abroad" there are those that do not have a common border with the Russian Federation (Armenia, Moldova, Turkmenistan, Tajikistan, Uzbekistan, Kyrgyzstan), while some states directly bordering on it do not include (Finland, Norway, Poland, Mongolia, PRC, DPRK). ROSSTAT refers to the near abroad the CIS countries except for Russia, referring to the far abroad Georgia, Abkhazia, South Ossetia, Transnistria, Nagorno-Karabakh and the Baltic countries, but this approach is not generally accepted.



Russian concern over a US interference in the North Caucasian regional dynamics fits with what the US Intelligence agency Stratfor wrote about the region and the North Caucasian Muslim population defined as one of Russia's most vulnerable fronts (Goujon, 2016).

The North Caucasus is not only part of the geopolitical chessboard which opposes Russia and the West because the region is also the battleground where Russian security forces have fought local militants and terrorist groups. Indeed, since the disintegration of the Soviet Union independent movements and ethnonationalism have characterised the North Caucasus which during the '90s experienced the First Chechen War (1994-1996), the radicalisation of the Chechen cause and its transformation into a terrorist movement whose final purpose was to establish a North Caucasian emirate or imamate under the Islamic law and independent from the Russian central authority (Vendina et al., 2007).

Although the North Caucasian terrorism has its specific characteristics, it is not merely a regional phenomenon because local militancy and terrorism have affected the entire Russian soil and the North Caucasian jihadist groups have established some connections with the international terrorism network. The North Caucasian terrorism's roots belong to the radicalisation process and the spread of jihadist ideology started since the fall of the Soviet Union and increased during the Chechen struggle for independence against the Russian central authority during the First Chechen War when the entire country was facing the weakness of the national institutions, economic crisis, the rise of criminal activities, and an uncontrollable migrants flow (A. Yarlykapov, 2010).

Terrorism in the North Caucasus

Because of the Chechen conflict and the instability after the collapse of the Soviet Union the North Caucasus has experienced waves of radicalisation, militancy, terrorist attacks and the formation of jihadist groups (Pokalova, 2017).

In 2007 Doku Umarov created *Imarat Kavkaz* (Caucasus Emirate) whose aim was establishing an emirate in the North Caucasus based on sharī'a law. The Caucasus Emirate organised some of the deadliest attacks in the entire Russian Federation and gained popularity among the local population (Roggio, 2007). Russian military forces and authorities perceived *Imarat Kavkaz* as the main threat for the national and regional security and their concern arose especially after the International Olympic Committee the Russian Federation as the hosting country of the 2014 Winter Olympic Games in Sochi. It is possible to underline a connection between Sochi 2014 and *Imarat Kavkaz's* decline because of a major military involvement and activity of the Russian special forces in the North Caucasus in the years 2013-2015 that allowed the elimination of Doku Umarov and the most representative leaders of the organisation (Hann, 2014; 'Imarat Kavkaza /Caucasus Emirate', 2014; Jasutis, 2016).

While the Russian special forces were eliminating some of the most influential leaders of the Caucasus Emirate, the Islamic State started gaining popularity in the North Caucasus. In 2014 some *Imarat Kavkaz's* leaders pledged allegiance to Abu Bakr al-Baghdadi opening the door of the region to the Islamic State which created *Vilayat Kavkaz* (Caucasus Province) as a part of the 'new Caliphate' (Borshchevskaya, 2015; Flood,



2015). The creation of *Vilayat Kavkaz* in the North Caucasus might be the conclusion of a process consisted in the dissemination of jihadist propaganda in the Russian language through the magazine 'Istok' and Social media accounts to promote ISIS ideology and recruit foreign fighters in the post-Soviet space. In reality, according to Russian President Vladimir Putin, around a 4,000 – 5,000 Russian nationals have joined the Islamic State and among them, there was a considerable group of North Caucasians (*North Caucasian Fighters in Syria and Iraq & IS Propaganda in Russian Language*, 2015; Parazsczuk, 2015).

Since 2010, the North Caucasus has registered a significant decrease in violent attacks and terrorist activities although the region is not immune to jihadist propaganda and militancy. Considering the data reported by Kavkaz Uzel, during the period 2010-2017 the North Caucasus recorded 6,536 violent attacks: Dagestan, Chechnya and Ingushetia were the republics most affected by terrorism followed by Kabardino-Balkaria, North-Ossetia-Alania, Stavropol Krai and Karachay-Cherkessia. During these seven years, the number of fatalities dropped from 1,705 in 2010 to 175 in 2017.

In 2018, Dagestan registered most violent attacks in the North Caucasus although the total number of victims decreased by 10.9 per cent compared with 2017. Among the 49 people involved in regional violence, the militants had the main casualties (*Chislo Zhertv Vooruzhennogo Konflikta v Dagestane Za 2018 God Sokratilos' Pochti Na 11%*, 2019).

The Chechen Republic was not immune from violence even though the Kremlin has promoted the country as its success in counterterrorism: in 2018, 26 people were killed and nine injured. Compared to 2017 (75 victims), the total number of victims diminished by 53.3 per cent but the number of armed incidents increased by 37.5 per cent (*Chislo Zhertv Konflikta Na Territorii Chechni Umen'shilos' Na Fone Aktivizacii Boevikov v 2018 Godu*, 2019). The third most-violent republic in the North Caucasus was Ingushetia which reduced the number of victims by 58 per cent even though the local government could not avoid violent attacks that caused ten victims, eight people killed and two wounded (*Chislo Zhertv Vooruzhennogo Konflikta v Ingushetii Za 2018 God Snizilos' Na 58%*, 2019).

In Stavropol Krai, violent attacks resulted in six people killed and two wounded. The North Caucasian republic experienced an increase of victims of 33.3 per cent in comparison with the 2017 (*Chislo Zhertv Vooruzhennogo Konflikta Za 2018 God Na Stavropol'e Vyroslo Na 33,3%*, 2019). Last year, in the territory of Kabardino-Balkaria, six people became victims of the ongoing armed conflict between the local militants and the authorities. The number of victims in the republic was 500 per cent more than in 2017 when only one person was killed (*Za 2018 God Chislo Zhertv Konflikta v Kabardino-Balkarii Vyroslo Na 500%*, 2019). North Ossetia-Alania was immune to terrorist attacks showing its success in de-radicalisation and security. If in 2018 the republic did not experience any form of violent attacks, in 2017 four-armed incidents caused the death of five people and four injured (*Severnaja Osetija v 2018 Godu Vernula Poziciju Mirnogo Regiona v Zone Vooruzhennogo Konflikta*, 2019). Also in Karachay-Cherkessia, there were no victims in 2018, a positive trend compared to the five people killed in 2017 because of the armed conflict (*Zhertv Vooruzhennogo Konflikta v Karachaevo-Cherkesii v 2018 Godu Ne Bylo*, 2019).



In the first quarter of 2019, at least 21 people (16 killed and five wounded) were victims of violent attacks and terrorism in the North Caucasus. Kabardino-Balkaria was the North Caucasian republic mostly affected followed by Dagestan, Ingushetia, Stavropol Krai and Chechnya ("*Infografika. Statistika zhertv na Severnom Kavkaze v pervom kvartale 2019 goda po dannym Kavkazskogo Uzla,*" 2019).

The confrontation between the 'traditional official Islam' and the emerging Salafism

The Russian central authority considers necessary improving security in the region and pays predominantly attention to military operations and the total number of victims. Even though the coexistence between Sufi and Salafi communities has generated confrontation and a new wave of violence and radicalisation, Moscow and local governments seem to underestimate this problem whose roots belong to the dissolution's period of the Soviet Union when the North Caucasus experienced an 'Islamic revival' and Islam gave its contribution to the new regional identity after the failure of the Soviet ideology. During the '70s and the '80s and after the collapse of the USSR young generations of Muslims travelled to the Middle East, the Gulf and North Africa aiming at receiving an education in Islam orthodoxy and practices in the local madrasa or the most prestigious institutions in the Muslim world to fill the lack of Muslim religious figures and knowledge which the North Caucasus experienced because of the 'Sovietisation', the 'Russification' and the Kremlin's anti-religion campaign during the Soviet times. Simultaneously, Muslim scholars and imams from the Middle East, the Gulf and North Africa arrived in the region supporting the 'religious re-birth' and promoting what they considered the 'real Islam' based on the ideologies of the Muslim Brotherhood, Salafism, Wahhabism, and Hizb ul-Tahrir. These scholars, supported by their governments, established a network of associations and organisations involved in financing social projects, building new mosques and recruiting future students for their *madrasa* (Berezhnoj et al., 2003; A. Yarlykapov, 2010; A. A. Yarlykapov, 2015). The ideological Islamic propaganda promoted by foreign countries and those young Muslims who studied abroad generated the spread of radical Islam in the North Caucasus during the '90s when the region was facing the Chechen independence conflict between Grozny and Moscow and local interethnic conflicts such as that in the eastern Prigorodny inherited from the Tsarists and Soviet past administration. Hence, the region started soon experimenting with the rise of jihadi Salafi ideology often labelled by the Russian government and state media as 'Wahhabism'. Sunni extremist local armed groups engaged in the fight against the Russian central authority adopted this ideology as their framework (Chifu, 2011; Sagramoso, 2012; Sokirianskaia, 2007).

The spread of new ideologies, the rise of Salafism and terrorist groups caused a confrontation between supporters of the 'traditional official Islam' (Sufi) and the new generation of Muslims (Salafi) which sharply aggravated the security situation and the cohabitation in the North Caucasus. Each North Caucasian republic (particularly in the eastern part of the region) has registered different trends and peculiarities and there is a non-homogeneous strategy regarding the rise of Salafism and the support to Sufism (Abdulagatov, 2013; V. Akaev, 2008; V. H. Akaev, 2010; Makarkin, 2016):



- In Chechnya, there is a conflict between traditional Sufism sustained by the local authorities and Salafism of the young generations promoted as the 'only real Islam' and purified by local traditions (for instance ziyāra). After the process of 'Chechenisation' adopted by the Kremlin to overcome the problems caused by the conflict and start the reconstruction process, the Chechen leader Ramzan Kadyrov started the 'Islamisation' of the Chechen society supporting Sufism and fighting against any form of Salafism (*Chechnya Encourages Islamic-Style Customs*, 2011; Vatchagaev, 2014; Barak, 2016).
- In Dagestan, the Salafists are against the tukhum (tribal clan identity) and the 'ādāt (tribal law), and they accept only the Muslim umma as a central element of their lives. The rise of Salafism in Dagestan caused a clash with the 'traditional official Islam' (Sufism) because of different views regarding the role of the tribal code in religion. In fact, while the Sufi community considers vital the ethnic element, the 'new Islam' (Salafism) aims at establishing a society purified by ethnicity and based only on religion. Also, there is a struggle for control over the mosques where Salafists pray because the Salafi community plays an important role in the country (Rozanova-Smith & Yarlykapov, 2014; Roshchin, 2018).
- The new generations of Muslims from Kabardino-Balkaria who studied in the Middle East and the Gulf clashed with the local authorities regarding the concept of 'real Islam' and 'traditional Islam'. In 2005, an armed Salafi group organised an attack in Nalchik (capital of Kabardino-Balkaria) causing 130 victims and over 200 injured people. In March 2010 the Russian security forces killed Anzor Astemirov, leader of the militant movement (Salafi), exacerbating the confrontation between Sufi and Salafi communities and the Salafists with the local government. This hostility is at the base of the spread of jihadist propaganda and Islamic State recruitment in the North Caucasian Republic (Hahn, 2005; Fagan, 2014).
- In Ingushetia, the confrontation between Sufi and Salafi Muslims has involved Issa Khamkhoev, the leader of the national muftiate or Dukhovniy Zentr Musul'man Respubliki Ingushetii (Spiritual Centre of Muslims of the Republic of Ingushetia, DZM) and a member of the Qādiriyya Brotherhood, Khamzat Chumakov, since 2008 the Salafi imam of the mosque of the village Nasir-Kort in the city of Nazran who survived at three different killing attempts and resigned from his position in 2018, and Yunus-Bek Yevkurov who, since he was appointed the head of the Ingush Republic, has adopted a domestic policy based on military operations against the local Islamist rebel groups, open dialogue with the local Salafi communities and an attempt to promote a de-radicalisation process (Kvakhadze, 2018; Ramazanov, 2018).

Russian counter-terrorism strategy

Since the creation of the North Caucasus Federal District in 2010, the Kremlin has elaborated a strategy based on *Kontrterroristicheskoy Operacii* (counter-terrorism operations, KTO) against local militants and those people accused of being terrorists or linked to the terrorist network, the adoption of national, federal and local laws against terrorism, political Islam, religious extremism and 'Wahhabism', and a socio-economic



development programme to improve the regional living conditions and open the North Caucasus to foreign direct investments (FDIs).

Socioeconomic development has relied on the administrative reorganization of the region and a strategy based on tourist and logistics clusters. On January 19, 2010, President Dmitri Medvedev signed the decree N.82 which created the *Severo-Kavkazskij Federal'nyj Okrug* (North Caucasus Federal District, NCFD), separated the North Caucasus by the *Juzhnyj Federanlij Okrug* (Southern Federal District, SFD) where the Kremlin organized Sochi 2014, and launched the "*Strategija Social'no-Jekonomicheskovo Razvitija Severo-Kavkazskovo Federal'novo Okrug a do 2025*" (Strategy of Socioeconomic Development of the NCFD until 2025, Strategy 2025) to contrast the economic problems and improve the local living conditions. On October 14, 2010, Prime Minister Vladimir Putin signed the decree N. 833 "*O sozdanii turistichekovo klastera v Severo-Kavkazskom federal'nom okruge, Krasnodarskom krae i Respublike Adygeja*" (On tourism cluster creation in the North Caucasus Federal District, the Krasnodar Krai and the Republic of Adygea) which established a tourism cluster in the NCFD, Krasnodar Krai and Adygea.

On December 2, 2010, the decree N. 833 instructed the AO '*Kurortij Severnovo Kavkaza*' (Open Joint-Stock Company Northern Caucasus Resorts, JSC NCR) to manage the tourism and recreational special economic zones in the NCFD with the purpose of designing, constructing and commissioning new ski resorts to attract FDIs and international tourist flow and transform the North Caucasus as one of the leading destinations in recreational tourism. The last action of the Russian central authority in the North Caucasus was on May 12, 2014, when President Vladimir Putin signed the decree N. 636 to establish the *Ministerstvo po Delam Severnovo Kavkaza* (Ministry of the North Caucasus' Affairs, Minkavkaz).

Thanks to this administrative configuration and economic plan the Kremlin aimed at improving socio-economic conditions in the region, boosting the economic development, providing around 400 thousand jobs to the locals, attracting FDIs, connecting the region with the most important commercial routes, and contrasting the North Caucasian *jamā'at* (terrorist groups) and their recruitment activities (Vatchagaev, 2011; Tappaskhanova et al., 2015).

Conclusions

Although the Russian government has heavily financed the North Caucasians republics, the NCFD risks remaining one of the most unstable Russian regions and one of the predominant threats to national security and stability. The strategy to focus every effort on economic development without considering local peculiarities, the historical background, and the current negative feelings of the population that always see the contraposition between russkij and russiyane might become the biggest mistake of the Russian government in managing ethnic minorities in the region.

The ethnic Russians have always seen the North Caucasus as a challenging area, and during the centuries they have developed popular feelings against non-ethnic Russians, especially toward the North Caucasian people. *Kavkazofobija* (the fear of the Caucasus)



is a negative feeling of the Russian society toward the North Caucasians fueled by the two Chechen wars, the local insurgency and the waves of terrorist attacks on the Russian soil. Kavkazofobija resulted in the slogan 'xvatit kormit Kavkaz' (stop feeding the Caucasus) often used in the Russian political discourse to accuse the Kremlin of financing massive regional investment projects using State funds (Bifulchi, 2019). In his research, Andrew Foxall showed that the mass riots against the North Caucasians in Kondopoda (2006), Stavropol (2007), Moscow (2010 and 2013), and Pugachyov (2013) exacerbated the confrontation with the ethnic-Russians. This climate of fear infusing disappointment and distrust among the North Caucasians who do not consider themselves part of the Russian society and look at the Islamist cause and the local militancy as the solution of their problems (Foxall, 2014).

In the NCFD there are no direct elections of regional leaders appointed by the Kremlin. The lack of a democratic process alienates the local population from political life and generates mistrust regarding the authorities (*The North Caucasus: The Challenges of Integration (III), Governance, Elections, Rule of Law*, 2013). In the NCFD there are two main trends about the governance strategy based on their centralization: the first one is that of Chechnya where Kadyrov does not have direct political opposition, manages the most significant business activities, and bases the economic development of his country on federal subsidies and development programs whose purpose is to improve the level of security and boost the economic recovery. The second model of governance could be that of Karachay-Cherkessia or Dagestan where the head of the republic emerges from an agreement between the different ethnic groups which fight for access to the financial state subsidies.

Even though in the last years the security level in the region has increased thanks to KTO and the Kremlin's socioeconomic strategy, the North Caucasus is not a safe and stable region as the Russian government promoted because the jihadist propaganda has proved that can influence the local population, especially the young generations, and a threat both the locals and the authorities (Falkowski, 2014).

Besides, in the North Caucasus life and cohabitation between different ethnic and religious groups has not improved. Nowadays, ethnic and religious tensions are at the base of socioeconomic problems. Certainly, the North Caucasus is a multi-ethnic region and every approach to contrast terrorism and manage the local republics should consider the historical and socio-cultural background and the distinctive peculiarity of every ethnic group (*The North Caucasus: The Challenges of Integration (I), Ethnicity and Conflict*, 2012).

These feelings of distrust regarding the central authority mixed with ethnic tensions, the struggle for the land, and the lack of job opportunities are the reasons of the growing importance of Salafism which offers a virtuous Islamist state based on shari'a law as an alternative model. Hence, Islamic State and the Caucasus Emirate are still the major threats to the stability and security of the region because the young generations disbelieve the local government and policies which have given no solutions to improve their socioeconomic status and prefer to join the Islamist cause.

Economic development is fundamental in the North Caucasus, but it significantly depends on the Russian state budget and the national economic performance. Thus, an economic



crisis in the Russian Federation, as that the country experienced in the past years due to the falling oil prices, might affect the North Caucasian security and social situation because the region is still unable of attracting FDI and the attention of the Russian businessmen. Foreign and Russian entrepreneurs are reluctant to take part in North Caucasian economic development because they consider the region volatile and not profitable. This makes the North Caucasian republics dependent on the Kremlin's financial subsidies and the State budget. Undeniably, the regional situation is complicated and presents two different realities: on the one hand, the persisting high level of poverty and unemployment might push some people, especially young adults, toward Islamist cause and radicalism. On the other hand, local investors and elites do not have the stimulus and the reasons to invest money and efforts to improve the regional socio-economic development and maintain the social order, mainly after Moscow lost its ability to support local governments (Kazenin & Starodubrovskaya, 2015).

In conclusion, the Russian Federation needs to control the North Caucasus because of its geopolitical and strategic role, but the Kremlin must elaborate a sociocultural – economic strategy to contrast terrorism and jihadist propaganda. When the Islamic State will be completely defeated in the MENA region there is the risk that the North Caucasian foreign fighters might come back home, apply guerrilla tactics and promote jihadist ideology in the region threatening the local security and ruining the Kremlin's socioeconomic development strategy focused on tourist clusters (Hedenskog & Holmquist, 2015; *The North Caucasus Insurgency and Syria: An Exported Jihad?*, 2016).

The Russian policy should assess ethnic and religious groups to avoid that tensions will explode in local conflicts, and the Islamist cause will spread among the young generations. Even though the creation of the NCFD, Minkavaz and the Strategy 2025 might be a starting point, especially in economy, the North Caucasus needs an approach more oriented on decreasing the use of violence by military forces and local police whose primary goal should fight corruption.

It is fundamental to establish free electoral processes that allow the indigenous population to elect their representatives and head of state and guarantee accountability and transparency to government. Regarding the local society, improving the quality of life through health-care investments and supporting the role of education are one of the primary tools in the region's integration and conflict management.

Also, Russia should be more engaged in a dialogue with the Salafi communities trying to avoid a confrontation between the 'traditional local Islam' represented by Sufism and the Salafists and distinguishing between jihadi Salafism and Salafism. Therefore, Salafists feel persecuted by the local authorities supported by the Sufi leadership, while Sufis feel themselves in danger because Salafi jihadist groups identify them as potential targets.

Security and stability in the North Caucasus are also a concern for the European Union because the region plays a strategic role in the Eurasian continent. Although the Ukrainian Crisis froze the cooperation between Moscow and Brussels in counterterrorism and de-radicalization, it is advisable a decisive involvement of the European countries in the region through investments and exchanges of good practices in contrasting terrorism and managing ethnic minorities. Otherwise, the destabilisation of the North Caucasus risks to threaten the security of entire Europe and might create a logistics hub for jihadist



and terrorist groups to spread their ideologies and organize violent attacks in the entire continent.

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CRISIS, TENSIONS, INSECURITY AND MORE FRACTURES: WHAT HAPPENED TO THE SOUTH AMERICAN DEFENCE COUNCIL?

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Abstract

The stalemate and crisis UNASUR finds itself have generated a great diversity of interpretations about their causes and consequences. In this context, the situation of the South American Defence Council (CDS) deserves particular attention, due to its relevance in the construction of greater autonomy for South America vis-a-vis global hegemonic processes and players. This article aims to open some lines of reflection on the causes of the weak impact and stagnation of the aforementioned Council.

Keywords

Crisis, Regionalism, Security, South America, Institutional

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CRISIS, TENSIONS, INSECURITY AND MORE FRACTURES: WHAT HAPPENED TO THE SOUTH AMERICAN DEFENCE COUNCIL?¹

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Introduction

This article was based on the discussions carried out in the framework of the research project on the South American identity of security and defence that took place between 2017 and 2018 at the Institute of Higher National Studies (IAEN) of Ecuador.

The creation of the South American Defence Council (CDS) and its intention to "Build a South American identity in defence matters that takes into account sub-regional and national characteristics and contributes to the strengthening of the unity of Latin America and the Caribbean" (UNASUR, 2009), raised expectations in political, governmental, social and academic circles that received with enthusiasm and hope the initiative that recovered the hopes and efforts made at important moments of the political history of South America. It was felt that this would lead to autonomous discussion, analysis and decision about issues associated with the aforementioned areas.

The intention to strengthen regional ties in defence matters is nothing new. From the Saavedra Lamas Non-Aggression Treaty of 1933 to the Inter-American Treaty of Reciprocal Assistance (TIAR) of 1947, there have been several proposals in this regard. Some sought to exclude the United States, as was the original purpose of Saavedra Lamas, while others sought to include it, as was the case with TIAR (Comini, 2010).

The crisis the Union of South American Nations (UNASUR) has plunged into led to this article. The various interpretations of, and approaches to this situation, has led us to propose a reflection on the space that welcomed the discussions and common decisions in the fields of security and defence. Even though circumstances, priorities and actors have changed, it is a matter of particular relevance, since it keeps the integration problem in the field of defence at the centre of the discussion.

¹ Article translated by Carolina Peralta.



This analysis aims to open a discussion about the CDS at a time when UNASUR faces regression, delegitimization and weakening, for not acknowledging that its demise constitutes one of the few options in the current scenario.

From its inception, UNASUR aroused enthusiasm and expectations in leaders, governments and diverse sectors in the region. For Venezuelan President Hugo Chávez, the organization constituted "a political body, a great leap forward" (Chávez, 2010). On his side, Cardoso from Brazil, perceived it as the prelude to the "United States of South America" (Cardoso 2000, cited in Gudynas, 2006). His successor, Luis Ignacio da Silva, insisted that a united South America would move "the board of power in the world" (Lula, 2008, cited in Visca, 2008).

UNASUR arose in a context dominated by the processes of restructuring global power - accompanied by rises, declines, conflict and agreement between the main world powers - progressive political alternations in key countries in the region; the force used by Brazil at a time when its historical project of becoming a major power was being renewed; the relative decline in US influence over regional affairs; the significant increase in prices and, consequently, in income from raw materials ("commodities boom") that tended to widen the margins for policies (internal and external) that were much more autonomous regarding the global hegemonic centres; and a discourse that emphasized the need to overcome the dispersion and ineffectiveness of the strategic models of regional integration, and to have long-term state policies able to build solid institutional capacities free from cleavages, crises and political ups and downs.

The withdrawal by the majority of the progressive political forces in the region - generally more prone to autonomization, coordination, concertation and diversification of their foreign policies - the physical disappearance of their main inspirers, and the absence of convincing results in favour of integration, plunged UNASUR into a severe crisis, which, according to the speeches and the facts, seems to place it on the path of disappearance. However, it would be hasty to suggest that its opportuneness has disappeared, if one considers objectives that, for the moment, still seem to remain, at least in discursive terms: sovereignty and defence of natural resources, promotion of the integration of physical and energy infrastructures, encouragement of intra-regional trade, diversification of extra-regional links, and the coordination of foreign policies on issues of common interest, among others.

The same applies to issues associated with security that have also been UNASUR areas of intervention, which are not addressed in this article: the fight against organized crime, terrorism and transnational threats, among others. UNASUR had institutional bodies to address these matters, such as the South American Council on the World Drug Problem (CSPMD), and the South American Council on Citizen Security, Justice and Coordination of Actions against Transnational Organized Crime.

The security problems associated with the massive and uncontrolled flow of Venezuelan migrants, the tensions and criminality on the northern Ecuadorian border, the suspicions generated by the Colombian status of "global partner" of NATO (NATO, 2018), the threats of military intervention in Venezuela, and the continued production and trafficking of illicit substances (UNODC, 2018) exposed the unused UNASUR's capacities. This article aims to propose some lines of discussion on the factors that limited the institutional maturation of the CDS, in the event that its revival and readjustment are decided.



The academic production on this topic has been diverse in terms of approaches. They have included disputes for control of the hemispheric agenda and hegemony over strategic security representations (Padula, 2015; Sánchez-Levis, 2019; Teixeira, 2010; Sanahuja & Verdes-Montenegro, 2010); the influence of political, ideological and geopolitical factors on the maturation of the CDS (Paladines, 2017); and the particularities of its institutional construction (Ugarte, 2009).

What explains the limitations of the CDS in fulfilling its objectives? This is the main guiding question of our research. Likewise, two more questions are proposed: what role do the features that determine the particularity of the regional security complex (RSC) in which the CDS was founded play? To what extent could the shortcomings of its institutional construction compromise the achievement of its declared objectives?

The following hypothesis is advanced: the stagnation and poor results of the CDS are due to some features that characterize the South American RSC (US advance, fears of future overlap of Brazilian interests, and fractures in the social construction of threats), and the weaknesses of its institutional construction.

This article is the result of an empirical study focused on the description of the intertwined processes that shaped the development of the CDS, guided its discourse and were present in the emergence and resolution of the crises faced by the aforementioned organization. The methodological strategy was designed considering, first, the breadth and richness of the contributions from direct oral sources (officials from UNASUR, the Centre for Strategic Defence Studies (CEED), governments of the region, etc.); second, the access to official documents of the aforementioned institutions; and third, the possibility of starting discussions with experts, researchers and officials. On the other hand, the interviews, debates and consultations with secondary sources contributed to substantiate and broaden the initial perspective of the work.

The combined look at the object of this research, from the neo-institutionalist theoretical perspective and of the Regional Security Complexes (RSC), are justified by the need to examine a phenomenon that has been insufficiently studied from these approaches, and the possibility of producing an original analysis that examines the reasons why such timid advances were made in the development of a regional security and defence forum, despite the confluence of political, historical-structural and institutional factors that may have acted in favour of its consolidation.

The theoretical contributions of the Copenhagen School² were essential for this work. Two of its exponents, Barry Buzan and Ole Waever, define the RSC as a substructure of the international system with relative interdependence between its units in the field of security, and indifference towards the environment units. A first line of debate is opened here before the evidence that indicates the relevance of the United States in the security calculations of South American countries, and in the design and application of their public policies. This relocates the discussions on the "penetration" of the RSC phenomenon, which is part of the aforementioned theoretical model.

² Academic forum that was born out of the discussions about the book "People, State and Fear: The Problem of National Security in International Relations, published in 1983. Its analyses focused on non-military security issues, which was a turning point with respect to traditional approaches.



The aforementioned authors include four variables in the essential structure of the RSC: differentiation from its neighbours, anarchic structure, polarity, and social construction. According to the theorists, South America constitutes a "sub-conflictual anomaly" given the secondary nature of interstate security dynamics with respect to domestic affairs, the low use of military force, limited wars, high degree of political violence, intense relationship with the neighbouring superpower, and the possibility of splitting the RSC into two subcomplexes, among other features. From the previous characterization, some elements emerge that exert a considerable influence on the evolution of the Complex, and in particular on the creation of favourable conditions for its institutionalization, which correspond to the following lines of debate.

First, the differentiation of the South American RSC with respect to its neighbours. Even though Buzan & Waever (2003) define South America as a RSC, based on the thesis of indifference with respect to the dynamics of other RSCs, the evidences that indicate the "penetration" and the relevance of the United States in the calculations of security of the South American countries, lead to the discussion of the extent to which this could limit the institutionalization of the Complex towards an autonomous framework to address and solve its conflicts and external dangers. According to the aforementioned theory, security problems are resolved within the region with alliances circumscribed to its physical space, while the action of external global actors, although influencing the capacities of the units, does not shape its inner structure. However, in the case of Washington, it is not an external power that simply aligns itself with a state or group of states, but a central actor of the international system that perceives the region as a zone of influence where it massively deploys resources and capacities. In addition, there is its geographical proximity, the dimensions of its material power and means, and its networks and influence mechanisms (OAS and the Inter-American System). The other element to consider is the US response to the development of the Brazilian "global player" project that could contribute to deepening penetration, and therefore accentuate the anomalous profile of the South American RSC.

In these specific conditions, obstacles are identified in the face of efforts to empower the discourses and common spatial practices of foreign policy and external security. Consequently, a RSC that is subject to high penetration will find serious limits to its development, running the risk of stagnation, to the extent that it needs relevant actors from other complexes to solve part of its security concerns.

Second, polarity constitutes one of the features that distinguishes the South American RSC. There is no hyper concentration of resources and capacities to stimulate the "overlap" dynamics and the will to impose stemming from asymmetric relationships, on the one hand, and accept hegemonic approaches in terms of conceptions, representations and spatial policies, on the other.

However, it is obvious that the Brazilian global power project generates suspicions, reservations and fears on the part of many regional capitals and staff, considering the need to accumulate material and ideological power that this process entails, and its consequences on distribution and regional power structure. In fact, the launch of the CDS initiative demanded from Brasilia huge diplomatic efforts regarding its acceptance and subsequent materialization. In these circumstances, a RSC will find quite a few difficulties to express itself in institutional terms.



Third, the social construction of threats and dangers, as well as the diverse ways in which discourses, spatial policies and material networks destined to confront them are represented, submerge and find their causal links in the depths of the history of the region: decolonization, its founding as a political subject, the formation of its states and the construction of its very diverse strategic integration models. The main promoters of the CDS-UNASUR - especially Brazil and Venezuela - defended the idea of the relevance and opportunity of a space for autonomous discussions on security and defence as a way to increase the weight and relevance of the region on the world board; the nations closest to, and dependent on military cooperation with the United States tended to show resistance to the initiative and preserve ties with Washington, insisting that it was the only viable alternative to reduce their vulnerabilities and face external threats. It is this duality of myths that continues hamper the unification of visions and the consolidation of the project.

Therefore, the indisputable weight of the particularities of the political history of South America on the efforts to build a regional institutionality in matters of security, faced with the ancestral and persistent struggle between Monroism (Pan-Americanism) and Bolivarism (autonomous regionalism) (Vasconcelos, 1937) is recognized; the same goes for the incessant rivalries between states; the interpretation of threats by its civil and military elites at national level (Nolte & Wehner, 2015); and the influence of the armies in the formation of deeply rooted national imaginaries that are associated with sovereignty and territorial control (Manero, 2007), with a marked tendency to import foreign models of interpretation, analysis, and treatment of external challenges and dangers.

The assumption of South America as a Regional Security Complex (RSC), considering the strong interdependence between its units, for the resolution of its security problems, is combined with identifying the CDS as one of its institutional expressions. The findings obtained by the research informing this article allow us to see that the development and the particular configuration of a RSC shape and influence the behaviour of existing institutions within it, regardless of the degree of interaction and interdependence of its members. Taking into account that the intersubjective processes not only result in the construction of threats, but also in the actions and decisions for their confrontation, reduction and/or elimination, it is considered that: 1) the persistent "penetration" of a RSC casts doubt on the "indifference" of one with respect to the other (one of its fundamental premises), facilitating the introduction of ideas, representations and material networks that can open competitive and fragmentary dynamics within the Complex; (2) the rise in terms of rank, power and influence of members of the Complex could introduce, in the future, very pronounced asymmetries and "overlap" with the capacity to compromise the anarchy and independence of their units, and consequently, their own existence; and (3) the social construction of threats to security fails to overcome the dispersion and diversity of its interpretation.

By way of generalization, within a CRS with anomalous features such as the South American one, the development of autonomous institutional forms can be difficult, given the consequences of the persistent "penetration" from a foreign Complex; the suspicions raised by the deepening of asymmetries in the face of actors with greater relative power and hegemonic claims, and the fear of seeing some "overlapping" features introduced in



the future; and the diversity in social constructions about threats and dangers, which tend to inhibit the unification of their myth.

Even though the usefulness of the RSC Theory is recognized to address this paper's object of study, the truth is that it is not entirely sufficient to complete the analysis and have a more comprehensive internal look at its institutional expressions, as a differentiated phenomenon. For this reason, one of the many neo-institutionalist perspectives that address the institutionality issue, with emphasis on its normative framework (formal and informal), and its influence on the behaviour of groups and individuals was used. Within this broad field of knowledge, the sociological institutionalism of John Meyer and Brian Rowan (1977) was chosen, given their interest in the coupling (isomorphism) of organizations with their external institutional environments, as a guarantee for survival and success.

For us, within the institutional environment where international organizations operate, the constitutions and the political, state and legal systems that emanate from them dominate. This is defined as being dual, insofar as it combines the acceptance and promotion of external relations, with the defence of sovereign attributes, almost always with greater constitutional rank and political appreciation. In other words, it is possible, under specific circumstances, for organizations to submit to the consequences derived from a hostile external environment, reluctant to provide legitimacy and resources for their operation.

According to Meyer and Rowan (1977), organizations that "develop in highly elaborated institutional environments and manage to incorporate and reflect the forms of these environments, gain the legitimacy and the necessary resources to survive. This depends in part on environmental processes and the ability of leaders to deal with them" (352). Here it is worth outlining some considerations:

- 1) The development of structures and areas of discussion and decision external to the states, either through external cooperation formulas, explained through the liberal intergovernmentalism of David Moravcsik, or through more complete supranational schemes, argued from the functionalism of David Mitrany, or the neo-functionalism of Ernst Haas, will depend solely and exclusively on their will, which will continue to be, according to Cassese (1986), "the backbone of international society" (73), regardless of the proliferation of transnational actors and the restructuring of power to which the various post-Westphalian notions refer. The decision of the CDS members to conceive a forum limited to the exchange of ideas and information, without binding resolutions or a structure that would compromise absolute control over their policies and decisions, seems to be part of this logic.
- 2) Díez de Velasco (1997) defines international organizations as "voluntary associations of states established by international agreement, endowed with permanent bodies, their own and independent, in charge of managing collective interests and capable of expressing a will that is legally different from that of their members (41). However, the evidence found so far does not point to a desire, within the CDS, to develop its own independent legal personality, nor the scope of its political action beyond discussions about specific issues and cooperation projects .



- 3) Unlike the institutions that are subject to domestic constitutional and legal norms, the international ones do not have another external institutional and legal framework of reference other than the state, which constitutes the source of legitimation and appropriation of resources for their survival. Consequently, its existence and development will depend on the perception and agreements between the forces and actors that collide and cooperate within the state fabric, on how they meet their expectations and satisfy particular and general interests.

The aforementioned factors suggest an insufficiently developed institutionality of the CDS, resulting from the weakness and laxity of its norms, the poor autonomy it has to achieve its objectives, and the persistent reluctance within the states about its viability and reason for existing.

In addition to the introduction, discussion of the results and conclusions, this article has four parts: the first is dedicated to the RSC and discussions about penetration; the second analyses the "overlap" and the misgivings raised by Brazil's leadership; the third is dedicated to the fractures of the social construction around threats to state security; and the fourth examines the CDS as an institutionalized form of the South American RSC.

The Regional Security Complexes and the discussion about "penetration"

The interest of the United States in the rich South American biodiversity, the bioceanic connections for the diversification and expansion of access to the Pacific Basin, Antarctica and the transpolar zones (of the South Atlantic, Indian and Pacific oceans), the "interpolar strip", the use of topography, water and energy resources, maritime and river corridors, and the control of social reproduction, among other regional assets, is evident. Classic geopolitics never stopped having the region under its radar. For Mackinder (1904), the development of the great potentialities of South America can have a decisive influence on the hegemonic system of the United States (Mackinder, 1904). Meanwhile, and according to Alfred Mahan, with the strategic dominance of the Panama Canal, the Atlantic coast would compete with Europe, on equal terms, in terms of distance, more than with the markets of East Asia (Mahan, 1912).

The support and impulse of the CDS-UNASUR was accompanied by careful diplomatic efforts from Brasilia to avoid, as far as possible, that it was perceived as an anti-US initiative. In fact, the most radical aspects of the Venezuelan proposal were moderated or eliminated (Cardoza, 2010; García, 2010; Montenegro, 201; Padula, 2015; Teixeira, 2010; Sánchez-Levis, 2019). On 22 March 2008, the Brazilian Defence Minister delivered the CDS proposal to the Inter-American Defence Board (IADB), a body dependent on the Organization of American States (OAS). He also met the Secretaries of Defence, Robert Gates, and of State, Condolezza Rice, to whom he clarified that in no case would it be a NATO-style military alliance. For Brasilia, it was about laying the foundations of a South American defence identity supported by three areas (Amazonian, River Plate, and



Andean) and three common principles (sovereignty, territorial integrity and non-intervention) (CDS Working Group, 2009).

According to Buzan & Waever (2003), it is "penetration" that links the general pattern of power distribution between global powers and the regional dynamics of the RSC. According to the authors, this occurs when external powers build security alliances with states within a Complex. According to the aforementioned scholars, a regional rivalry can provide opportunities or demands for great powers to penetrate the region, while the logic of the balance of power encourages local rivals to ask for external help, and, as a result, local patterns of regional rivalries are linked to global ones (p. 46). Even though the Regional Security Complex Theory (RSCT) declares that one of its purposes is to deconstruct the emphasis on the role of the great powers and enhance the weight of local factors in the security analysis of the region, in our view some aspects indicated by the aforementioned theorists about external penetration are arguable. These include the statement that "the pattern of conflict comes from factors internal to the region", and the approach that ensures that external powers cannot - even if they are heavily involved - define, de-securitize or reorganize the security agenda of the region (47).

The strategic importance of the Amazon basin in Brazil's discourse, representations, and geopolitical calculations has been extensively documented in the literature (Padula, 2015, 2013; Manero, 2007; Teixeira, 2010; Kersfeld, 2010). At the same time, it is assured that such geographical space will be created in the context of global rivalries and struggles (Rodríguez & Plazas, 2012; Pastor, 2017; Navarro & Bessi, 2017; Guevara, 2017). The interest expressed by the US military in its control and implementation; the declarations of the former Vice President and presidential candidate Albert Gore, stating that the Amazon, "contrary to the feelings of the Brazilians, belongs to all of us"; the similar words used by Brazil's former secretary of Justice, Romeu Tuma (Barrionuevo, 2018); the dimensions of the military architecture deployed in the region; and the conduction of military exercises like "AmazonLog 17" - with the active presence of American troops - constitutes empirical evidence of the discussion about the definitions of the RSCT regarding the autonomy of the South American RSC, and of the hypotheses that discards Washington's direct involvement in an armed conflict for the control of the zone in the future.³

The United States has about 800 military bases around the world, of which more than 76 are in Latin America. The best known are: 12 in Panama, 12 in Puerto Rico, 9 in Colombia and 8 in Peru. The majority are in Central America and the Caribbean. On the other hand, the North American Command, in March 2018, publicly informed about its strategy in the region for the next ten years, identifying the main "hazards" or "threats" and how to deal with them (Capote, 2018).

Admiral Kurt W. Tidd, commander of the South Command, addressed the Committee of the Armed Services of the Senate, after saying that corruption, violent crime, economic backwardness, Islamic fundamentalism, illegal and uncontrolled migration, instability,

³ The history of the military bases built by the United States government in Latin America is related to having to face potentially conflicting and strategic movements for its foreign policy, such as the construction of the Panama Canal, started in 1903, Cuba's independence in 1902, and Puerto Rico's in 1898. As a result of these facts, this form of protection of American interests was expressed in the creation of a network of bases in Latin America during the 20th century (Bitar, 2016). Nowadays, the maintenance of US military bases is justified by the war against drugs and terrorism (Bitar, 2016).



trafficking in arms, drugs and human beings, money laundering, and the presence of global competitors such as Russia and China, formed part of the hemisphere's security environment; he stated that "an integrated approach was needed to approve the capacities of the authorities in joint, interinstitutional, international and non-governmental communities." He declared that it was necessary to "mobilize, organize and unify its own strongholds and those of partners and allies, to expand the exchange of information and collaboration, and to align security activities and development of capabilities in such a way that short-term successes can be translated into long-term achievements, supported by an adaptive and inclusive regional security network (Tidd, 2018).⁴

On the one hand, the Joint Vision 2020 of the Joint Command of the United States Armed Forces says that "the joint strength must be able to achieve full control of the spectrum, with American forces operating unilaterally in combination with other countries, institutions and partners to defeat any opponent. At the same time, the document insisted on the need to "maintain forces abroad able to deploy immediately so that they control the full spectrum" (Joint-Chiefs-of-Staff, 2018).

The penetration is equally massive and forceful at institutional level. The OAS has an architecture surrounding security and defence. The meetings of the Ministers of Defence, Public Security, and Justice (Attorneys General) stand out as fora, as well as the specialized conferences of the States Parties to the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms, Munitions, Explosives, and Other Related Materials (CIFTA), the Sessions of the Inter-American Committee Against Terrorism (CICTE), and the Ordinary and Extraordinary Periods of Sessions of the Inter-American Drug Abuse Control Commission (CICAD). There is also a Committee on Hemispheric Security. At the same time, conventions and treaties on hemispheric security, weapons, terrorism and disaster cases have been signed within this body (OAS, 2019).

The concept of hemispheric security stands out in the field of the penetration of the South American RSC. The Declaration on Security in the Americas, adopted by the OAS in October 2003, broadened the traditional definition of defending the security of states by incorporating new threats, concerns, and challenges, which include political, economic, social, health, and environmental aspects, considered from that moment as potential threats to security (Griffiths, 2007). In this sense, the risk of increased securitization of the region's problems, and of militarization as a response to confront them, cannot be ruled out, if one considers the historical trend of political intervention by the armed forces during authoritarian regimes or in the context of armed conflict or social instability, the US anti-drug and anti-terrorist strategies that promote a broader role for the armed forces in law enforcement, and the crises and inoperative systems of public safety of the region (Freeman, 2005; Martínez Á. , 2016; Fernández, 2012).

So far, the massive penetration by the United States in the RSC is evident, which is still far from the definition of "overlap", considering, according to the cited theoretical

⁴ These statements took place in a context marked by the use of Colombian bases by US troops, the reactivation of the 4th Fleet, the promulgation of the White Paper of the United States Air Mobility Command and the issuance of the document «Development and Strategic Planning» of the North American Southern Command (Comini, 2010).



perspective, factors such as the autonomy of its units to define its security policies, friendship-enmity patterns, and the distribution of the bulk of resources and capacities among a group of regional powers that converge and disagree. However, the US influence on the fields of management and transformation of conflicts and threats through ideas, capacities and institutions, shows an anomaly with respect to the theoretical proposal in question, and calls into question the problem of "indifference", as shown in the data obtained.

The global struggles for access and control of the Amazon is another point of debate regarding the Regional Security Complex Theory, taking into account the possibility of unleashing, in the future, a military conflict with the direct participation of the United States, whose interest in the area has been manifest for several decades, attested by the persistent and extensive presence of troops, bases and exercises.

Overlap: a scenario that can be discarded in the future?: Brazilian major power project in the face of asymmetric perceptions, rivalries and distrust

Even though the region succeeded in establishing the UNASUR and its CDS, having overcome a past of wars and conflicts that compromised peace, stability and development as a whole, it can be said that asymmetries and misgivings persist, as well as a perception of these phenomena, which questions the idea of consolidating a project such as the CDS, which to some extent results from Brazil's will to conceive an autonomous cooperative security and defence model, under its leadership.

For this reason, beyond becoming a factor for promoting the institutionality of the CDS, according to the logic of the RSCT, the perceived asymmetry of material power of neighbouring countries vis-à-vis Brazil has become a relevant obstacle, temporarily outmatched by affinities and favorable circumstances, but latent from the visions, interests, experiences and specific perceptions of sectors of the elites of these countries.⁵ They appeared with certain logic, reluctance and reservations in the face of an initiative seen as supporting the Brazilian major power project.

The ambition of the Brazilian elites to raise their rank and weight at sub-regional, regional and international levels constitutes a process under construction that began several decades ago. The Getulio Vargas government was responsible for the modernization and centralization of the state, the promotion of the industry and the rapprochement with the

⁵ The struggles, rivalries, and misgivings between units that won or claimed some autonomy in the region, date back to long before independence. The distance and suspicion of Chile, Asunción and Montevideo regarding Buenos Aires was notorious; of Guayaquil regarding Lima and Colombia; of Charcas and Upper Peru regarding Lima; Quito's suspicion of the annexation to Greater Colombia project, etc. (Demélas, 2010, cited in Paladines, 2017, p. 39). After years of republican and independent life, the maturity of the political subject was not enough to appease the struggles and suspicions, which has a lot to do with the Hispanic heritage and the specific cultural, social and political conditions in which the South American states arose. A not inconsiderable influence was exerted by the geopolitical concepts and guidelines generated in Europe, and, especially those of German origin, permeated South America through the Liaison Officers of the Latin countries in Europe. In other words, the Armed Forces were the direct recipients of geopolitical knowledge, especially in the Higher Schools or War Academies of the armies. And derived from the stigmatization of geopolitics by the allies, this knowledge was circumscribed almost exclusively to the said bodies and estates, acquiring a national connotation through the application of geopolitical guidelines to the circumstances of each country (Toledo, 2017).



United States, which was accompanied by its participation in World War II, and the recognition by Washington of its right to become a permanent member of the UN Security Council (Cardoza, 2010). This project has been continued by different types of governments - including the military - and political and economic situations that put it to the test.

Brazil's White Paper on Defence recognizes "a clear trend of cooperation in defence", reinforced by "the creation of the Union of South American Nations (UNASUR) and especially its Defence Council (CDS)", and the establishing of a "security community, motivated by the fact that neighbouring countries share common historical experiences, similar development challenges and democratic regimes, which facilitate mutual understanding and favour the peaceful accommodation of the various national interests" (Brazil-Government, White Paper on the Defence of Brazil, 2012: 33). Likewise, it reiterates the priority interest in the South Atlantic (38) and in the Amazon, highlighting the launch in 2010 of the New Strategic Agenda for Amazonian Cooperation (50).

With a prospective vision of the Brazilian global leadership project, the text "Brazil in 3 steps" identifies the preservation of the national territory with integration with South America as one of its needs and objectives (Presidency-Brazil, 2004: 18). It also cites considerations of the National Intelligence Council, adscript to the Central Intelligence Agency (CIA) of the United States, that Brazil will not achieve regional leadership in South America due to the scepticism of its neighbours and the mistrust generated by the emphasis on its own interests (117). The document emphasizes "the economic, political, social and cultural integration of the peoples of Latin America", in favour of the formation of a Latin American community of nations (p. 15).

The National Defence Strategy, for its part, insists on the importance of the integration of South America for the defence of Brazil, the promotion of regional military cooperation and the integration of defence industrial bases. It points to the CDS as a consultative mechanism that will prevent conflicts and promote cooperation and integration "without the participation of a country from outside the region" (17). It also gives priority to the Amazon region, stating that "it represents one of the centres of greatest interest for defence (14).

The aforementioned documents were integrated into an action platform of the Brazilian government that included the reactivation and modernization of its industrial production complex for defence, the approval of the Regulatory Decree of the National Mobilization Law (2008), the implementation of the Southern Border Exercises, and the requirement of the right to increase its nuclear energy production (Comini, 2010).

The creation of the CDS-UNASUR in 2008 was an initiative of Brazilian foreign policy. The then minister of the Brazilian government Nelson Jobim, following the guidance of President Lula da Silva, travelled to the countries of the region promoting the accession of South American countries. In this context, Brasilia kept insisting on possible interstate threats to sovereignty over the rich Brazilian and South American natural resources, especially in contexts of political crisis and international conflicts. The need for a deterrent force in the region was expounded, agreed in the framework of the CDS, and adequate to the defence of natural resources and the autonomous and leading role that Brazil and the region wish to achieve in the international system (Padula, 2015: 243). For Comini



(2010), a flexible cooperation scheme between unequal members was sought, and determined by multiple and even contradictory tendencies.

The clear imprint of Brazil's national interests that promoted the CDS was evident. Let us now examine the views of relevant actors in the region such as Argentina, Colombia and Chile.

Argentina, for its part, from the beginning insisted on preserving MERCOSUR as the privileged forum to discuss and settle matters related to regional security. The Argentine law "Restructuring of the Armed Forces", stated that:

Art. 7. The levels of strategic management and planning will analyse, at international level, the probable development of a defence system within the framework of MERCOSUR, in order to consider the requirements for the restructuring of the armed forces that may be necessary as a result of those agreements (National Congress, 1998, p. 65).

According to Ugarte (2009), this reluctance is based on the fact that the subregional entity had already been the scene of intense and fruitful cooperation in the field of public security, organized in specialized ministerial meetings on aspects of subregional integration different from the economic ones, including security and defence, accompanied by the construction of proposals and projects, which were pushed away by the emergence of the CDS idea.

Beyond security, for García (2010), the position vis-à-vis UNASUR has been ambiguous in the Argentine case, since in the bureaucracies of that country there is still a feeling of mistrust regarding the Brazilian leadership in regional affairs, seeing UNASUR as part of Brazil's regional hegemony project, and harbouring the fear that by paying less attention to MERCOSUR – more important for Buenos Aires in strategic terms – Argentina will lose its international negotiation relative power (Giacalone, 2007 cited in García, 2010, p. 36).

However, the initial reluctance was dissipated with Brazil's support for the renewed Argentine claim around Las Malvinas (Falklands), the election of Néstor Kirchner as secretary of UNASUR (Cardoza, 2010), the economic rapprochement with Venezuela since 2005 in the energy, industrial and agricultural cooperation areas, regional public financing mechanisms such as the Bank of the South, and the Venezuelan purchase of a large part of the bonds of the onerous Argentine foreign debt (García, 2010).

The 1998 White Paper on the Defence of Argentina stated that understanding the current state of maturation of defence and security issues in the sub-region required examining the origin and evolution of this historic initiative (MERCOSUR) (...) (Government-Argentina, 1998: 27). In its 2010 edition, the existence and objectives of the CDS-UNASUR are recognized, although it emphasizes the existence of "differentiated sub-regional dynamics", a Southern Cone, which in the areas of "defence and international security has the openness and transparency levels that resemble those of the early experience of European integration" (Government-Argentina, White Paper, 2010: 34, 37, 38).



In the 2015 edition, a more resolute position in favour of the consolidation and qualitative progress of cooperation between the Latin America nations, in general, and South America in particular, appeared, with the creation of the CDS and the scientific complementation, technology and production of Defence projects. (Government-Argentina, White Paper on Defence 2015, 2015, p. 217). The deepening of the commitment to the regional organ could be associated with the sympathies of the Kirchner administrations for the regional autonomization processes, as well as ideological affinity with their main promoters. However, Ugarte (2009), Luongo (2018) and Livoti (2019) refer the reluctance and criticism of career officials of the Ministries of Foreign Affairs and Defence regarding the priority given to the CDS-UNASUR over that of MERCOSUR. The truth is that there is a widespread fear that the Brazilian commitment to UNASUR will end up making MERCOSUR flexible to the point of emptiness regarding its most ambitious objectives, particularly being a “customs union” (Gandásegui, Martins, & Vommaro, 2015).

Despite all that has been said so far, we agree with Schenoni's (2014) approach regarding the factors that ended the Argentine-Brazilian rivalry: the behaviour of both actors, the nature of the political economy of each country, and their relative participation in regional power. Gandásegui, Martins, & Vommaro (2015) emphasize that there is no longer a leadership struggle between the two powers. However, so far nothing indicates that all concerns, doubts and even fears have been cleared up regarding a country that stands out at regional level not only for its capacities but also for its complicated insertion and relationships history.

Colombia, as a secondary power, also sought to preserve its autonomy in the face of Brazil's rise. The equation could be even more complex when part of the answers are articulated within the alliance with the United States, which for Bogotá is essential. The initial reluctance of the country to join the CDS is known (Álvarez & Ovando, 2009; Kersfeld, 2010; Flandes, Nolte, & Wehner, 2011). In general, the attitude of the Colombian authorities can be explained by the fear of affecting the strategic alliance with Washington, the presence of players in solidarity with the armed groups with whom it maintains an internal conflict, as well as the fear of being trapped in a forum where it can be weakened in conflicts with countries such as Venezuela and Ecuador.

Faced with the hypothesis of the Brazilian hegemonic construction, Colombia maintained the relatively highest military budgets in the region, the lowest levels of economic interdependence with its emerging neighbour, and close commercial and strategic relations with the United States and other powers (Schenoni, 2014).

In Bogotá, the country's concern to protect economic sectors and build alternatives to Brazilian leadership in the region persists, including the signing of free trade agreements with the United States and the European Union, as well as the project of triangular integration outside the regional blocks that became the Pacific Alliance. The most conservative sectors of Colombian politics have always been suspicious of the Venezuelan-Brazilian entente and their interest in the domestic conflict, and sceptical about the real determination of the CDS to support Colombia in its confrontation with its huge internal challenges. Likewise, the misgivings about a structural reality of power that gives Brazil greater autonomy in its international positions continued (Pastrana, 2011).



In the case of Chile, Brazil's promotion project does not seem to be indifferent to its civil and military elites. Even though the dominant Prussianism in the Chilean military sectors makes them assume a kind of "manifest destiny", with a nation surrounded by real and potential enemies (Maldonado, 1998 cited in Montenegro, 2011: 117); and its condition as regional secondary power forces it to take certain precautions to preserve an acceptable margin of autonomy; the truth is that Chile's official narrative does not tend to express great concern about the rise of Brazil, nor its willingness to lead the process of building a regional discussion forum on issues related to security.

Santiago's accession to UNASUR had a fairly broad consensus within Chilean society, influenced by perceptions regarding the transnational nature of some problems and, therefore, the existence of common interests due to greater interdependence. The fact that the regional organization is not perceived as a danger also matters, since it does not interfere with the country's economic opening strategy. Let us remember that within UNASUR, it was decided to put aside the implementation of trade agreements and the transfer of sovereignty, due to lack of consensus among the members on these issues (Serrano, 2017).

For Chile, UNASUR has been a framework to mitigate the potential for instability and conflict with Bolivia and Argentina, improve its energy security and access to South American gas, avoiding the difficult relationship with La Paz, and facilitate the access of its exports to the regional market, without submitting to the requirements of MERCOSUR (Borda, 2012). "In the acceleration of geopolitics in the region, there are alliances that could be altered from their immediacy and appear distant from their long history. But in the case of Chile and Brazil, the accommodations and adjustments will not affect the organic and fundamental unity between these two nations" (Rivas, 2019).

In our view, the Chilean National Defence Book (2017) provides evidence of the state's will to diversify its interconnections, fora and spaces for the discussion of problems associated with security. Clearly, the CDS is not "the option" for Santiago, but one of many, with the government refraining from wasting the possibilities offered by each alternative to strengthen its defensive capabilities against traditional and non-traditional threats. According to this logic, it could be stated that although Chilean spatial practices and discourse try to produce adequate margins of autonomy and manoeuvre in the face of regional hegemonic dynamics, in the specific case of Brazil, the dense relationship, collaboration and understanding between the two countries is actively used to complement capacities and reduce its vulnerabilities. The aforementioned document states:

From an institutional perspective, the continent has gradually gained a complex and multilevel architecture of cooperation regimes in the various geographic areas in matters of security and defence. At continental level, Chile participates in the security and defence institutions of the Inter-American System. (...). In the specific sphere of the continental level of defence, the Conference of Defence Ministers of the Americas has gradually developed as the most important political forum in the area of defence of the inter-American system, cooperative in nature, (...)"(Government-Chile, 2017, p. 87).



"A second level of security practice in the continent corresponds to that of the Latin American and Caribbean region, which has gradually gained institutions and whose general situation contrasts positively with the global context of growing uncertainty and instability that is occurring and summarized in the previous sections (...). The practice of Latin American regionalism has also taken important steps in recent years, with the creation of the Community of Latin American and Caribbean States (CELAC), the Union of South American Nations (UNASUR) and its South American Defence Council (CDS) and, more recently, of the Pacific Alliance" (...)"(Government-Chile, 2017, p. 88).

From the perspective of the RSCT, we went beyond the level of the unit (State/Government), encompassing other security aspects within it, such as the "influential groups", defined therein. For the purposes of this study, we worked with bureaucracies and high-ranking military commanders, taking into account their contribution to the constructions of imaginaries in terms of external threats and dangers.

The data collected shows differentiated attitudes and degrees of loyalty towards the CDS on the part of the elites of the selected countries, with direct consequences on their institutional maturation processes. The tensions in the discursive structure⁶ of the mentioned organ, gradually dissipated at political level, as the ideological affinities became more evident: the Kirchners' rapprochement with Caracas, the socialist government in Chile, etc. , the changes in regional policy, the change in the international position of Colombia with the diversification and intensification of the ties of the government of President Juan Manuel Santos at regional and global levels, changes in priorities of US foreign policy, and the rise of China and other emerging powers with growing interest in the region, etc.

However, with regard to the bureaucratic elites and military leaders, the position was not the same. This is demonstrated by the primary and secondary sources accessed, and, in particular, the contents of the white papers on the defence of these nations, which, while mentioning their membership and commitments to the CDS, raised with different nuances and emphasis the need to diversify the areas and processes of the agreement and treatment of conflicts and threats regionally. Research and discussion about the role of rivalries and asymmetric perceptions in the construction of the CDS and of a regional security identity remains open.

⁶ The term "discursive structures" is used by (Barnes & Duncan, 2001), and refer, according to the authors, to "the frameworks that embrace particular combinations of narratives, concepts, ideologies, and practices of meaning, each associated with a particular field of social action.



The fragmented social construction of threats in South America: diversity of myths, representations, and security discourses

Even though South America's efforts to regionalize the visions, interpretations and spatial security practices date back many years, in general, the problems and dangers in this area are interpreted and tried to be solved at national level, as stated by Manero (2007), Nolte & Wehner (2015), and Sánchez-Levis (2019). This is attested by the successive editions of the Defence white papers reviewed for this work. This is one of the reasons that could explain the difficulties in achieving the unification of myths posed by the neo-institutionalist perspective as a condition for the survival and proper functioning of organizations.

On the other hand, there is diversity of discussion, management and integration models in the field of security and defence, with fora and bodies with a distinct profile in UNASUR, ALBA, and, fundamentally, the OAS. The proliferation of initiatives and regionalization and cooperation models, so diverse and with overlapping competence and functionality, is considered a "complexity" process of international defence and security institutions in South America. A process that reflects the political and ideological plurality in the region, with impacts on the organizations that act in this particular field. In their task of defining objectives and responding to common challenges, the organizations try to differentiate themselves from hemispheric and extra-regional entities and adapt to the specific needs, risks and threats, as well as the interests of the region (Bragatti, 2019: 71).

The macrosecuritization of the agenda that the United States tried to impose, based on the concept of multidimensionality of threats, generated ambiguity, disagreements and discrepancies in national approaches and lack of a hierarchical system to structure defence problems based on their zonal, neighbourhood, sub-regional and regional disaggregation (Comini, 2010). In fact, the CDS seemed to attempt an approach differentiated from that introduced in the OAS, where a Secretariat for Multidimensional Security (SMS) was created to promote and coordinate cooperation among OAS Member States, and of the latter with the Inter-American System and other entities of the International System. This aimed to evaluate, prevent, confront and respond effectively to threats to security, being the main hemispheric reference for the development of cooperation and the strengthening of the capacities of the OAS Member States, having the "Declaration on Security in the Americas" as conceptual framework (OAS, 2019). As can be seen, during the life of the CDS, conflicts did not cease to exist between strategic security representations (Padula, 2015; Sánchez-Levis, 2019).

Some countries that joined UNASUR did so with interests divergent from those of its inspiring core (Brazil and Venezuela) (Bragatti, 2019). Brazil sought a base that would reduce its vulnerabilities while boosting its global leadership project, and also contain US penetration. Venezuela promoted it as part of its counter-hegemonic and anti-imperialist platform. Colombia, after its initial reluctance to join, later modified its position by ensuring that it would have regional political support for the management of its internal conflicts, with the probable purpose of gaining some autonomy and negotiation capacity in its close, priority and asymmetric relationship with Washington. Argentina, despite its preferences for settling security issues in MERCOSUR, joined the initiative to strengthen



its regional visibility, gain support for national causes such as the claim of the Malvinas Islands, and perhaps as part of the internal political confrontation. Chile saw it as an opportunity to avoid isolation and to deepen the diversification of the spheres in which it discusses these issues. And other smaller countries (Ecuador, Uruguay, Suriname, Guyana, etc.) took advantage of the space to strengthen their capacities to face vulnerabilities and threats.

For Comini (2010), the assignment of new functions to the Armed Forces should avoid the militarization of certain areas and the displacement of the policy-setting axis and its implementation, in a context where the asymmetric relations between the members of the CDS persist. This is in terms of regulations, organization, budgets, operational capacity, and potentiality for industrial production and research and development systems for defence - with a clear superiority of Brazil.

Ugarte (2009) insists on the need to seek coincidences and consensus in favour of a common nomenclature and that each country defines the structure that it would use in each case. He affirms that such a process was key to improve civil-military relations between member countries. He made reference to the reluctance in adopting a concept as inclusive as that adopted in the Special Conference on Security in Mexico, given that with such a concept of multidimensional security, the development agenda had been made secure in practice. He also pointed out the case of Colombia, its support of the US security agenda, unlike other Andean countries and the Southern Cone, which are more prone to building an autonomous regional agenda (11).

We agree with the views of Labadi (2018), Ugarte (2009), Sanahuja & Francisco Verdes-Montenegro (2010) in that the "Preliminary report from the CEED to the CDS on the terms of reference for the concepts of security and defence in the South American region" (CEED, 2016) was characterized by its laxity and the absence of more detailed definitions corresponding to the needs of the CDS to unify its positions and visions as to the main threats and challenges in terms of security. It should be noted, however, that the aforementioned work constitutes a reflection of a regional reality where discourses and representations compete and overlap, stemming, among other factors, from the spaces and limits imposed by the complex's own dynamics, and the length of every process of institutional construction.

The limited Institutional of the South American RSC: normative laxity and the weight of Westphalian culture

In their approach to the RSC, Buzan & Wæver (2003) discuss the autonomous units that operate in this anarchic system. This refers to the states, whose interrelation behaviour depends on the perception of their internal vulnerabilities, the opportunities and challenges that derive from their ties with other states, and the possibilities offered by ties with extra-regional powers in managing the threats and security problems they face.

The presidential diplomacy of UNASUR - and of the foreign ministers who have acted on its behalf - played a central role in the resolution of the crises, which had direct consequences on the development of the institutional architecture of the CDS.



In the absence of the automatic use of institutional mechanisms - of analysis, action, decisions, rewards and punishments - that could consider the intervention of technical, bureaucratic and political levels, the evidence indicates that it was the leaders of the region themselves who acted under the influence not so much or not only of the development needs and strengthening of the Council's management capacities, but of the pressures and demands of their respective internal policies. This is combined with Vargas' criterion (2018) in the sense that a formal rule can be accompanied by a strong intersubjective belief in its legitimacy (50).

This can be perfectly in tune with the statements of Powell & Bromley (2015), in that the social construction of international organizations takes place in the external environment, from where they are provided with guidelines for their structures and formal policies. In this framework, it is the state, the area in which the bulk of the representations take place, which leads to the institution as a material network, to which it gives legitimacy and the necessary resources for its operation (Meyer & Rowan, 1977).

As sources of the legitimacy and the resources that the CDS has had, the pressures and demands in different senses can be explained in order for it to align itself with the beliefs, myths and expectations of each of its member states, and of the groups, actors and influential sectors within them.

In the absence of defined normative and institutional frameworks, means and specific instruments for crisis management, they fell within the remit of the presidents and foreign ministers who were directly in charge of them, without standardized procedures or processes that could have acted more effectively and consistently. Despite this, the Guyana Summit, in 2010, decided to give impetus to a proposal previously made in Argentina, on the "Democratic Protocol", against "coup attempts" (Erazo, 2010), which had a greater following. Similarly, the situation of political instability in Bolivia in 2008, the coup in Honduras in 2009, the attempt in Ecuador in 2010, the creation of military bases in Colombia in 2009, the breakdown of Colombian-Venezuelan relations in 2010, and the overthrow of Paraguayan President Fernando Lugo in 2012, were among the events that received the attention and capacities of UNASUR, which remained devoid of solid institutional mechanisms to confront them. The prominence of the leaders and officials, while giving strength and impetus to the discourse in favour of the resolution of the disputes, did little favour to the maturation of the institutional architecture of the CDS.

Information on crises and negotiation processes circulated with difficulty. Sometimes three or four versions of the same issue were confronted. Very often, details and information of great relevance were known in the meetings, without there being an express mechanism to seize them, analyse them and build a solid basis for decision-making (Acosta, 2016).

At the same time, the CDS is part of the so-called "cooperative security schemes", defined as systems of interstate interactions that, by coordinating government policies, prevent and contain threats to national interests and prevent the perceptions the various states have from being transformed into tensions, crises or open confrontations (Comini, 2010).



For Mijares & Nolte (2018), UNASUR sowed, since its creation, the germ of its current crisis and self-destruction, due to its lax organizational design, the pre-eminence of national autonomies over the interests of regional integration, and the lack of a supranational institutionality that the authors call the “paradox of autonomy” (Cited in Bragatti, 2019: 70).

The countries that make up the organization maintain bilateral relations in defence matters with extra-regional countries, in areas that correspond to regional interests and in which there is still no intra-regional coordination. Topics such as the exchange of experiences in the field of humanitarian actions, the establishment of immediate response mechanisms in situations of catastrophe or natural disasters, as well as the promotion of the sovereign defence of natural resources, are some strategic aspects which, although framed in the CDS, each country continues to approach in parallel with other nations. A lack of correspondence is then evidenced between the defence systems invoked as common and the dynamics of the processes (Comini, 2010).

Discussion of the results

The use of the RSCT perspective offered us the opportunity to discuss some of its central aspects based on the empirical evidence that the research has produced. In this sense, the discussion about the definition, scope and consequences of the phenomenon of “penetration” remains open, which for Buzan & Waever (2003) constitutes one of the most relevant conceptualization elements of a RSC. Although this work, so far, does not rethink this specific aspect of the aforementioned theory, it opens a reflection on the degree of influence that the penetration of an external power can have in the design and development of the management models of security within a Complex.

A much more heated debate arises over the question of “indifference” as a differentiating factor between the South American RSC and the one to which the United States belongs. The data collected confirm that in the calculations and representation of threats by the CDS member countries, the movements, emphasis, decisions and discursive orientations of Washington are more than relevant. This was demonstrated when the conditions for the abandonment of the Democratic Security Policy (PSD) by the Colombian government - after the election of Juan Manuel Santos - were analysed, including adjustments of the external security policy of the Colombian government to the administration of President Barack Obama, and the decision to get closer to the region through its active participation in the mechanisms and processes of multilateral and bilateral ties.

From the outset, this analysis tended to overestimate the issue of rivalries and misgivings about the rise of Brazil and its regional and global hegemonic ambitions. Later, and as the two main theoretical perspectives developed, they allowed us to distinguish two different levels of reaction and appreciation (political and bureaucratic) that placed the balance of analysis right in the middle: on the one hand, the ideological affinities acting in favour of the CDS, and, on the other, the criteria and the interpretations of the countries’ military and civilian leaders, resisting the regionalization of the analyses and decisions, emphasising how the vulnerabilities and challenges increased with the integration of their respective states in the regional initiative.



The problem of the maturation of the institutional processes of the CDS remains pending. The access limitations to oral and written primary sources made it difficult to have a finer and more complete approach to the matter. We believe that the chronological distancing of the Council's peak period could help us obtain much more information.

Even though the "futurology" exercise associated with the conflictual potential of the Amazon was risky and disruptive for the South American RSC, the truth is that the overwhelming amount of data obtained and studies conducted tend to test the theoretical claims of Buzan & Waeber (2003), who transmit, at least momentarily, the idea of permanence of the Complex, based on the hypothesis that the United States is not directly involved in a future war conflict in the region.

Conclusions

The massive penetration of the United States in the RSC, which is still very far from the "overlap" logic proposed by Buzan & Waeber (2003), considering factors such as the autonomy of its units to define security policies, friendship-enmity, and the distribution of the bulk of resources and capacities among a group of regional powers that converge and disagree. However, the US influence on the fields of management and transformation of conflicts and threats through ideas, capacities and institutions, shows an anomaly with respect to the theoretical proposal in question, and calls into question the problem of "indifference".

The Brazilian global leadership project presupposes an extraordinary accumulation of resources and capacities for its materialization. This phenomenon does not compromise "polarity" for the moment, considering the existence of other actors with enough power to gravitate towards regional politics. However, it accentuates asymmetric perceptions that tend to arouse many reservations and concerns about the future of the Complex, and indicates some "overlapping" features that would put its very existence in doubt. This could be associated with other problems such as the promotion of "penetration", adherence to other representations and material networks, and the reluctance to provide legitimacy and political support to the CDS.

Even though the efforts in South America to regionalize the visions, interpretations and spatial security practices date back many years, in general, the problems and dangers in this area are interpreted and tried to be solved nationally, resulting in fragmentation of the social construction of threats. This could be at the origin of the pitfalls that prevented the unification of the representations, interpretations and approaches within the CDS. This problem was further aggravated by the influence of the diversity of discussion, management and integration models in security and defence, with fora and bodies with a distinct profile in UNASUR, ALBA, and the OAS.

The absence of explicit norms and mechanisms for the resolution of several of the crises that broke out in the region had direct consequences on the stagnation of the development of the CDS' institutional architecture. In the absence of the automatic use of institutional mechanisms that could consider the intervention of technical, bureaucratic and political levels, it was the leaders of the region themselves who acted under the influence not so much or not only of the development needs and strengthening of the



capacities of management of the Council, but of the pressures and demands of their respective internal policies.

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POLITICAL TURNS AND PERCEPTIONS IN THE FOREIGN POLICIES OF ARGENTINA AND BRAZIL (2003-2019)

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Abstract

In the evolution of contemporary international politics, ideological turns are important factors that affect the resetting of governments' external agendas and of intra-regional and extra-regional ties. All of them are affected by the worldviews of political leaders who occupy a prominent place in governments and by the types of leadership that presidents choose to have in the exercise of their functions. This prompts us to analyse and reflect on the forms of international insertion South American countries in the regional, continental and global scene based on the perceptions of these leaders. The challenge is to analyse the pre-existing and emerging perceptions between Argentina and Brazil in the period 2003-2019 and how they shaped the regional integration processes. At the same time, this paper examines their trends based on the operational milieu, that is, according to the international and regional context and the evaluation of integrationist alternatives. The hypothesis is that the changes that took place in the operational milieu were a determining factor in the setting of the psychological milieu; and that the resetting of the agenda regarding regional integration shows both a change in perceptions and an effort to adapt to external and internal political turns. Thus, among the various existing perceptions, we highlight as the most relevant three ideal models/types that move towards two extremes to achieve a third that synthesizes them: the strategic alliance; nationalist-military thought (or traditional suspicion); and Mutually Assured Trust (MAT). The creation of concepts such as the MAT implies advancing in a relational model that removes uncertainty from the bilateral relationship.

Keywords

Political Turns, Perceptions, Foreign Policy, Argentina, Brazil

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POLITICAL TURNS AND PERCEPTIONS IN THE FOREIGN POLICIES OF ARGENTINA AND BRAZIL (2003-2019)^{1 2}

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I. Introduction

The year 2003 was a turning point in world politics. The invasion of Iraq marked the relations of the Middle East with the world, the renewal of the alliance between the United States and the United Kingdom and, necessarily, the redefinition of the external agenda of the European Union (Paredes Rodríguez 2013; Martínez 2019; de Castro Ruano 2015). In the South of the world, political processes also began to redefine themselves during the first decade of the 21st century. Starting with the regional electoral cycle that began in 1998 with the triumph of Hugo Chávez in Venezuela, the processes were characterized as a 'turn to the left', 'progressivism', 'rise of the pink tide', 'post-neoliberalism', 'neo-populism', etc. (Panizza 2006, Moreira 2017, Dubesset 2017). A decade later, the debate gained new vigour from the results of the electoral cycles in which political leaders labelled from the right were triumphing, who are averaging their terms of office in the final years of this second decade of the 21st century.

This double reactivation of the ideological debate makes us rethink the political path of the governments of South America, and gives us a time frame. The governments that inaugurated the new century - Kirchner in Argentina, Lula in Brazil, Chávez in Venezuela, Vázquez in Uruguay, Morales in Bolivia - were perceived by the academic community as representatives of a shift to the left (Pereyra Doval and Lorenzini 2019; Lesgart and Souroujon, 2008; Dabène, 2012). From 2015 onwards, the electoral results - Argentina, Venezuela, Brazil, Chile - invite us to think about the emergence of a new political cycle, based on the advance of right-wing political forces through various mechanisms - electoral, institutional and para-constitutional victories, including a coup in Bolivia³ - as well as the growing role that these actors play in the social and political opposition (Middlebrook, 2000; Beltrán, 2005; Anselmi 2017).

In the evolution of contemporary international politics, ideological turns (right-centre right- centre-centre-left-left) are important factors that affect the (re)setting of the governments' external agendas, and of intra-regional and extra-regional ties. All of them

¹ This article is the result of research leading to the award of the post-doctoral degree in International Relations, awarded by the National University of Rosario (Argentina).

² Article translated by Carolina Peralta.

³ The different references to Coups of a different nature in this work refer, in general terms, to a change of government operated by violating constitutional norms (Borja, 1997).



are affected by the worldviews of political leaders who occupy a prominent place in governments and by the types of leadership that presidents choose to have in the exercise of their functions. This prompts us to analyse and reflect on the forms of international insertion of South American countries in the regional, continental and global scene based on the perceptions of these leaders⁴. In this sense, the turns that have taken place in South America from 2003 until now mean not only a change in the political aspect, but also in what Jervis (1976) called the psychological and operational milieu. That is, the world as seen by an actor (psychological milieu) and the setting in which politics are carried out (operational milieu). Thus, the thinking of policy makers contains complex information and patterns, such as beliefs, values, experiences, and concepts; at the same time, a specific context operates. Therefore, the perception consists of the sum of images, beliefs and intentions of an actor according to a specific situation. The perception that the political classes have about the role of the nation impel a State to have a specific type of foreign policy.

Based on this, the challenge is to analyse the pre-existing and emerging perceptions between Argentina and Brazil in the period 2003-2019 and how they shaped the regional integration processes. Thus, the bilateral relationship between Brazil and Argentina, South American integration and the relationship between ideology and foreign policy are our object of study. We also examine its trends based on the operational milieu, that is, on the international and regional context, the redefinition of the place traditional partners occupy on the agenda and the evaluation of integrationist alternatives. The hypothesis is that the mutations that took place in the operational milieu were a determining factor in shaping the psychological milieu; and that the resetting of the agenda regarding regional integration shows both a change in perceptions and an effort to adapt to external and internal political turns. Thus, among the various existing perceptions, we highlight as the most relevant three ideal models/types that move towards two extremes to achieve a third that synthesizes them: the strategic alliance; nationalist-military thought (or traditional suspicion); and the Mutually Assured Trust. These three perceptions coexist in the same historical moments, but they also overlap each other, being able to identify the most outstanding in each cycle. We also affirm that, despite signs of mistrust, the last two models were the ones that prevailed in the construction of the foreign policy of the two countries under study and that suspicion increases the more to the right the ideologies of the governments are.

At this point, two clarifications are worth making. The first is that our intention is not to understand specific foreign policies, but to find general patterns of interaction. The second is that, according to Jervis (1976), there is no way to determine perceptions exactly, therefore, we delineate these three different models or ideal types. The most general theoretical framework is constructivism, since we agree that the roles are delimited from the perceptions - dominant interpretations - that Others have of us and

⁴ Two issues should be clarified. The first is that, in this text, there is an absence of discussion of the role of the economic elites of the two countries. While realising that it is a central piece to explain the positions and definitions of foreign policy, as well as the perception and actions of the executive powers, it exceeds the objective of this work. In this regard, we recommend reading González Bustamante, 2016; Donatello, 2015; Diniz et. al, 2012. The second is that the lack of capacity of the ministries of Foreign Affairs (particularly Itamaraty) in decision-making will also be noted; this is also a deliberate decision of the author regarding the objective of the text. However, we recommend reading Pereyra Doval, 2013; Schenoni and Ferrandi Aztiria, 2014; Rizzo, 2012.



vice versa; that is, our actions towards Others are planned from and limited by the perception that one has of that Other. In this context, perceptions end up playing a central role in the decisions about political structures. The way the current ruler perceives reality and the scenario where he is immersed will be decisive in the choice of the external action to follow. Therefore, we argue that perceptions are the fundamental variable for the formulation of foreign policy measures. This is where our objective derives from.

As can be seen, one of the main assumptions is that perception is closely related to the design of policies. On the other hand, the creation of concepts such as that of Mutually Assured Trust supposes advancing in a relational model that removes uncertainty from the bilateral relationship. We believe that the past, present, and future of Argentine-Brazilian relations demand a permanent categorical effort to account for them. As Deleuze (2007) put it, the task of thinking about the reality that involves us is nothing more than a permanent creation of concepts that not only explain but are reality itself.

Detailing and conceptualizing the near future of the Argentina-Brazil relationship, its environment, and also the South American integration-concertation, in terms of Mutually Assured Trust, arises from this idea. Thus, it is necessary to define not only the model of bilateral and regional relations but also to advance a discussion that involves approaching common proposals of a global order. To do this, first, and based on the concept of strategic alliance, we will describe the bilateral relationship; second, according to militaristic thinking, we will emphasize the latest political turn and how it affected the binomial; finally, we create the concept of Mutually Assured Trust to demonstrate that the increased institutionalization of regional schemes confers predictability to the bilateral relationship. This work favours an Argentine vision on the Argentina-Brazil approach. However, we will support the hypotheses with bibliography on the subject produced in Brazil.

II. Strategic alliance

Before starting with this section, two clarifications should be made. First of all, this section contains data from various surveys carried out among the population. The main source is the research programme "Argentine Public Opinion on Foreign Policy and Defence" (CARI 1998, 2002, 2006 and 2010), which is a series of surveys involving the population and Argentine leaders regarding the country's international relations. They are used for purely instrumental purposes and as indicators of the perception of just the political elites (specifically the executive powers). Second, it is not unknown that the term strategic alliance officially emerged from the signing of the Declaration of Rio de Janeiro in 1997 by Presidents Cardoso and Menem. However, in this paper we argue that the nineties were not relevant in terms of bilateral relations with Brazil since the importance of Argentina's political "carnal relations" with the United States did not give room for greater contacts with other countries, except for the rapprochement to Brazil in economic and commercial terms - (Cervo, 2000; Russell and Tokatlian, 2011). As Russell and Tokatlian (2011, pp. 289-290) state "it was never about equivalent relations, no matter how much the official discourse presented them in this way; the alliance with the United States had a political-strategic character, while the link with Brazil was considered economically necessary but politically inconvenient".



Thus, this second perception is based on the consolidation of the models drawn up by the executive powers in both countries as of 2003 and on an effort made by the Brazilian government to act as both a mediator and a “benefactor partner” of the region. In this sense, we will separate the strategic alliance, which implies an exclusively bilateral relationship, from the solidarity association characterized by unilateral Brazilian or multilateral actions led by Brazil.

Regarding the strategic alliance, it was in the governments of Néstor Kirchner and Lula da Silva that this bilateral friendship began to strengthen, regardless the rapprochement in relations from the mid-eighties and the implementation of MERCOSUR in the nineties (Lessa, 2010; Gomes Saraiva and Briceño Ruiz, 2009; Pereyra Doval, 2014). Although the concept of strategic alliance is somewhat vague and generalized, we understand it as “(...) a type of interstate relationship which, for various reasons and factors, is distinct in terms of consideration and importance from the rest of the bilateral relationships that make up the diplomatic universe of a country” (Cortés & Creus, 2009, p. 120). In other words, the bilateral relationship established or announced by Néstor Kirchner at the beginning of the new millennium would give more importance to Brazil as a privileged partner than to any other country.

It is a significant fact that part of the campaign for the ballot in the 2003 presidential elections was the meeting between Kirchner and Lula in the Planalto Palace, where both reaffirmed their position in favour of the integration process and the bilateral relationship. At the same time, the Brazilian president reinforced this gesture of receiving a ‘candidate’ through football hints that marked his opposition to Kirchner’s then opponent, the neoliberal Carlos Menem.

In a way, the meeting showed that Kirchner was going to follow the same direction Lula was taking in Brazil. This was very important for the population since, in general, according to the CARI surveys, Argentina was considered to have lost international presence, while Brazil was considered to be the Latin American country that was going to play the most important role in the world. Therefore, opinion leaders and the general population considered that regional integration should be the most relevant topic for the government regarding foreign policy -90% of opinion leaders and 77% of the general population considered it important for Argentina to be part of the MERCOSUR-.

The latter was strengthened when Brazil became the first destination abroad for the elected Argentine president and, above all, after the signing of the Buenos Aires Consensus a few months later, as opposed to the Washington Consensus. The new consensus meant several things: the collapse of the paradigm of the 1990s; a supposed ideological convergence between both governments; and, in the Argentine case, a return to the Peronist Third Position and also to a theoretical position that reveals an updated version of the Autonomy Doctrine of Rosario-born Juan Carlos Puig with a more liberal key: relational autonomy. The latter needed a trusted ally and Nestor Kirchner leaned towards his immediate neighbour. This was attested by the subsequent signatures of the Copacabana Act and the Rio Consensus.

The strategic alliance was reaffirmed on countless occasions and was transferred to the subsequent government. It seems that the symbiotic relationship established by Néstor and Lula, based on ideological convergence, had a pattern of continuity between Cristina



and Dilma, now based on a question of gender and human rights policy (Vitale, 2014; Rivarola and Moscovich, 2018).

This perception is based on some indicators that have their origin in the Latin American left or the neo-populism that emerged in the 21st century. The first thing to say is that these governments are not so much on the left as they are opponents of the neoliberal discourse of the previous decade and the havoc that neoliberalism caused in the countries of the region. In any case, the ideological base was the platform for the symbiosis between the governments of this side of Latin America, of which Lula and Kirchner were important exponents. As we will see later, the most important milestones of institutionalization of integration schemes such as Mercosur and UNASUR emerged during their leadership.

III. An increasingly present history, military nationalist thought

This first perception derives from some deep tendencies that still prevail. It is a minority but growing position within Brazil, and also in Argentina, especially since the rise of Jair Bolsonaro. It responds to certain sectors linked to the old nationalism and to the national Armed Forces since the middle of the last century, and is based on a historical interpretation of geographical disputes not properly settled since the dissolution of the Spanish-Portuguese empire. Thus, a direct heir of the Portuguese empire allied to the then hegemonic power, Great Britain, is observed in Brazil. On the other hand, the idea of Argentina as the child of a fractured nation, after independence from Spain, is insisted upon. Historical continuity places Brazil in times of national independence as an ally of the new regional leader, the United States, and Argentina as a counterweight allied of Great Britain in the southern hemisphere (Bernal Meza, 1999; Russell & Tokatlian, 2011).

This perspective, in short, saw the other country as an enemy of national interests and, therefore, as an ally of the powers that threatened the destiny of a state with large-scale international status. As is logical in a thought anchored in objective dimensions of power (geography, demography, etc.), integration was perceived as part of Brazil's clear imperial intention, in addition to taking advantage of Argentina.

The belief is still present in those heirs of what is called military thought. This exegesis argues that Latin American integration does not have to do with a historically necessary integration or with the new conditions of the global economy, or a partnership of solidarity. Rather, it is due to a historical project of expansion and consolidation of Brazilian hegemony in Latin America.

It must also be pointed out that both the academic and political circles, which are the platform of all parties with electoral presence, deny this thought. The basis of this denial is a triple criticism that comes from different places. The first criticism is that militaristic thinking preaches a model of imperialism or Brazilian hegemony that lies outside the structuring of the current international order, something like an old fashioned thought (Lanús, 1984). The second criticism is linked to the theoretical thinking of democracy, which maintains that the consolidation of the democratic system in the region annuls, in both countries, the categories of thought the international and especially the regional scene was approached with. In other words, the rise in the agenda of soft power and democratization builds cross-border links that make it impossible to think of geographic



imperialism (O'Donnell, 1994). At the same time, there is a general discrediting of this thought, considering it linked to military governments. The third and last criticism is based on the fact that the advance of integration describes new economic actors that have transnational interests, which would make it impossible to think of the relationship in traditional militaristic terms (Escudé, 1992, 1995). However, this denial does not prevent old perceptions from having been definitively annulled, with the clear danger that they may become evident in the turbulence of the current binational scenario. Particularly at regional level, the crisis that the Mercosur is going through, the replacement of UNASUR by PROSUR and the emergence of more lax regional bodies such as the Lima Group (Van Klaveren 2018; Caetano and Sanahuja 2019; Birle 2018), generate some questions about the place that integration and consensus-building occupy on the agenda of the governments of the region. International relations at continental level seem to have acquired a new profile after the presidential elections in the United States, which Donald Trump won. The redefinition and redirection of the ties of various South American governments with the United States can also be approached based on the indications, the decisions and the positions adopted in the negotiations on free trade in the different bilateral ties.

Therefore, despite the fact that the conflict hypotheses have been deactivated since the re-democratization, it cannot be ignored that this type of perceptions exist in both national leaderships. Thus, there is a collective unconscious as present as in the past that will continue to think of an imperialist Brazil and a counterweight Argentina, respectively.

IV. The moment of Trust: uncertainty about the future, between fear and love

Before Bolsonaro - which changes everything - the extensive list of gestures and political events produced in the last decade and a half (even with Temer) would enable an analysis in terms of the continuity of such scenarios. In short, why suspect a possible political change in Brazil regarding the Region? Why revive the suspicions of old nationalism still present in the imaginary of the Argentine elites, if the strategic alliance and solidarity cooperation refute such prophecies? Our response aims to consolidate perceptions of the present by suggesting the reduction of uncertainty caused by a global scenario in profound change. Given this, perhaps as an upward leap, but without ceasing to acknowledge the contradictions, it seems interesting to advance the need to inaugurate a new moment in bilateral relations: integration and cooperation as Mutually Assured Trust (MAT).

The proposal to inaugurate a relationship model based on what we call MAT aims to recover contradictory perceptions - double standard - of the past and project them into the future to act in the present. Thus, the MAT supposes advancing in a relational model that removes uncertainty from the bilateral relationship. A controlled association supported by mutual trust and deployed in a set of legal and political tools within the integrationist and cooperative process. The past, present, and future of Argentine-Brazilian relations demand a permanent categorical effort to account for them. As Deleuze (2007) would say, the task of thinking about the reality that involves us is nothing more than a permanent creation of concepts that not only explain but are also



reality itself. Defining the near future of the Argentina-Brazil relationship and with it also the South American integration-concertation, in terms of MAT arises from this task.

It is about generating trust in the other through the institutional strengthening of bilateral or collective instances. It is an agreement in which both are constrained to avoid problems in the future, in such a way that they both know that the other is not going to break unilaterally - or at least it will have high costs if it does. Thus, trust is generated in the link regardless of who governs.

Accordingly, the MAT: proposes predictability regardless of the political stance; it is a pragmatic concept that requires, paradoxically, a joint look at bilateral/regional priorities; it can establish cooperation frameworks on sensitive issues (e.g., water resources or nuclear or defence agreements). In short, it proposes establishing state policies at regional level.

The problem today is that in "illiberal" democracies there is an inversely proportional relationship between the construction of the MAT at institutional level and the tightening of bilateral relations that threaten these instruments. Trust is a category in common and widespread use. It develops into a common term to characterize various relational models. In the field of international relations, it has also been much used. Studies linked to regional or global security analysis find in trust a way to account for a set of preventive relationships. The multiple reinsurance of trust - through balance or agreement - increases the prospects for peace between nations.

To see -in institutional terms- which governments generated trust in the relationship and which did not, we compiled some institutionalizing milestones⁵ of UNASUR, from its immediate antecedents to its disappearance in 2018. Some of them were created by the South American Community of Nations (2004), the South American Energy Council (2007), UNASUR at the Brasilia Summit (2008), the South American Defence Council and the South American Health Council (2008), and the South American Council for Infrastructure and Planning - before IIRSA - (2009), among others. The institutional framework generated in UNASUR when defining its different levels of operation, and especially the role assigned to its different sectoral councils, account for the diversity of fields of action considered necessary for an effective advance of South American integration. Regardless of the abandonment of member states (especially Argentina and Brazil), UNASUR has played a major role as a space for dialogue, political mediation and definition of common positions by the region, in situations such as: separatist attempts in Bolivia; emergency due to the earthquake in Haiti; the attempted coup in Ecuador; the parliamentary coup in Paraguay; the conflicts in Venezuela; the retention of the Bolivian presidential plane in Vienna; the economic blockade of Cuba; the coup in Honduras; the US declaration that Venezuela is a threat to its national security; and, Argentina's claim to sovereignty over the Malvinas Islands cannot be forgotten. We wonder if it would have been effective in situations like those in Ecuador, Chile and Bolivia.

Regarding Mercosur, some institutionalizing milestones can also be observed in this period of time. Examples include the regulation of the Olivos Pact that created the

⁵ We call institutionalizing milestones those that can show concrete results in the origin of a process that leads to something higher than a speech.



Permanent Review Tribunal (2003); the creation of the Protocol of Asunción on Human Rights (2005); the Mercosur Structural Convergence Fund (2005); the Constitutive Protocol of ParlaSur (2005); the Mercosur Social Institute (2007); the Social Participation Support Unit (2010); the Intra-Mercosur Investment Cooperation and Facilitation Protocol (2017). These milestones within Mercosur were launched and reinforced as feedback on the bilateral relationship between Argentina and Brazil, which also had other milestones, such as the joint position in the G-20 Trade at the WTO Ministerial Conference (2003), the Buenos Aires Consensus (2003), the articulation of positions in the Financial G-20 for the reform of the international financial system, the Act of Copacabana (2004), the Gaucho Project (2004, goes into production in 2006) of military vehicle production (military cooperation), joint negotiation in the FTAA (2005), the First Joint Space Mission (2007), the establishment of the Binational Commission to pursue the joint enrichment of uranium for nuclear energy purposes (2008), the development of the KC-390, a military transport plane (2011), the creation of the "Strategic Integration Dialogue" (2012), the signing of the Memorandum of Understanding between Brazil and Argentina on Technical Regulations for the Automotive Sector (2018), the signing of the Montevideo Declaration on Argentina-Brazil Business Nuclear Cooperation (2018), and the Brazil-Argentina Trade Agreement for the automotive sector (2019), among others⁶.

At first glance, these milestones offer a couple of reflections. The first is that it is the perception of the Strategic Alliance that generates the greatest number of milestones that reinforce the institutional framework of the processes, and, as a consequence, as the perception gets closer to militaristic thinking, the milestones decline. The second is that, at the risk of destroying a bilateral relationship built over the years with much effort, governments that approach militaristic thinking do not care too much about breaking institutionalization - and the MAT - unilaterally.

This also confirms that the integration perceptions point to the preference of the actors regarding how the integration processes develop, and the way they decide their participation. In this sense, there is a certain consensus that governments on the right have an individualistic and liberal vision, while those on the left seek deeper forms with a solidarity tinge⁷. The former would prefer that the states diversify their trade links via NAFTA or the Economic Complementation Agreement with few restrictions, opting for less committed forms of integration such as free trade zones; in this sense, a more rigid institutionalization would be interpreted as a weakness rather than a strength. For their part, governments more on the left would refer to forms of integration that demand greater commitments and that cut margins of action for member states in negotiations with third parties (Lorenzini and Pereyra Doval, 2019). It is in this sense that we found it interesting to examine the lines of institutionalization of the regionalization processes.

⁶ These milestones - and trust - were reinforced by official presidential visits that decreased over time (Lula da Silva made 18 official trips to Argentina and Néstor Kirchner 5 to Brazil; Dilma Rousseff 5 trips to Argentina and Cristina Fernández 8 to Brazil; Michel Temer and Bolsonaro made only one official trip to Argentina each, while Mauricio Macri made 4 to Brazil).

⁷ To understand the relationship between integration processes and political ideology, the following works are recommended: Lorenzini and Pereyra Doval, 2019; Pereyra Doval, 2019; Gomes Saraiva and Granja Hernández, 2019; Caetano et. al, 2019; Sanahuja and López Burian, 2020; Lorenzini and Pereyra Doval, 2020, among others.



V. Conclusion

Imperial past, present of association and uncertain future, between fear and love. The three confused or reformulated images are part of the collective consciousness of the Argentine and Brazilian elites. Currently, national perceptions about the main political and economic partner are going through a moment of re-definition. The first thing to clarify is that, in the period under study, there was a tendency for progressive or left-wing or post-liberal governments to move closer to the perception of a strategic alliance, which gradually recedes as one turns to the right and closer to militaristic thought. The proposal stated that progressive governments should establish institutionalized links to prevent militaristic thinking from obscuring the bilateral relationship through unilateral measures. Therefore, it must be taken into account that the use of the variables was made with this trend in mind.

The uncertainty that this bilateral relationship has been generating for a couple of years revives old nationalist ghosts in which a conflict hypothesis dominates the analysis. Some deep forces from the past tend to prevail. This is the case of military nationalist thought which, based on disputes of the past, places Brazil in an imperialist position contrary to Argentine interests. In this sense, integration is part of that imperialism, almost like a macabre plan by the neighbouring country to increase its power and continue to harm Argentine interests. According to this model, the integration process follows a historical project of expansion and consolidation of the Brazilian hegemony in Latin America. The reverse of the relationship represents an anchor for Brazil that does not allow it to advance its economic and commercial intentions. Clearly, this model rejects regional integration.

The Strategic Alliance model points to a mutual reverence that hardly recognizes the differences which, in fact, exist between all binomials. The similarities – especially discursive – between the governments inaugurated at the beginning of the millennium announced Brazil as a privileged partner, while at the same time establishing an extremely favourable position to the integration process based on the renewed bilateral relationship. So much so that the surveys carried out by CARI in this period consider that regional integration should be the most relevant issue in the government's foreign policy. This regional integration would also be supported by the so-called Solidarity Association, which indicates a kind of benignity on the part of Brazil towards the rest of the countries in the region, supported and reinforced by Argentina.

Finally, we propose a third ideal type - that of the Mutually Assured Trust - for which international changes, debates about order, the diversity of claims are, among others, factors of uncertainty. For this reason, inaugurating a new bilateral and regional moment in the form of a MAT can be an interesting way to go.

This last concept, MAT, is considered a contribution that offers a new way of studying this so much revisited bilateral relationship in the future. The uncertainty regarding the future of Mercosur and the abandonment of UNASUR are clear demonstrations of the weakness of the process in terms of trust. The low institutional density forces the entire political process to a logic of constant consultation in all decision-making bodies. The consequences are clear: commitments are always temporary. The increase in mistrust is



inversely proportional to the creation of institutions: the greater the mistrust, the less institutionalization and vice versa.

For this last reason, integration based on the MAT is, ultimately, a work programme that aims to advance towards greater degrees of institutionalization. Common institutions weaken the ever-present game of interests and perceptions and establish clear rules of the game for countries. Here are two important debates which, in our opinion, mark the strategic agenda. The first is given by the will -or not- of both countries to advance the creation of government mechanisms common to the integration processes. The second refers to what form will they have, given the need to guarantee a fair balance of power between the states. The "distrustful perceptions" will continue if there are no institutional guarantees that make progress less reversible and set a date for the implementation of the common agenda. The proposed MAT presupposes a path of institutional advancement. Therefore, it is also about analysing these common proposals on the international scene. In short, the shared vision of the world is what allows a redefinition of relationships. As we will see, Mutually Assured Trust thus requires a common starting point (world view) that recovers the past and designs the shared game of future politics in a single key.

In conclusion, current national perceptions about Argentina's main political and economic partner are going through a moment of redefinition. The uncertainty revives old nationalist ghosts where conflict presides over the analysis. The near present contributed concepts such as strategic alliance or solidarity cooperation to inaugurate a new era. However, local, regional and international changes, debates about the international order, the diversity of claims are, among others, factors of uncertainty. Inaugurating a new bilateral and regional moment in the form of Mutually Assured Trust may be an interesting way to go.

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**FOREIGN POLICY, DEVELOPMENT, AND INTERNATIONAL STRATEGIES
TOWARDS ASIA PACIFIC: THE CASES OF ARGENTINA AND CHILE**

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Abstract

In the 21st century, the links between South America and the Asian region have been more constant, and these links have had different interpretations according to their consequences in the domestic South American economies, as well as their relation with the current integration processes in the region and the different economic insertion strategies. It is observed that there are differences in the way in which the South American countries insert in Asia, so the aim of this work is to analyze the characteristics of the foreign policy and the strategies of foreign insertion of Argentina and Chile towards China, South East Asia and India, highlighting the articulation between the economic and productive structures, the international insertion models and some economic implications. The case studies selected represent two different development models that have chosen dissimilar foreign insertion strategies, with the consequence of diverse relationships with the Asian region. The research was carried out through a qualitative methodology and a South American theoretical perspective.

Keywords

Asian region, development model, international insertion strategy, foreign policy, South America

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Introduction

In the 21st century, East Asia surges as a world economic growth and development region due to, in part, the relocation of production as a consequence of the competitive advantages the Asian region provides, such as the low costs of production, which are a result of the cheap labor and the investment incentives. China's consolidation as a main producer of manufactures and, recently, as a source of investments, as well as Southeast Asia (SEA)¹ and India's consolidation as markets for raw material exports, have turned the region into an economic alternative for countries that are in search of diversification.

South America and the Asian continent have had occasional links throughout their histories due to cultural, geographic, historical and political reasons. The links boosted with the end of the Cold War; with the boom of the economic growth of China, SEA and India, and with the implementation of trade openness and liberalization of economic measures in the South American countries that favored the search of new markets to export raw material and its by-products. In this context, Latin American started revaluing the Asia Pacific region in their foreign agendas within a search for diversification (Mols and Faust, 1998).

In the 21st century, the links between these two regions have been more constant due to the growing multilateralism in the international system, the raise of commercial interdependence, the globalization of finances, the progress of communication and transport, among others. However, these links have had different interpretations according to their consequences in the domestic South American economies, as well as their relation with the current integration processes in the region and the different economic insertion strategies that result in a competence for market shares and for interregional investments.

The links between South America and the east and south of Asia have not been deeply explored in the academic research since the bilateral and multilateral relations are still

¹ For the purposes of this piece, the countries that are part of ASEAN-6 shall be considered: Indonesia, Thailand, Philippines, Malaysia, Vietnam and Singapore, since they are the main commercial partner in the South American region.



under a consolidation process. Most East Asian academic work on Latin America focus on the comparison of economic policies, divergent economic performance and the causes and consequences for both regions.² Likewise, very few works present analytical frames that may go beyond the statistical analysis of the links and that, at the same time, make it possible to compare dissimilar cases³.

Due to the need to go deeper into the intrinsic differences in the way in which the South American countries insert in Asia, the aim of this work is to analyze the characteristics of the foreign policy and the strategies of foreign insertion of Argentina and Chile towards China, South East Asia and India, highlighting the articulation between the economic and productive structures, the international insertion models, and the main economic implications.

To this end, we take into consideration the effect produced by the growing dependence on the East Asian markets, mainly in the following aspects: a) characteristics and implications of Argentina and Chile's bilateral policies in their relation with Asia Pacific; b) the degree of partners and/or markets diversification for exports; c) the changes in the export structure that may have an impact on the productive structures (concentration in primary products and manufactures of agricultural origin [MAO]).

The cases selected are Argentina and Chile because they represent two different development models and they have chosen dissimilar international strategies, leading to diverse relationships with the Asian region. On the one hand, the Andean country opted for a neoliberal development model, with a productive structure oriented to the primary sector and an international strategy based on open regionalism with a dense network of free trade agreements (FTA). Argentina, since 2003, has implemented a neo-developmental model based on a more diversified productive structure and an international strategy based on a semi-closed regionalism.

Concepts from a South American theoretical perspective

Development models and international strategies

To understand the economic implications in Chile and Argentina of the commercial relations with Asia Pacific, we must draw on local concepts related to foreign policy and the articulation between development models and international strategies.

² In this respect, Lee & Kim (2018) analyze the innovation systems and the relation to economic performance in Latin America and East Asia, from a developmental perspective; Zhang (2007) discusses the relation between foreign direct investment and economic growth in both regions; and Lin (1989) also focuses on the comparison of economic performance and development policies in East Asia and Latin America.

³ Before the 21st century, studies about Asia and LAC were concentrated in Japan, South Korea and some aspects of China (e.g. Taiwan). Since 2000, studies on the links between LAC and Asia-Pacific were first led by international organizations such as the ECLAC, the Inter-American Development Bank, and the World Bank –among others-, due to the economic complementarity of the regions and the possibilities that this fact meant for economic growth and development. The analysis concentrated on economic, commercial and infrastructure dimensions. When the links started to grow and strengthen later on, studies on China skyrocketed and studies on Southeast Asia and India started to flourish, including other aspects like politics, culture, diplomacy, cooperation, etc. Due to the increased impact of these countries in the foreign policies of LAC countries, last decade has witnessed a higher amount of academic initiatives which have been carried out from different analytical frameworks, like foreign policy analysis. This paper is included in this last category.



First, we set off from a wide definition of foreign policy, which is understood as a state policy “that is planned and designed taking into account national objectives, domestic demands, and conditions that arise from the external frame” (Colacrai, 2006: 25). It is the combination of State decisions and actions projected abroad that combine multiple conditionings of the internal and external levels. According to Van Klaveren (1992), since Latin American economies are part of a developing world, it is development the domestic imperative that determines the States' external decisions. It is not just about assessing the foreign policy in terms of its contribution to the promotion of exports and trade and financial stability, but also in terms of the ability to transform the international variables “in a more favorable way for the achieving a development strategy” (Van Klaveren, 1984:36). We agree on the fact that there is a common condition in the influence the development imperatives have on Latin American foreign policies. However, the way in which these goals are projected abroad is not homogeneous. Therefore, we distinguish the different models of approaching Asia, and these distinctions will be based in the material abilities –mainly economic structures of the countries under study – and in the preexistent regional commitments, which have shaped, in different ways, the foreign policy and economic strategy decisions.

As a main premise we consider there is a connection between a country's productive and export structures, and its international strategy, as well as with its foreign policy. This connection is not always linear, since a country's productive structure imposes domestic condition not only to the international economic policy, but also to foreign policy, in terms of commercial partners and regional integration.

Bernal Meza (2000) states that foreign policy analysis cannot be separated from the development or international economic model. The development model includes “the way in which the policy and the economy connect, between the State and the market, in certain context. Each model has its own way of wealth accumulation, production and distribution, as well as a foreign insertion strategy. Because of this, the currency exchange patterns, the foreign trade regulations and the demands in foreign negotiations will differ” (Zelicovich, 2012: 6). That is to say that as domestic conditionings of the external action of the South American countries towards the Asian region, the influence of the productive model and, within it, the roles of the State and the market, should be considered central when defining economic decisions.

Each model of development has a specific international strategy, which can be understood as the strategy used by the States in their interaction with the international system. According to Lorenzini (2011) this strategy expresses the choices made by a State regarding foreign policy orientations and guidelines that it implements in order to relate with other actors in different spheres, such as the political, economic and security ones.

A highly determinant element in the international economic strategies of the countries under study is the preexistence of a primary export model that, in the case of Argentina, is combined with an industrial model based on regional agreements (Southern Common Market [MERCOSUR, by its Spanish acronym]) and mainly oriented to the domestic and Latin American markets. The latter also presupposes “a gradualist strategy where the protection and the economic action of the state play a main role, the aim is to have more autonomy from the center” (Guillén, 2008:25).



To conclude, both countries present heterogeneous productive structures which directly affect how international economic insertion takes place, thus turning into the material conditions on which the external strategies are built, and reflecting different ways of interaction and intervention between State and market, which show different development model.

Diversification, neoextractivism and the role of emerging economies

In the early 21st century, and especially since the 2008 crisis, the South American States opted to expand their commercial partners to increase their autonomy, improve their international insertion and mitigate the effects of the crisis diversifying partners and attracting investments. The combination of domestic conditions, an unstable international economic context and a growing competition between developing countries for market shares and investments favored the approach of South America to China and, to a lesser extent, to the main economies in SEA and India.

The diversification became a tool to reach higher levels of autonomy reducing the economic and political dependency, to avoid the discrimination of integration processes and to improve the participation in the world economy so as not to end up in the periphery (Olivet, 2005). Asia Pacific, with its high rates of economic growth, appeared as the best option for an alternative economic insertion to the traditional partners. The result, combined with Asian regional conditions, has been the multiplication of commercial partners –in most of the countries in the region–, with a high participation of the Asian countries among the destination of the South American exports, and having China the main role.

In this sense, we have observed that, in the case of Argentina, there has been a reduction of the export concentration to the first five destinations between 2003⁴ and 2019: whereas in 2003 it represented 51%, in 2019 it plunged to 41% (Brazil, China, the United States, Chile and Vietnam). In the case of Chile, we have observed a growing concentration of the sales in the same period to its five main destination partners, but a growing involvement of the most important Asian markets. In 2003, 47% of the country's exports went to its main partners, while in 2019 that participation increased to 66% (China, the United States, Japan, South Korea and Brazil) (UN Comtrade, 2020).

It has been noticed that the process of diversification of export destinations shows positive results in the case of Argentina, whereas in the case of Chile, there has been the opposite effect. We understand that signing bilateral FTAs with economies such as the United States and China has caused a greater concentration of commercial partners for Chilean exports.

As regards the composition of the export basket, there is a growing concentration of primary products and their byproducts in the South American exports. This concentration is connected to the international division of labor which has led to an economic growth of the Asian countries and the improvement of its citizens' standard of living, which

⁴ We have selected the year 2003 because we consider it the beginning of the impact of the commodity boom –rapid increase of prices of commodities due to growing demand from emerging economies- in Latin America that started in 2002. This will allow us to see the change during diversification.



produces a raise of commodities consumption (Frechero, 2013), thus boosting primary South American exports.

Despite this phenomenon, we have noticed that, in the chosen cases, there has been a steady participation distribution of each of the big areas in the exports between 2005 and 2015. In the case of Argentina, in 2005 the manufactures exports accounted for 30.7% of the total, and those of primary products 69.3%; while in 2015 the manufactures represented 29.4% and primary products held a 70.6% of participation. In the case of Chile, the scenario is similar as regards stability, although the composition of the basket shows a higher concentration of raw material. In 2005, the manufactures accounted for 13.7% of the participation in the basket, whereas the primary products represented 86.3%. In 2015, the participations in the baskets were 14.4% and 85.6% respectively in the total of the Chilean sales to the world (ECLAC, 2016)⁵.

In both cases, the export basket has a high component of primary products and their byproducts which is related to the international conditions before mentioned, and to the important raise of the international prices of commodities.

Nacht (2013) and Bittencourt (2012) explain some of the implications that the concentration of commodities' sales may have for the internal development of South American countries. Firstly, the commerce of South America with China highlights the region's role as raw material supplier. This favors the fragility of the economic insertion strategy conditioned by the "swings of the good and bad harvests (in the case of the agricultural products), as well as by the volatility and deterioration of the exchange terms" (Nacht, 2013: 151). Secondly, Bittencourt (2012) states that the main primarization of the South American economies and the growing competition with China in industrial areas –in particular with the MERCOSUR – represents a problem for the South American development in the long term.

These changes have put the phenomenon of extractivism back in the spotlight, together with its consequences for the development of the countries in which it is a central trait for their productive structures (Gudynas, 2012). Gudynas (2009) talks about progressive neo-extractivism to describe the 21st century phenomenon in South America, where different premises are combined: a) development is conceived based on extractivist sectors; b) there is a greater presence and active role of the State, which seeks legitimation by means of redistributing the surplus obtained; c) generate an international insertion dependent on raw materials and subordinate to the power centers; d) deeper territorial fragmentation, social and environmental impacts, among others.

In South America, this phenomenon is shown in extractive activities such as the development and deepening of the open-pit mining already existing and in the oil exploration and exploitation. There has also been a change in the practice of agriculture, and export monocultures such as soy have been promoted (Gudynas, 2009). Slipak (2012) adds that prices of commodities generate a high opportunity cost if production factors are not destined to these activities, thus facilitating this model's continuity.

⁵ For 2019 the trends are similar: in the case of Argentina primary products accounted for 27% of total exports; fuel and energy 7%; MOA 37%, and Manufactures of Industrial Origin (MIO) 29% (INDEC, 2020). In the case of Chile, mineral products accounted for 52% of total exports; agriculture, livestock, forestry and fishing 10%, and industrial goods 38% (SUBREI, 2020).



Besides, until mid-2014, there was a national currency appreciation, which raised the incentive of the import of middle and final goods, and the export of primary products and MAO (Durán Lima and Pellandra, 2017).

Maristella Svampa (2019), who coined the concept *commodities consensus* to explain the large-scale exports of primary products, economic growth and the increase of consumption due to neo-extractivism, said that the economic opportunities that the increased prices and demand of commodities generated, led to another concept: *developmentalist illusion*. According to Svampa, regional governments –either progressive or conservative- thought that it would be possible, thanks to these new economic openings, to shorten the distance with the industrialized countries so as to achieve development.

Actually, the strong income that the South American States have received due to this kind of exports caused more disincentive to the development of the national industry and supported the continuity of an unfavorable exchange for the South American region (Slipak, 2012; Nacht, 2013). An absence of industrial policy can be observed in almost the majority of the countries in the region, and in those where there is one, it has defensive characteristics, which does not make the adaptation to new technological models possible (ECLAC, 2016).

In this sense, this type of commodity economy, without an innovation policy, has shown the problem of the lack of diversification of the productive matrix. The Fourth Industrial Revolution is characterized by the development and implementation of the artificial intelligence, internet of the things, additive manufacture, biotechnology, big data, block chain, among others, and Latin American countries are behind in these fields. In a global knowledge-driven economy, the Latin America region assigns scarce resources to research and development (R&D), representing only 0.6% of the regional GDP (RICYT, 2019) and, as a consequence, has a limited number of researchers in the STEM area, lack of incentives to research and a poor generation of patents and licenses (representing only 2% of world's total) (OMPI, 2020).

So, the dependence on this type of production specialization –based on products intensive in labor and natural resources-, increases the State's vulnerability to external changes – many times linked to weather, social and political factors- (Nacht, 2013) and, at the same time, decreases its margin of economic, commercial and political autonomy. To complete the scenario, this insertion model strengthens the foreign direct investment (FDI) presence which focuses on the extraction of natural resources or their basic processing, reinforcing the specialization pattern of the region and making the development of low technological content activities stronger (Dussel Peters and Armony, 2018).

To conclude, the economic and productive structure of the South American countries is affected not only by the damages to the exchange terms, but also by the deceleration of the Chinese FDI, as well as its exports and imports and those of the SEA countries and India. This shows the vulnerability faced by those countries focused in a development model based on products with little added value.



Divergent international strategies towards East Asia: Chile and Argentina

Since Argentina and Chile's development models present structural differences, their international economic strategies also show dissimilar characteristics.

Regarding Chile, the international insertion strategy is based on the premises of unilateral commercial openness, financial liberalization and economic deregulation, which gives priority to the open regionalism and to the signing of preferential and free trade agreements. The main results of this model, promoted between 1973 and 1990 and continued by the democratic governments until now, have been a steady growth of natural resources exports, the concentration in big extra-regional commercial partners, a decrease of non-traditional exports and the disincentive of the development of industrial manufactures, among others (Aninat del Solar, 2007).

In line with this, and with a pragmatic vision of insertion, in economic terms, Chilean foreign policy followed a commercial agenda oriented to growth by means of primary exports (Colacrai and Lorenzini, 2005). In the political sphere there is also the privilege given to the multilateral negotiation instances, which had a main role in the country's rapprochement with Pacific Asia (Quezada, 2010).

Under this vision, the Asia Pacific region became a pillar in the Chilean foreign policy. The military government had the capacity to see that the development of new links with Asian countries could alleviate the limitations faced by the State due to its international political situation of isolation⁶. The democratic governments that followed, continue with a policy of deepening and strengthening the relations with these countries, especially due to the need of the international re-insertion of the country (Wilhelmy, 2010).

In accordance with this, a dense network of agreements multiplied and consolidated: the signing of FTAs with South Korea (2003), China (2006), Malaysia (2012), Vietnam (2014), Hong Kong (2014) and Thailand (2015); the negotiation of a FTA with Indonesia, an Economic Partnership Agreement with Singapore (called P-4 in 2008) and a Preferential Trade Agreement with India (PTA) (2007). Some conditions that favored this dynamic rapprochement were the economic complementation, the Chilean need for big markets to insert exports, and the Asian Commercial opening and liberalization policy that also privileged the signature of FTA. This is added to the Asian growing demand for resources to sustain an industrialization process that is developing fast, which made the rapprochement to the trans-Andean country –first producer and exporter of copper and byproducts– natural.

In the case of Argentina, and taking into account the period since the redemocratization until now, the development model has varied, from imports replacement to a neoliberal model in the 90s, to another neo-developmentalism from 2003 up to 2015. This way, the foreign policy and the international insertion strategies went through changes and adjustments with each of these models. The only characteristic that prevails since the end of the Cold War has been the adoption of a closed regionalism, with the aim of widening the domestic markets and developing an industrialization policy.

⁶ The military government (1973-1990) suffered from international restrictions due to the violations of political, social and human rights.



Historically, Argentina's foreign policy towards Asia has a scarce background because the region has been considered distant from local interests. It gained visibility in the 80's when a group of countries emerged in the international economy. Under Alfonsín's government, fresh impetus towards the Asian region could be observed due to the need of new sources of external financing as well as new alternatives to international insertion (Cardozo, 2008). The main feature that has characterized the links with this region has been the commercial and economic aspects that in only few occasions have been accompanied by governmental political initiatives. Most of these actions were concentrated in the decade of the nineties, when the Southeast Asian region received great attention by the government and its diplomacy (Baroni & Rubiolo, 2013).

Leaving the convertibility plan by devaluating the national currency in 2002, together with the increase of the international price of commodities, favored the adoption of an economic growth model based on exports with a high component of primary products and MAO, whose main destinations are the Asian economies. Likewise, the limited opening of the market and the closed regionalism made it possible to keep the industrialization process, thus ensuring Latin American markets for the country's industrial exports.

Taking into account this commercial insertion double logic, the Asian region acquired relevance within the Argentinean foreign agenda as an agricultural exports receptor, in line with China, SEA and India's growing demand. The foreign policy towards these countries followed the trend and, gradually, the political actions to approach the main markets began multiplying by means of high rank state visits, trade missions, and the signing of diverse bilateral agreements, among others (Rubiolo, 2017).

Trade as rapprochement key: characteristics and implications

The commercial dimension has been key both for Argentina and Chile in their bilateral links with Asia. In general terms, the Asian nations became important partners in the last 15 years. The differences are focused, mainly, in China, SEA and India's participation as destination and origin markets of both South American countries' goods.

In the case of Argentina, China is the third sales destination and second origin at a global level. Since 2008, there has been a steady increase of imports coming from this market: in 2018 the total of goods coming from China represented 19% of Argentina's global purchases. Meanwhile, Argentina's sales had a fluctuating movement that led to a reduction of the percentage destined to China to 6.8% in 2008. This information shows, on the one side, the asymmetric relation between exports and imports that causes a constant negative trade balance for Argentina in relation to the Asian giant which, since 2014, is over 6,000 million dollars (ALADI, 2019; UN Comtrade, 2020). At the same time, we notice that Argentina is more dependent on the Chinese market as manufactured goods supplier rather than as destination of local sales, where we observe more diversity.

Chile's commercial relation with China is different from that of Argentina. Firstly, Chile and China have a FTA in place since October 2006 which has had an impact on the bilateral commercial link: both Chilean exports and imports from the Asian giant have had an incremental steady pace since 2008, turning it into the trans-Andean country's



first commercial partner (as destination and origin market). In 2018, Chinese goods accounted for 23% of the world Chilean purchases, and Chile destined 33% of its exports to China. In both senses there is a growth regarding the previous year which continues a constant line since 2008 (UN Comtrade, 2020). Unlike the case of Argentina, we see that Chile's foreign commerce has a high and growing degree of dependence on Chinese market, which shows a progressive trend to a larger commercial concentration.

Now, if we take a look at the numbers regarding Chile's relation with SEA, the situation is considerably different, since the concentration in the Chinese market has damaged the commercial links with partners in the region who are less important, but more similar economically and politically. The SEA is a secondary partner: the exports have shown a decreasing trend, which in 2018 reached a total of 1000 million dollars regarding the six main economies. This figure represents only 1.4 % of the total Chilean sales to the world. As regards imports, although slightly superior, they were not representative either: a regional total of 2300 million dollars that account for 3.2% of Chile's world exports (UN Comtrade, 2020). In both senses, we see how irrelevant SEA is as a commercial insertion market for the South American country.

In the case of India there is a similar situation. Although there is a PTA –which boosted Chilean exports and made the markets diversification easier–, it is not a strategic partner for the trans-Andean country, despite its market's potential. Between 2012-2018 the average participation as Chile's exports destination was of 2.7%, the highest point being in 2014 (3.4%), with exports for 2571 million dollars. Regarding imports, they do not show a quantitative leap, since they represent less than 1% of Chile's total imports during the same period. This shows a constant positive commercial balance for the trans-Andean country (UN Comtrade, 2020).

On another note, Argentina's commercial relationship with SEA went through a unique deepening process in South America since 2003, with more intensity since 2008, which made it possible to avoid the concentration on Chinese market as sales destination: in 2018 the Argentinean sales to the six main economies of the SEA exceeded the 4500 million dollars, which accounts for 7% of Argentina's total sales to the world. Among the destination countries in the region, Vietnam and Indonesia stand out as the main buyers. For their part, imports that have also had a steady growth are not important for the Argentinean commerce since, currently, they only account for 4% of the country's total purchases (UN Comtrade, 2020).

As regards the commercial relation with India, there has been a progressive increase of its role as Argentina's exports destination since 2010 and with greater emphasis since 2014, when it was included in the Export Increase and Diversification Program⁷. Its average participation as exports destination in the period 2012-2018 was 2.7%. As regards imports from India, they show a greater plateau and little growth, going through a participation of 0.9% in 2012 to 1.3% in 2019. In this case, we can also observe a positive commercial balance for the South American country (UN Comtrade, 2020).

What is peculiar about Argentina's relation with China and SEA and India is the triangular commerce configuration: China concentrates the main imports flow, while exports go,

⁷ Program started in 2013 whose aim was to improve Argentina's exports both quantitative and qualitative by means of partners and products diversification.



mainly, to SEA and India's markets. This way, Argentina set a commercial insertion strategy with larger market diversification than Chile, besides adding markets that are no big world economies, such as Vietnam and Indonesia, and other emerging country such as India, to the ranking of main partners thus shaping a South-South commercial insertion.

One of the main characteristics of both countries' commerce with East and the South of Asia is the exports concentration in a few products. In the case of Chile, four products account for the 83% of sales to China: copper ore and its byproducts, Iron ore and wood pulp. Exports to India follow a similar pattern, with more than 90% concentrated in three products: copper ore and its byproducts, wood pulp and iodine (ALADI, 2019).

Argentina's exports also show a high level of concentration in agricultural products. Sales to SEA are formed, mainly, by soybean, maize and wheat pellets, that represent approximately 85% of what is sold to the region. Those sent to China are mainly soybeans, oil, fish and sunflower oil, and they account for 82% of what is sold to the country. In the case of India, the concentration is higher since the main exported product is soy oil, whose participation fluctuated between 72% and 90% in the period 2012-2018 (ALADI, 2019).

As we mentioned, South American imports of Chinese products have gone through a growing process since the early 2000. The two main import areas are textile and confection, and IT, machinery and electronics (ALADI, 2019). The quick growing process of imports increased the governmental and business concern about the impact on local production, on employment and on the competition in other markets, among other variables.

The productive and exporting concentration of commerce of South American countries with China, SEA and India have many impacts in their foreign trade insertion. With a greater or smaller opening level, the strategies adopted do not become efficient tools for a sustainable development of trade. Argentina and Chile have not developed economies of scale that allow them to set their products apart and develop an intra-industrial kind of trade. Therefore, the most relevant proportion in the exchange is given by the comparative advantages, whether by the provision of natural resources, the low labor costs, their geographic position, or the combination of these and other factors. In this sense, the trade openness they have set in place has not come into play at the time of achieving a better position in the market by means of long term bonds hard to replace (De la Cruz y Marín, 2011).

So, these characteristics reveal a dependent political economy that attempts also to permeate every aspect of the commodity chain, which has deepened the peripheric status of this type of countries and restricted their ability and possibilities for an autonomous development (Giraudó, 2019).

Final Remarks

It is out of the question that many international, regional and domestic conditions, permanent and occasional, must be taken into account when analyzing South American international strategies. Some of these conditions –such as the international commodity



prices, demand of raw materials, and the contraction of world commercial flows, among others– affect every economy in the region, due to the similar conditions of extra-regional commercial insertion they share: raw material suppliers and members of downstream value chains. However, there are domestic differences that generate certain conditions – such as the interregional trade levels, the Latin American demand, regional trade agreements, among others– to have dissimilar impacts on the foreign trade insertion policies of the countries in the region.

As a first conclusion, the international strategies based on raw material exports turned out to be successful as platforms for economic growth and for overcoming economic crisis, especially in the case of Argentina. Likewise, currency flow generated by the growth of exports to China, SEA and India, made it possible to diminish the dependence on external financing, as well as to diversify exports markets which also enabled higher autonomy margins when making political and economic decisions.

Nevertheless, during the last decade, the links with China have become stronger, thus contributing to a new dependence relationship. Among other effects, there is the high concentration of export to Beijing –particularly in the case of Chile–, and the growing competition for regional markets. As becoming locked into a commodity export-oriented economy, these countries have shown a deficient capacity and autonomy to transform their productive matrix.

Here, the characteristics of the foreign insertion strategies each State had at an economic level had different implications, because of the domestic productive conditions. While in the case of Chile we observe a wide openness process based on free trade with China, in the case of Argentina we find selective policies of national and regional market protection and privilege, connected to the current integration process. The various orientations of foreign economic insertion of these two countries, which represent the two development models and their corresponding foreign insertion strategies more extended in South America, represent obstacles for the agreement on common regional policies when facing the challenges set by China's presence in the region's commercial and financial dimensions.

Similarly, the differences of the impacts according to the productive sector affected also makes it difficult to design consistent and long-lasting policies aimed at balancing the Asian economies' roles, especially China's, given their negative effect on the regional industry. Thus, the States must decide on which sectors to favor and which ones to relegate. In the case of Chile, the choice was an open model that benefits the primary export sector and relegates the industrial one. As regards Argentina, there is still a struggle: on the one hand, to favor the agricultural sector – main source of currency income–, on the other, to go on protecting a wide industrial sector that, although solid in some areas, is still developing.

The lack of innovation in the productive structure of both countries limits the possibilities of economic growth and development since the access and advance of new technologies are essential, not only for productivity and international competitiveness but also to avoid the progressive increase of the technological gap and, as a consequence, of the conditions of structural dependency.



In this sense, the construction of joint policies at a regional level is hindered by these differences because the underlying interests which support states' decisions are opposite. As long as South American leaders do not consider the consolidation of an extended regional sphere a priority for the economic and trade insertion, so as to establish extra-regional links –such as FTAs or others–, it is hard to foresee a joint way to respond to the negative effects produced by the presence of China and, increasingly, of other big Asian countries in the region's economies. The hazard is the intensification of an insertion strategy dependent on the export of products with zero or little added value and the gradual loss of international importance because of the growing dependence.

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DOES FOREIGN DIRECT INVESTMENT PROMOTE
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BUILDING INTELLIGENCE COOPERATION IN THE EUROPEAN UNION

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Abstract

European security is transnational in nature due to the interdependencies of globalized societies. This gives rise to the need for cooperation and the sharing of security intelligence between Member States. This article presents a critical review of the functioning of the intelligence community in the European Union (EU), making a historical review that allows us to understand whether or not transnational cooperation has been moving towards greater integration. In addition to mapping the organisms that are part of this community, the article relies on a theoretical framework of policy analysis to structure the challenges of intelligence sharing on the European level.

It is argued that the EU's capacity to produce its own security intelligence is very low, depending on the sharing of intelligence by the national agencies. Additionally, it is said that the sharing of police intelligence is much more structured than the sharing of security intelligence. Finally, it is concluded that the European intelligence community welcomes different intelligence cultures within it and focuses its activities on diffuse cooperation that faces the limits of national sovereignty, interoperability deficits, and difficulties in establishing institutional relationships of trust.

Keywords

Intelligence, security, cooperation, intelligence cultures, European Union.

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BUILDING INTELLIGENCE COOPERATION IN THE EUROPEAN UNION¹

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Introduction

According to Article 4 of the Treaty on European Union (TEU), it is clear that *"It shall respect their essential State functions, including ensuring the territorial integrity of the State, maintaining law and order and safeguarding national security. In particular, national security remains the sole responsibility of each Member State"*. Article 73 of the Treaty on the Functioning of the European Union (TFEU) also reiterates the role of Member States in the implementation of their national security policies: *"It shall be open to Member States to organise between themselves and under their responsibility such forms of cooperation and coordination as they deem appropriate between the competent departments of their administrations responsible for safeguarding national security."*. This legal framework is important for the achievement of intergovernmental security in the EU, from which the practices of cooperation between intelligence services and agencies emerge. As argued by Aden (2018), cooperation in the European intelligence community is much more formal and structured in terms of police cooperation than between intelligence agencies, mainly due to a legal framework for police cooperation in terms of European regulation, with successive efforts to integrate into the revisions introduced by the Maastricht, Amsterdam and Lisbon Treaties. Even so, the Treaty of Lisbon, despite extending the EU's area of action in security matters, maintained the principles of intergovernmentalism, first and foremost the unanimous decisions of the Council and the possibility of brake mechanisms (Brandão, 2010: 60).

The difficulties are greater when it comes to concrete and operational action, despite the fact that we see presidents and prime ministers signing treaties, publicly expressing the need for cooperation between Member States to tackle common threats, or supporting symbolic documents such as the European Security Strategy (Cross, 2011:76). However, the security context in the EU has changed somewhat as a result of the various terrorist attacks, highlighting the need for greater sharing of security intelligence between Member States (Costa, 2016: 91). Additionally, the UK's exit from the EU requires a reorganization of the Union's intelligence community (Glees, 2017; Hillebrand, 2017; Segell, 2017). Thus, although European security has been following a path of progressive integration in central matters of national sovereignty - terrorism, human and drug trafficking, cybercrime, border control - blurring some divisions between the internal and

¹ Article translated by Cláudia Tavares.



external frontiers and accepting partial EU governance in these areas (Cross, 2011), though cooperation in sharing security intelligence remains complex and volatile (Gruszczak, 2016: 271).

Intelligence studies as a field is still under construction and has developed mainly in the English-speaking context, advancing theoretically from disciplinary frameworks of Law, History, Political Science and International Relations (Gill and Phytian, 2018). There are many definitions of strategic intelligence, some more restrictive that limit them to a process that feeds national security, others more comprehensive that perceive intelligence as the product of a process that generates knowledge to feed strategic decision with interest and relevance in different areas (Gill and Phytian, 2006). Conceptually, it is necessary to distinguish between security intelligence and police intelligence. The former has a strategic character, offering an understanding that contributes to decisions, policies, and resource management to achieve long-term objectives in order to guarantee national security. The latter are geared towards internal security, particularly with regard to the prevention of violent crime and incidents in the public space and may also fall within the sphere of criminal investigation (Moleirinho, 2009: 82). In the context of this article, strategic security intelligence is considered as an essential element of national security and defence systems but is conceived in a way that is disseminated among the Member States (Coqc, 2017). Globalization has brought a broad understanding of national security, which now includes concerns about many transnational risks, in addition to the traditional political-military threats (Buzan, 1991; Hough, 2004; Williams, 2008; Kaldor and Rangelov, 2014), having demanded a broader intervention of intelligence. However, the globalization of intelligence services has not been so fast, and they remain mainly within national jurisdictions (Aldrich, 2009). There are many intelligence agencies without the capacity to collect and analyze all the available intelligence, first of all because they are not endowed with sufficient resources, unlike countries with "big schools" of *intel* like USA, Russia, United Kingdom, Israel or China. The cooperative practices among intelligence communities are the solution and happen both at the national level - with other security forces and services - and at the international level - with similar services. International cooperation is mostly bilateral and takes place on the basis of common interests, shared intelligence cultures, historical alliances, or geographical and strategic proximity to different regions of the world (Rudner, 2004; Aldrich, 2009).

It is within the above context that it is important to assess the way in which security intelligence is organized within the EU. This article is an exploratory research and takes the form of a predominantly descriptive essay, which aims to answer three fundamental questions: (1) What bodies and mechanisms exist for intelligence cooperation in the EU?; (2) What are the challenges for greater cooperation?; and (3) What role the EU could assume in this process? The structure of the article follows the guiding questions, there being three sections, the first identifying the bodies involved in the process and how, the second presenting a model for analyzing the challenges facing cooperation in intelligence, and a third section pointing out possible courses of action for the EU. Methodologically, the first section follows a comprehensive approach of the literature to map the existing intelligence community as well as its evolution; the second part of Goodin and Tilly's contribution (2006) in political analysis to introduce a model that allows to analyze and



structure the challenges faced in different dimensions; finally, the third section relates the two previous ones, in order to consider the role and positioning of the EU in this process, following here an institutional approach. It is considered that the contribution of this article derives, mainly, from the systematization of intelligence about a little explored theme in the field of social sciences.

The argument put forward here is that there is a non-integrated and fragmented European intelligence system, which depends heavily on the production and management of intelligence by the national intelligence agencies of the Member States, pointing to an EU intelligence community where national interests prevail and where different intelligence cultures coexist. In this way, it is a system where some overlaps and difficulties in sharing intelligence are noted, and weaknesses in the EU's position are also identified, since the cooperation needed to face many risks and threats going beyond the limits of the Union and even Europe. At the same time, the required action is mostly local or national, placing the regional level in an ambiguous zone for the operations of the EU intelligence community. Thus, its future seems to depend on the institutional evolution of the community project itself and on a possible deepening of integration in matters of national security and defense, as well as on the intensity and territorial expansion of the main shared threat of the various national security systems: terrorism. Without further integration of Member States' national security on an EU scale - EU internal security - it will be impossible to think of a common intelligence system. Nevertheless, cooperation and intelligence sharing (especially of the police) within the European intelligence community will continue to be developed, with positive contributions to the Common Foreign and Security Policy (CFSP) and the Common Security and Defense Policy (CSDP), even if they face some challenges, such as the limits of national sovereignty, interoperability deficits and the establishment of institutional relations of trust within and outside the EU area.

Cooperation and intelligence in the EU: the supranational bodies

Intelligence development in the EU has progressed at a slow pace, although relative progress in pan-European cooperation after September 11 and March 11 is recognized (Argomaniz, 2009) and, currently, after the successive terrorist attacks, in particular that of Paris (2015). However, the production of intelligence remained centered on the national dimension rather than the EU dimension, turning the EU intelligence community into a project of cooperation and intelligence sharing between national services and agencies, which is based mainly on a counter-terrorism strategy (Rudner, 2004; Argomaniz, 2015; Den Boer, 2015). The European Union's Global Strategy 2016 highlighted the need for greater intelligence sharing and cooperation between Member States and EU security agencies in counter-terrorism activities, as well as a strengthening of intelligence production by the EU Intelligence Analysis Centre (IntCen), fed by cooperation with EU agencies such as Europol and Eurojust (European Union, 2016). There has been a framework for cooperation in the EU with gradual increases in intelligence sharing and police cooperation with a particular focus on issues of violent radicalization, terrorism and transnational crime (Feiteira, 2016: 286), also impacting on the objectives set by the CFSP and CSDP.



Intelligence sharing is led by the Member States on a voluntary basis, which allows for variations in its intensity and modalities, namely in terms of not compromising privileged relations of some agencies and intelligence services with other partners outside the EU area (Walsh, 2008). Also, there is some mistrust regarding the quality of intelligence produced by some services due to the dissemination of the collection and analysis techniques that serve as a basis for the production of intelligence (Politi, 1998: 12; Gruszczak, 2016: 84). Trust is assumed to be the basic principle of cooperation, but there are several challenges to establishing relationships of trust, primarily due to the secret nature of intelligence production. Thus, cooperation on intelligence tends to focus on issues such as cyber security, international terrorism and transnational organized crime (Bilgi, 2016: 59) and to occur in the following bodies.

Club of Bern

It is a forum for informal and voluntary sharing of intelligence between services of different countries, created in the seventies of the last century, generally meeting every two years. Currently, all EU countries as well as Norway and Switzerland are members. It is considered to be one of the main platforms for meetings between the leaders of national intelligence services. Its agenda focuses on the holding of meetings and conferences, where technical and operational issues of activities carried out by national intelligence services are discussed. More recently, working groups have been set up in the field of counter-terrorism and the fight against transnational organized crime, which have led to the creation of the *Counter Terrorism Group* (CTG), in 2001. This group includes the US and produces terrorist threat assessment reports, which are shared not only between Member States but also with the Council of the European Union. It should be noted, however, that this group operates outside the institutional framework of the Union despite its rapprochement with it in the last decade, and there is no obligation on the relevance and quality of the intelligence provided by the national intelligence services (Walsh, 2006: 631).

European Police Office (Europol)

Like the Club of Bern, also in the sphere of police cooperation, an informal forum for sharing intelligence was created which brought together several European countries in the seventies, namely the Trevi Group. This was made up of a group of ministers and senior officials from the Ministries of Justice and Home Affairs of the Member States, often understood as a forum which fostered the creation of the EU Area of Freedom, Security and Justice, enshrined in the Amsterdam Treaty. Europol came into operation in 1999 with units representing all Member States, which are responsible for mediating between national security forces and services and Europol. The sharing of intelligence from national offices derives from their own initiative or from replies to questions put to national offices by Europol (Bilgi, 2016: 58). It is a fundamental structure of EU security, supporting operations on the ground and acting as a platform for intelligence on police-criminal matters. Its main areas of activity are the fight against threats from terrorism, transnational drug trafficking and money laundering networks, counterfeiting of currency



and fraud, and human trafficking. In recent years, Europol's role has been growing and its areas of intervention expanded, becoming a key body in the fight against crime at European level (Rozée *et al.*, 2013). In 2015, the European Counterterrorism Centre was created (*European Counter Terrorism Centre - ECTC*), following the attacks in Paris in November 2015, which has been in operation since the beginning of 2016. Also in 2016, the European Centre for Migrant Trafficking was created (*European Migrant Smuggling Centre - EMSC*), which comes after this issue has been identified as one of the major challenges in the European Agenda for Migration 2015. This center works closely with other Union agencies such as Eurojust in the field of judicial cooperation and Frontex in the protection of external borders. Although a number of criticisms against Europol in terms of transparency and accountability have been pointed out (Jansson, 2016), the production and open dissemination of an annual report is worth noting, the *Europol Review*, which reports on its activities and the results achieved and also contains specific intelligence on the types of functionalities and systems available to Europol from which it provides coordinated support to police operations in the EU.

Standing Committee for Operational Cooperation on Internal Security (COSI)

Another body contributing to intelligence sharing is the Standing Committee on Operational Cooperation on Internal Security (COSI), set up on the basis of Article 71 of the TFEU to ensure that operational cooperation on internal security is promoted and strengthened within the Union. To this end, it promotes the coordination of action by the competent authorities of the Member States by ensuring effective operational cooperation in the field of EU internal security, including law enforcement, border control and judicial cooperation in criminal matters. It also assesses the overall direction and effectiveness of operational cooperation and assists the Council in responding to terrorist attacks or natural disasters. However, once again, it is not an operational body with autonomy to conduct operations, nor to intervene in the legislative process (Caldas, 2016: 63). It is made up of representatives of the Member States, supported by the JHA advisers of the Permanent Representations, and regularly informs the European Parliament and the national parliaments of its work. Representatives of other bodies involved in internal security, such as Europol, Eurojust and Frontex, frequently attend COSI meetings.

INTCEN

The Intelligence and Situation Center of the European Union (*Intelligence Analysis Centre - IntCen*) exists under different names since 1999, being integrated into the European External Action Service (EEAS) in 2010, operating daily and uninterruptedly. Its mission is confined to the provision and analysis of intelligence, in particular early warning and assessment of events which may have an impact on EU institutions and Member States, in the fields of security, defense and counter-terrorism. It acts as an entry channel for classified intelligence into the EU from Member States' civilian intelligence services and agencies, much of its analysis being based on intelligence provided by national intelligence services and agencies, national military authorities and diplomats in EU



Delegations. Although not all Member States can contribute to the production of intelligence, all will have access to the intelligence produced by IntCen. When sharing intelligence originating from the national services for the IntCen, the former can define that other actors can access that intelligence in addition to the main consumers of the intelligence disseminated by the IntCen. That is, according to the principle of the origin of intelligence, that which comes from national services can be denied to MEPs, for example (Cross, 2013: 393). Its operational contribution extends, for example, to the provision of intelligence on the destinations, reasons, and circuits of movement of terrorists within and outside EU territory. In 2007, the capacity of the IntCen to analyze situations outside the EU was strengthened through the creation of the Individual Analysis Capability (ISAC), which crosses civilian intelligence with that obtained by the Intelligence Division of the EU Military Staff, issuing early warning intelligence, crisis response planning, and assessments of CFSP operations and exercises (Caldas, 2016: 64-65).

It is a body that produces intelligence in support of the policy-maker, in particular directed at the EEAS, but also assisting the Presidencies of the Council and the European Commission, while contributing to the CFSP and the CSDP, derived from its analyses responding to threats from terrorism, proliferation of weapons of mass destruction and other risks and threats of a global nature. Nevertheless, it is a body that also intervenes in the collection of intelligence, mainly from open sources (*Open Source Intelligence - OSINT*) and residually by direct and face-to-face observation in crisis scenarios (*Human Intelligence - HUMINT*), producing intelligence that would not otherwise exist. In this way, the product of the IntCen intelligence combines its own collection, mainly using OSINT, with the analysis of intelligence shared by the Member States, both civil and military, and diplomatic reports (Gruszczak, 2016: 86). The product of IntCen's intelligence is effective through the production of biannual reports, special reports (in response to crisis situations or in an area of growing relevance at a given time), summaries of support to the policy maker when requested and risk assessments, also biannual, to which *ad-hoc briefings* with the EU institutions may be added when relevant. IntCen is not a European intelligence agency, but it is the closest to it and has been a key player in coordinating and centralizing intelligence cooperation at European level and has gradually established itself as a producer of safety intelligence. As such, it is a key body (as producer and consumer of intelligence) in the EU intelligence community (Cross, 2013: 395) and has assumed a growing role in European foreign policy over the past decade (Fagersten, 2014: 97).

European Union Satellite Centre (SatCen)

As such, it is a key body (as producer and consumer of intelligence) in the EU intelligence community (Cross, 2013: 395) and has assumed a growing role in European foreign policy over the past decade (IMINT e GEOINT). It assumes itself as a military intelligence body, developing its activities jointly with other partners such as the European Defence Agency (*European Defence Agency - EDA*) and the European Space Agency (*European Space Agency - ESA*). The main consumers of SatCen's products and services are, in addition to the Member States, the EEAS, the European Commission, Frontex, and other



EU institutions and agencies. Although GEOINT is particularly associated with the Armed Forces, the truth is that there is a growing interest in the civil sphere, both for the public and private sectors. The GEOINT produced by SatCen is mainly intended to collaborate in humanitarian aid programs and missions, in contingency plans in crisis situations, in the areas of border control, combating piracy to terrorist and organized crime networks, supporting video surveillance networks, identifying military capabilities, controlling the non-proliferation of chemical weapons and mass destruction, and supporting critical infrastructure, including risk and vulnerability assessments. Note that the center does not have its own satellites, so it uses the existing satellite images, often proceeding to purchase them, for later analysts to perform the treatment of them. So: (1) on the one hand SatCen does not command existing satellites, neither in their tasks, nor in their positions; and (2) much less can it control the quality of the material collected, with private satellites for commercial use often having lower resolution image collection than could be needed for SatCen evaluation (Walsh, 2006: 636).

European Union Military Staff (EUMS))

The Military Staff of the European Union, like the Military Committee, was a consequence of the Helsinki European Council (1999), which opened space for the establishment of permanent political-military bodies, and was subsequently established in 2001, and since 2010 integrated into the structure of the EEAS. It is the only permanently integrated military structure in the Union, bringing together a wide range of experts, who use the contribution of military intelligence to the elaboration of the PCSD. Its functions include, on the one hand, advising on matters of a military nature and, on the other hand, planning, evaluating, and issuing recommendations on matters relating to crisis management situations and the definition of military strategy. To cope with this mission, the EUMS benefits from an Intelligence Division, which uses military intelligence produced by Member States and other European bodies, to subsequently produce reports and assessments for the Military Committee, the EEAS and other EU bodies (Walsh, 2006: 633). The Military Staff shall also monitor the management of ongoing operations and the military capabilities made available by the Member States to the EU, identifying which (inter)national forces may be deployed for operations conducted by the Union (Caldas, 2016: 66).

The challenges of cooperation: formal obstacles and ambiguities

National intelligence services and agencies have different intelligence cultures and asymmetric resources, causing within the EU itself heterogeneous intelligence production processes between agencies and bodies. With the growing expansion of the Internet, there are estimates that place the collection of intelligence largely dependent on OSINT, which proves to be a less complex, expensive and time-consuming way to do it when compared to other forms of secret collection such as HUMINT (Omand, Bartlett and Miller, 2012). As far as intelligence sharing is concerned, recent efforts highlight a paradigm shift, which relates to strengthening cooperative security in the EU. Due to the expansion of national security agendas, it is impossible for small services to produce intelligence, in



quantity and quality, keeping their budgets unchanged. Thus, cooperation allows, on the one hand, the maximization of existing resources, avoiding, on the other hand, the overlapping of missions in operational terms (Gruszczak, 2016: 88-89). From a security point of view, the existence of shared risks and threats in the EU area encourages cooperation and a common agenda, as in the case of counter-terrorism. Still, intelligence sharing has sometimes benefited the EU's decision-making process more than the effectiveness of a common counterterrorism strategy. This is because shared intelligence has primarily fuelled European counterterrorism policies, with recurrent low operational and tactical impact, areas where intelligence (operational and tactical) tends to remain at the national level (Muller-Wille, 2008: 69). Although cooperation allows economic and security gains, it also has an internal origin, which is determined by the nature of the European integration process itself, marked by successive *spillover* effects. The introduction of cooperation policies in security matters has determined cooperation in adjacent areas, where the growing cooperation in intelligence with the development of the CFSP is included (Fagersten, 2014: 103). However, cooperative practices face obstacles in different areas, proposing below an exploratory model that systematizes the dimensions and determinants of cooperation from the grouping of large contextual domains that may affect a political phenomenon (Goodin and Tilly, 2006). Briefly, we can frame the challenges of sharing security intelligence in five major dimensions: cultural, security, legal, economic, and psychological.

Cultural dimension: different intelligence cultures

Cooperation tends to be easier when similar intelligence cultures exist, and more difficult to achieve when intelligence cultures are substantially different between the countries concerned (Born *et al.*, 2015: 110). The intelligence culture depends on how the intelligence communities legally register within the Member States and develop their practices, with repercussions on different institutional designs, different articulations between civil-military intelligence, different governmental guardianships, different contributions to the internal security and national defense systems, or different mechanisms of oversight, democratic control and transparency. Taking into account EU countries, it is assumed that there are distinct intelligence cultures, which derive from a differentiated political and cultural history among Member States, from which divergences have emerged in the legal environments and political systems in which the national intelligence communities operate (Graaf and Nyce, 2016).

Security dimension: the globalization of security

There are many interdependencies between environmental or public health risks, or threats such as cybercrime or terrorism, for example, which require broader cooperation, first and foremost including the US, and not restricted to Member States. At the operational level, missions and operations have mainly taken place at the national and local levels, or come from NATO, with the Union at an intermediate level, where shared problems are often circumstantial and the capacity to intervene limited. The challenge is then to find common goals, and action on cybercrime, counter-terrorism and combating



human trafficking networks can be mentioned as challenges that currently unite all the Member States, although on a scale of differentiated concern that is insufficient to establish structured and broad cooperation in the long term. For effective intelligence sharing within the EU, it is essential to formulate a collective security agenda that can link the actions of Member States and their national intelligence services and agencies around common interests.

Legal dimension: the Lisbon Treaty

The Treaty of Lisbon has led to an increase in IntCen's competencies and strategic relevance. However, it cannot be ignored that the same Treaty has clearly inscribed the responsibility of the Member States to ensure national security. Thus, this is an exclusive competence of the Member States, where they maintain reserves of sovereignty, making cooperation on security matters and, in particular, on issues associated with the sharing of intelligence between intelligence services take place in an unstructured manner and, preferably, with partner services. As a result, the EU's powers to act in intelligence production or to require and coordinate intelligence sharing are still very limited, despite the increase in the number of European bodies that are part of the European intelligence community over the past two decades. The Lisbon Treaty presents itself as an instrument of formal-legal blockage, which makes it impossible to achieve more integrated cooperation, the development of networks and centralized intelligence sharing channels in the EU, and greater harmonization of collection methods and intelligence analysis techniques. A revision of this legal framework could speed up greater interoperability, correcting some of the difficulties experienced in sharing intelligence within the European intelligence community and bringing about efficiency gains.

Economic dimension: the expansion of the intelligence market

The importance of intelligence at the national level has today a wider spectrum, consecrating a performance in different sectors that serve national interests. It follows that the work agendas of national intelligence services and agencies present some elements that are shared, but that go far beyond those elements. National intelligence services and agencies operate in an expanding and very competitive market, and there are several situations where Member States compete for strategic intelligence that can help different national governments in their decision-making processes (Rêgo, 2015). There seems to be a dual system, where there are areas where Member States' intelligence services and agencies cooperate and others where they compete. For example, both economic intelligence (support for government negotiations, economic counterintelligence actions, support for national business strategies, etc.) and energy intelligence are areas where national strategic interests are recurrently conflicting, and where national intelligence services and agencies face a competitive environment. This constant competition does not favor the broad, open and continued long-term cooperation that is desired in the EU.



Psychological dimension: the principle of trust

One of the fundamental dimensions of cooperation is trust, expressed through uncertainty about what other services and analysts can do with the intelligence received, the possible negative impact on already existing historical partnerships for bilateral cooperation, or the risk of 'free-rider' (Muller-Wille, 2008: 62). How can a fair sharing of responsibilities and resources between Member States be ensured to avoid distrust? How can standards be set in the collection and analysis of intelligence so that national services and agencies rely on intelligence produced externally? How to ensure the security of intelligence shared in smaller, less resourceful centers? How to keep communication channels permanently open, which foster interpersonal relationships of trust, and not only occasional relationships in crisis situations? These are some central questions whose answers have been characterized by volatility and uncertainty, which has created difficulties in stimulating the desired relationships of trust. This may understand the preference of Member States for bilateral intelligence sharing with intelligence services and agencies with which the principle of trust is assumed to exist, as opposed to broad multilateral action in the EU. Trust is the determining element for the success of intelligence sharing, but it needs time to develop, through recognition of the mutual benefits achieved in joint initiatives, as opposed to creating a formal model of cooperation.

The role of the EU: *status quo* or greater autonomy?

The transfer of competence in the production of security intelligence to Brussels does not seem possible soon, *ceteris paribus*. Nevertheless, the lack of full integration of intelligence in the bureaucratic apparatus of the Union does not invalidate the expected deepening of the security intelligence community in the EU. The development of this community points to the development of a broad and flexible network, which makes the EU and the Member States jointly responsible for the production and sharing of intelligence within the Union. As Alessandro Politi (1998: 8) wrote in one of the first reference texts on intelligence in the EU context, there may not be great advantages in over formalizing the European intelligence community, as the flexibility of a network can ensure greater efficiency in managing the necessary cooperation and intelligence sharing, instead of trying to engage in the creation of a European intelligence culture alternative to the national ones. If, in part, this argument can still hold water, it seems to have lost momentum as a result of the enormous expansion of international terrorism, pointing to several problems over a complex and insufficient intelligence network where cooperation is diffuse, takes place at different levels, and does not present standard procedures and practices (Argomaniz, 2015). Despite the effective gains from intelligence sharing in the field of police cooperation, the integration of intelligence sharing between intelligence services and agencies in the community area has been slower, revealing a preference of national governments (i) for informal initiatives as opposed to formal regulation, (ii) by sharing with a small number of actors rather than broad sharing at Union level, and (iii) by establishing *ad hoc* practices as an alternative to institutional solutions (Gruszczak, 2016: 217 and 272). The role of the EU will depend on its positioning in three areas,



namely defining its participation in the intelligence cycle, its effectiveness in managing and coordinating intelligence sharing and its ability to drive greater interoperability.

Its participation in the collection of intelligence using its own means will require more of the EU and its relationship with the Member States, as opposed to a circumscription to the phases of analysis and dissemination of intelligence from the national services, firstly because the collection and its legal limits are an area more sensitive to national legal cultures, which vary between the Member States. Although the importance of HUMINT and SIGINT is recognized, there are many possibilities for the collection of intelligence to happen from OSINT, which has held the preference of European bodies that produce intelligence, especially as its value increases with the expansion of digital communication tools. The collection through own means does not invalidate the processing of intelligence from national services and agencies. Even so, the joint action involves two challenges: (1) avoid overlapping analyses and (2) ensure the added value of intelligence produced from the EU. The duplication of analyses, the excess of analyses and the growing bureaucratization of processes and procedures will hardly be perceived as an added value for Member States. By contrast, a direct, flexible and stable networked system, with access to intelligence that is more difficult for national services and agencies to obtain, could lead to the recognition of a favorable contribution from the EU and their greater participation in the European intelligence community. This horizontal network with several bridges for cooperation, rather than a formal hierarchical model, can foster trust and avoid additional conflicts in the relationship of Member States with their own integration processes.

In relation to cooperation, the European intelligence community needs to be further deepened, articulated and centralized, and it is also essential to ensure the relevance of shared security intelligence at the multilateral level. An EU-led system of cooperation could diminish the preference for bilateral cooperation, without an obligation for multilateral sharing, and there could be a model for cluster cooperation according to interests shared by Member States but coordinated by the EU. This flexible sharing by clusters and by areas would even allow cooperation to be extended beyond the borders of the EU, to countries with a historical relevance such as the United Kingdom and the US, as well as to countries with a very high geostrategic interest in certain areas, such as Turkey or Morocco, for example, or even within the institutional framework of collective security with NATO. Obviously, greater circulation of and access to intelligence presupposes the strengthening of the security of existing communication channels and data centers where they would be stored, as well as the definition of the conditions of such access by the security forces and services of the Member States and other actors.

The poor interoperability in the European intelligence community is one of its main limitations, and it is necessary to make compatible solutions between Member States in terms of the legal environments where intel is collected, the infrastructures, the techniques and methodologies of intelligence analysis and processing, and the sharing of technology (necessary both in the collection techniques and in the security of the channels of intelligence dissemination). All this would also contribute to greater harmonization of the different intelligence cultures living together in Europe and could have a positive impact on relations of greater trust between the Member States,



promoting cooperation. This harmonization could also have positive effects in terms of democratic control, transparency and the management of the binomial security and freedom, by reconciling access to (meta)data with the protection of rights, freedoms and guarantees, on which the Member States have different positions.

Conclusion

This article shows that the EU intelligence community is substantially different from the national communities we know, which is not surprising given the prevalence of nationality in the sharing of security intelligence between intelligence services and agencies in the EU. The national security of the Member States is not yet fully represented in the internal security of the Union, thus including greater cooperation in the sharing of police intelligence. The sharing of security intelligence is more like an open network, where different ways of producing, analyzing, and disseminating intelligence live together. Security intelligence is configured as the last stronghold of national sovereignty that Member States make use of, making the European intelligence community's dependence on Member States very high. This community acts at national level, with the different national intelligence agencies, and at European level, through the different bodies involved in the production and sharing of intelligence, from which various EU bodies and institutions as well as Member States benefit.

Although the creation of a European intelligence agency in the current context seems impossible today, the strengthening of sharing seems to be one of the ways to go, contributing to the maximization of existing resources and to the development of epistemic communities. Moreover, the advantages of cooperation in terms of saving resources - in a context of budgetary constraints for many small services and national intelligence agencies - and producing intelligence in scale economies are difficult to deny. It is also necessary for the EU to assert its own capacity for collection and analysis - especially from the IntCen and using OSINT - from which a growing contribution to the CFSP and the CSDP is expected and thus in the formulation of the whole EU geostrategic vision. The future of security intelligence in the EU seems to depend, on the one hand, on the further integration of common security and defense issues and, on the other hand, on the advancement of common threats to such as terrorism. Nevertheless, it is important to ensure that any further centralization, analysis, dissemination and, above all, intelligence sharing do not compromise the autonomy of the Member States and do not violate the principles of action of the several actors involved in the EU intelligence community. Finally, the EU's position on this issue also reflects the way it intends to project itself into the international system, perhaps forcing it to revisit the current cohesion of the transatlantic relationship and the historic EU-NATO relations in security and defense matters.



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THE EUROPEAN UNION AND THE BREXIT PARADOX

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Abstract

The article analyses the consequences of the withdrawal of the United Kingdom from the European Union, particularly the political effects of its decision. In the first place, it addresses the holding of the referendum, and the decision to withdraw, as a paradigmatic example of the so-called "new politics" that has given special prominence to the so-called populist forces in Western societies. Then, the peculiar negotiation between the UK and the EU to establish a withdrawal agreement is examined. Next, the different forms of commercial ties that the EU currently maintains with third States are identified as a reference to the agreement that may be established with the United Kingdom. Finally, the viability of the Global Britain project as a future strategy to regain a position of international influence is evaluated. The conclusion reached is the paradox that Brexit represents, as the United Kingdom has launched a traumatic, uncertain and divisive process to achieve an international, political and commercial position, which in objective terms will be indisputably worse than the one it left.

Keywords

Brexit, European Union, United Kingdom, Referendum, Trade Agreement.

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THE EUROPEAN UNION AND THE BREXIT PARADOX¹

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1. The Brexit paradox: a “democratic” decision against Britain's own interests²

A paradox is a “fact or expression apparently contrary to logic” (DRAE)³. It is an apparently true manifestation that, however, contains a logical contradiction. Brexit constitutes a paradox in the sense that British voters chose in the June 2016 referendum an option that is contrary to their own material and political interests.

Undoubtedly, the departure of the United Kingdom from the European Union weakens the European project, but so far less than expected. Instead, the break will really hurt the country that is leaving. The economic, commercial and business costs will add up to a bill yet to be determined, very high in any case, depending on whether the United Kingdom and the EU finally manage to agree on a mutually beneficial form of economic and commercial coexistence (Dhingra et al, 2016). In any case, the magnitude of the material damages that Brexit entails is outweighed by the loss of the positive and stereotyped image of the country, its political system, the leadership and international influence that it has wielded through the exercise of its extraordinary soft power. It will mean a break of its political system that directly affects its party system and threatens the very constitutional structure of the United Kingdom. Territorial cohesion between the four nations that comprise it (England, Wales, Scotland and Northern Ireland) is in danger by giving up European integration. We have seen it in Northern Ireland, where the possibility of re-establishing an international border places the 1998 Good Friday peace accords at risk and fuels sentiments in favour of the island's unification. One of the keys to peace and coexistence in this territory lies precisely in the existence of a porous intra-community border that is a consequence of the unity of the EU market. A similar concern is also seen in Scotland, where the Scottish National Party, currently in power, threatens to hold a new referendum on its relationship with the United Kingdom, encouraged to retain membership of the EU through future accession once independence is achieved.

¹ Article translated by Carolina Peralta.

² A first version of this paper was presented and discussed at the seminar organized by the Centro de Investigação em Ciência Política - CICP at Minho University (Braga), in December 2019, with the title: “A União Europeia perante o paradoxo do Brexit”.

³ All cited online references were last accessed on 30/09/2020.



If the motto during the Brexit campaign was to vote out to "take back control", what one sees is precisely the opposite. A new paradox.

Why does this situation occur? Is it perhaps a problem of the decision-making mechanism adopted in consultation with the electorate? Are democratic systems unreliable and should a momentous decision be voted on? Obviously, the problem is not democracy as a political system, but rather the evils that afflict Western societies that present a series of common features shared by many countries (Portugal is an exception), the most obvious manifestation of which is the rise of the so-called populist forces from one side of the Atlantic to the other.

Brexit is a paradigmatic example of this process of political change in Western societies that perhaps symbolizes a change of era. Brexit is analysed here as a representative category of this process of change in a double dimension: the responsibility of political leaders who embrace these populist policies for their own advantage and to avoid their own responsibilities; and the motivation that drives citizens to support such options.

Regarding the first question, Brexit is a clear example of political mismanagement within the Conservative Party. Threatened by a split as a consequence of the bitter confrontations that date back decades, and the pressure exerted by the electoral advance of the demagogic Independence Party (UKIP), Prime Minister David Cameron avoided holding a congress that would resolve the internal division by convening instead, a referendum, encouraged by the success achieved in the consultation on the independence of Scotland (Castellà, 2016). This way, he managed to transfer an internal problem of the party to the whole country and, by extension, to the whole of the Union. In order not to face a domestic problem, it generated a constitutional and international crisis.

Political mismanagement does not concern only the decision to consult the population, but also the chosen procedure. All major political decisions (such as, for example, a constitutional reform) are framed in a procedure regulated by the countries' constitutional systems. Despite their differences, they all share common features: an extended legislative procedure that allows detailed analysis of the rules to be adopted and a reinforced voting procedure that requires qualified majorities in the Chamber and, in some cases, calls for elections for the new parliament to ratify the decision. And also the holding of a referendum, at the end of the process, to corroborate the decision made, but never as a consequence of a popular initiative, except in the few constitutional systems in which it is contemplated, such as the cases of Switzerland or the State of California (Butler and Ranney, 1978). Faced with this traditional use of the referendum, the British government used it as a formula for direct democracy, in contradiction to its political system, which is the archetypal example of parliamentary democracy. In addition to the known weaknesses of this form of direct democratic exercise (the possibility of manipulating deliberative assemblies, the opportunity offered to demagogic arguments or their interested celebration based on the priorities of the rulers' agenda), political theory had repeatedly warned of the danger that the decisions adopted this way may be the result of the passions of the moment, without any procedure that imposes limits on the power of the majority: "Referendum democracy is objectionable mainly because it



establishes (...) a system majority government that excludes minority rights" (Sartori, 1988: 156).

The procedure followed in the United Kingdom has incurred in all the dangers political theory warned about: the referendum was held at the beginning of the procedure, the result of which, to be applied, does not require any reinforced majority and lacks any other counterweight or filter that conditions its execution. Only once leaving the EU was approved was the design of the rule that made it possible to apply such a resolution began. Resorting to a referendum as the supposedly more democratic decision procedure eliminates the procedural guarantees and the parliamentary debate typical of indirect democratic systems. It reduces decision time to an instant by simplifying complex problems to the extreme of reducing them to yes or no. An electoral campaign is not a parliamentary debate. There is no reply or dialogue, and the opportunity to launch demagogic arguments, if not simple lies, multiplies, creating a very intense emotional climate that is increasingly decisive in electoral processes.

A referendum, the exercise of the so-called direct democracy, is not the most appropriate procedure to make important political decisions. Those who chose to use it do so for political advantage, to take advantage of the emotional state of an electorate that can be excited by multiple means and thus avoid a debate that highlights the negative consequences of the decision, if not its infeasibility.

A referendum is not invalidated as a decision-making mechanism in democratic processes, but it cannot be a single act, nor should it be placed at the beginning of the decision-making process. It should be part of a longer and more rigorous process that allows analysing the consequences of the decision and evaluating the way it will be carried out. In democratic systems, all these guarantees are given through parliamentary procedure. Brexit runs aground when it comes to applying the result of the referendum in Parliament and the consequences derived from the decision are verified, preventing the majority that would allow its execution.

The referendum, as used in the terms of David Cameron's government, was self-advantageous and demagogic. And, of course, its celebration did not bring any democratic bonus.

Let us now examine the second question posed: the motivation that drives voters to choose a certain option.

There is a huge amount of academic literature published in recent years that convincingly explains the process that has allowed the electoral boom of the so-called populisms (Goodwin and Eatwell, 2019). Although each society has its own domestic ghosts, social scientists have identified some aspects that are common in all cases where there has been an electoral victory of these political forces or their postulates, as has undoubtedly been the case of Brexit.

The first common factor lies in the existence of a fragile society as a consequence of the growing duality driven by globalization and reinforced by the impact of the 2008 crisis on Western societies (Rueda, 2014).



Social dualization is a phenomenon of increasing division that occurs within national societies between a minority, urban and enlightened group, linked to transnational production and information chains, and a majority group that is "left behind", which sees their material and working conditions deteriorate as wage earners (the end of the middle classes: Guilluy, 2019). The main consequence of this dualization phenomenon is that it is increasingly difficult to move from the *territorialized* to the *globalized* group, although not the other way around.

This dynamic generates an extraordinary frustration regarding social promotion expectations in broad social layers. The social lifting that the welfare state entailed has ceased to function and its loss fuels growing resentment, which can occasionally manifest itself in the form of a social explosion, a process identified as the *tunnel effect* by Albert O. Hirschman (Costas, 2015). Accordingly, the *globalized* are "denationalized", while the *territorialized* are "renationalized".

They feel unjustly harmed and degraded by their condition as losers in front of the educated, urban and cosmopolitan groups that stigmatize them. Self-perception as victims of globalization leads them to reaffirm themselves in everything they reject: the longing for protectionism (King, 2017) and a kind of national withdrawal from the global, in the confidence that the nation-state can protect them more effectively than international or multinational institutions such as the EU (Grygiel, 2016).

The second aspect is how identity, the feeling of belonging to a community, has become the backbone of mass political action through what Francis Fukuyama has called the *politics of resentment* (Fukuyama, 2019: 23), used in different ways.

The identification of groups that are assembled around identity feelings that can be the most varied is becoming more and more frequent. In addition to the nation, religion or ethnic group, which traditionally have been the most common, now there are also issues such as gender or sexual orientation. These groups share the perception that their identity does not receive the recognition it deserves from others. An allegedly humiliated group that demands to restore its lost dignity constitutes a more effective mobilizing element in political processes than rationality based on a cost/benefit calculation. The emotional appeal to the vote invoking identity feelings is the key that the so-called populist forces use to win electoral majority by offering fanciful solutions, if not lying and brazenly manipulating the electorate. The feeling of identity has replaced the materialistic logic of belonging to a specific social class. The parameters that traditionally defined the ideological spectrum of Western societies in terms of right and left have been irreversibly altered (Bobbio, 1995). The definition of political options that were previously made under material criteria (based on the position occupied in the production system as an employee or owner) has come to depend on other postmaterialist criteria which, increasingly, are linked to the feeling of belonging to a certain identity and a system of values. The *globalized* are not necessarily "right-wing", on the contrary (the *gauche brahamane* identified by Piketty, 2019). Nor the *territorialized* are necessarily "left-wing": in the US, they constitute Trump's electoral base. The anti-globalization, anti-cosmopolitan and renationalizing reaction can manifest itself both on the left and the right, but they find a shared channel of expression through populist platforms.



The third element that allows explaining this dynamic is the cause whereby emotion prevails in front of reality when voters decide their political option. How do we get to lose the sense of reality and, even, the very notion of true? Hans Rosling conducted decades of research to show that humans have a tremendously distorted view of how we perceive what is happening in the world (Rosling, 2018). Using surveys directed at groups of all walks of life and nationality on global parameters related to the economy, development, demography and the environment, he concluded that our perception was always inclined towards pessimism. The problem is not ignorance, and even less ignorance due to lack of information, which for decades has been more abundant than ever, although not more accessible. The problem is our individual perception of the world and reality, deeply pessimistic and fearful of changes. These negative feelings tend to be stimulated by the media and certain political groups through discriminatory criteria that tend to disseminate biased information with a high dramatic impact. They try to capture the attention of the audience, effectively contributing to establish in the collective conscience the idea that everything is going wrong, that the future is going to be worse, that they are the harmed ones and need restitution. The feeling of threatened identity stimulated by a distorted perception of reality leads to a simplified political choice, to the extreme that reduces the solution of all problems to a single cause that can be neutralized only with a vote: the problems are caused by Mexican immigrants, or Jews, or Spain, or the European Union.

The British vote in the referendum constitutes a paradox only if we use a rational choice analysis typical of other times. It is the paradigmatic example of the new stage where national and international politics are in, where traditional references to the left or right do not explain political alignments, where reality is not the basis of the logic of political action. On the contrary, in many cases reality is an accessory discomfort that can be easily dispensed with.

2. The European Union and Brexit

The UK's decision to withdraw from the EU Treaty placed the EU in a state of alarm. A new and very serious problem was added to those already present (design of the euro, migration crisis,...) pointing to a scenario of "existential crisis" as defined by the president of the Commission Jean-Claude Juncker (Juncker, 2016). This was due to the relevance and international weight of the United Kingdom, for setting a precedent that could influence other Member States, for denying the self-legitimizing and complacent discourse of inclusive Europeanism. With Brexit, the EU faced a situation that challenged its own survival: being or not being part of the Union.

More than four years after the referendum, it can be said that the Union has survived, although all the threats are still present and the problems, rather than resolved, seem postponed. Neither the euro nor the migratory crisis, nor Brexit, are past, they continue to be problems of the present with which we will have to live in the future.

Regarding Brexit, the extraordinary political, legal and diplomatic capacity of the EU to face a challenge that only had a generic treatment through Article 50 of the Treaty of the Union (TEU) is striking. Throughout the negotiating process, the Union has shown what possibly are its greatest institutional virtues: an extraordinary regulatory framework



adapted to specific needs defined through permanent negotiation: the law through consensus.

Let us recall how the negotiation process started. It was not from the presentation of two negotiating proposals, one from the United Kingdom and the other from the Union. These were not two positions that tried to reach a shared synthesis (Patel, 2018). It has never been an international negotiation. It was something quite different, and it should be remembered.

In January 2017, Prime Minister Theresa May presented her exit plans and the new framework of relations that she intended to agree with the Union (May, 2017a). She also expressed her intention to negotiate a transition period to smooth the process. The significant delay with which the British Government established its negotiating position and the fact that it did not formally notify its withdrawal to the Union until 29 March of that same year should be noted. The intention of trying to gain time was evident but, in the end, it did not bring her any advantage in the negotiation.

In this document, the British Government established the so-called "red lines" that defined the objectives it wanted to achieve:

- Establishment of controls to regulate immigration from EU countries.
- Independence of the British justice, which would cease to be under the jurisdiction of the Court of Justice of the EU.
- Renouncing the single market (which implied giving up participating in the so-called "four freedoms": free movement of people, capital, services and goods).
- And instead, negotiate a free trade agreement with the EU.

For its part, the EU responded through the President of the Council, Donald Tusk (European Council, 2017), establishing the times and the material scope of the negotiation:

- It was necessary to negotiate, in the first place, the way the British withdrawal would take place and only when a "substantial progress" had been achieved would a second negotiating phase take place, with the United Kingdom already a third country, to agree on a new association agreement.
- The possibility of "à la carte" participation in the Single Market based on sector approaches was excluded.
- And, finally, it was proposed to solve the most urgent problems derived from the British withdrawal
 - To ensure legal security to resident citizens and companies, avoiding a legal vacuum that would allow the enforcement of new regulatory measures that violate acquired rights.
 - Demand that the United Kingdom comply with its financial commitments, which were finally estimated at around € 40,000 million.



- Study “flexible and creative solutions” to avoid a rigid land border in Northern Ireland.

With this decision, the European Council managed to thwart one of the few negotiating tricks that the British Government had: negotiating at the same time the exit and the future relationship with the EU. By being able to negotiate on those terms, the United Kingdom would have had the opportunity to conduct the negotiation according to its interests, which basically consisted of achieving a sort of selective membership in the Union by fragmenting the single market. Having to accept a negotiation in successive phases, the British only had to try to break the community bloc by offering bilateral agreements to the Member States separately (Rogers, 2019)⁴, or threaten a hard break in the relationship by taking the resident population hostage (RTVE, 2018) or weaken the future relationship on security issues (May, 2017b).

The EU has managed to maintain negotiating unity and has faced British threats by limiting its negotiating capacity in the face of evidence that it could offer nothing in exchange for its claims. The loss of options led the British Government to use a last resort: successively threaten the Union with causing total chaos (May, 2018), and to its Parliament by not leaving the Union if the agreement offered by Brussels was not approved. Brussels finally accepted the May cabinet after having previously rejected it (*El País*, 2019a).

With the British negotiating strategy neutralized, the question was posed in essentially technical terms: how to shape the exit demands freely and unilaterally expressed by the British Government? It should be remembered that the “red lines” defined a very narrow area with little room for manoeuvre.

The work of the Commission and the European negotiating delegation was to give legal form to these British proposals, protecting the integrity of the *acquis communautaire*. A British proposal that was never presented was not discussed, rejected or accepted. On the part of London, only wishes were expressed and when those wishes were transferred to the text of a treaty, the result frustrated the emotional illusion generated by Brexit in such a way that Parliament rejected it up to three times, and by a large majority, the proposal accepted by its Government. This led to a situation of institutional blockade that ended up forcing the resignation of Theresa May and the constitution of a new conservative cabinet led by Boris Johnson as of 24 July 2019.

Johnson, a fierce opponent of the agreement reached by the May government, presented to the British Parliament a new agreement with the EU negotiated in record time at the end of October 2019. In reality, it cannot be properly said that it was a new agreement but rather a modification of the document closed with Theresa May in 2018 that fundamentally affected the situation regarding the border between Ireland and Northern Ireland.

⁴ “Theresa May did not know how the EU worked when she activated Article 50 and thought she could reach a Brexit deal by negotiating directly with European leaders. It didn't work during [David] Cameron's negotiation before the referendum and it hasn't worked now either”. Statements by the former permanent representative of the United Kingdom to the European Union, Ivan Rogers.



In the 2018 agreement, the so-called “Irish backstop” was intended to prevent the reinstatement of a physical border between Ireland and Northern Ireland. This provision sought to preserve the 1998 *Good Friday peace accords*, which ended three decades of violence in Ulster, while protecting the integrity of the European single market. It was a last resort solution that would only come into force if, after the transition period foreseen in the agreement, London and Brussels did not find a better solution.

In the agreement signed by the Johnson government with the EU on 17 October 2019 (BBC, 2019), the so-called “Irish protocol” ceased to be a safeguard clause to become a permanent situation as long as the Northern Irish parliament so decided. This agreement provides that this region is part of the British customs territory, although it is subject to the Community customs regime and under the jurisdiction of the Court of Justice of the European Union. This means that border controls will be carried out at the ports of entry into Northern Ireland and not at the border with the Republic of Ireland, to control goods declared as destined for Ireland, even if they come from other parts of the UK. Consequently, the new customs border is moved to the Irish Sea.

To reach this agreement, both the United Kingdom and the EU made important concessions, which was quite a surprise given the sovereign intransigence that Johnson had championed until then and the solemn statements made by the European authorities affirming that the 2018 agreement was closed and could not be renegotiated again (*El País*, 2019b).

The determining factor that made it possible to reach the agreement was the change in the position of the Dublin government, which accepted this compromise solution. This allowed the alignment of the rest of the Community partners with the Commission, which from the beginning of the negotiation had given Ireland the last word on this specific issue of the British withdrawal agreement. The only non-negotiable limit was, and still is, to preserve the integrity of the European single market, and the agreement guarantees this.

With his bombastic style, Boris Johnson presented the signing of the agreement with the EU as a “great victory” (Day, 2019). His best argument was to ensure that the previous Irish backstop was gone. The survival of this special customs situation was left exclusively to the Irish Parliament. Every four years, the Assembly of Northern Ireland may vote to abandon this special regime, which would mean its disconnection from the European Union and the establishment of the border with Ireland as the external border of the EU. If the Assembly approves by a simple majority to maintain the special regime, it will be extended for another four years. In the event that a favourable vote is obtained with a reinforced majority (which would imply counting on the votes of the Catholic and Protestant parties), the renewal would be for eight years. In the event that it was not approved, a two-year period would be established to negotiate the new formula that would replace it (*El Confidencial*, 2019).

The Northern Irish unionists of the DUP (Democratic Unionist Party) expressed their opposition to the provisions in the new agreement, but their influence as a supporter of the minority Conservative government disappeared when Johnson achieved a comfortable absolute majority of the chamber on 12 December 2019. The agreement



was finally approved and the United Kingdom officially withdrew from the EU on 31 January 2020.

Since then, and until the expiration of the transition period on 31 December 2020, the bilateral relationship has been maintained, in its practical effects, in terms similar to those that prevailed until then: the United Kingdom remains within the single market and the customs union during the transition period, without being a member state, and therefore lacks voice and vote in the community institutions. Although the possibility of extending the transition period was offered to give more time to the negotiating committees of the treaty that would regulate the future relationship, the British Government rejected this possibility. This decision put strong pressure on the negotiating commissions in charge of agreeing on the treaty that governs future bilateral relations, as the time available to close a negotiation is limited, which, as has been shown, is proving extremely difficult.

When it seemed that this chapter had been successfully closed, with the entry into force of the Withdrawal Agreement (Agreement, 2020) that has allowed the United Kingdom to formally exit the Union, the British Government presented to Parliament, at the beginning of September 2020, an Internal Market Bill designed to allow goods and services to flow freely through England, Scotland, Wales and Northern Ireland when the transitional period ends on 1 January 2021. Surprisingly, its articles include the possibility of unilaterally modifying the terms agreed upon in the aforementioned Agreement.

By invoking the right "to act in the best interests of Northern Ireland and the UK internal market" (UK Government, 2020), the law would allow eliminating the UK's obligation to control goods destined for North Ireland from the rest of Great Britain. That is, to eliminate the "border" in the Irish canal, to which it had committed itself in the Agreement, without re-establishing the territorial border between Ireland and Northern Ireland. This is precisely the key point on which the Withdrawal Agreement was built, which ensures both the validity of the *Good Friday agreements* and the integrity of the European internal market.

The legislative initiative represents a violation of the terms agreed with the European Union, of which the British Government is fully aware. The Minister for Northern Ireland, Brandon Lewis, has publicly stated that: "it will break international law" (*The Guardian*, 2020a). The head of the British Government's legal department, Jonathan Jones, resigned as a result.

According to Lewis, it would be a "very specific and limited" violation of international law, based on the need for the Government to reconsider its international obligations to the extent that "circumstances" have changed.

Implicitly, the British Government is appealing to Article 62 of the Vienna Convention on the Law of Treaties, which establishes the *rebus sic stantibus* principle. The problem is that the circumstances have not changed, quite the opposite. Even the Agreement itself provided for the application of this commitment even when a commercial treaty was not agreed within the foreseen time period.



Unilateral action by the British Government, should the Internal Market Bill come into force, violates the UK's international commitments and, as Theresa May has stated before Parliament (BBC, 2020a), permanently compromises its international reputation⁵.

The excess of the British legislative initiative is of such scope that the European authorities have initiated a disciplinary proceedings after its approval in the Westminster Parliament by a large majority (340 favourable votes compared to 256 against), even pending its passage through the House of Lords for final approval. Pressured by the intransigent wing of the Conservative Party, Johnson had to include an additional safeguard in the text of the bill according to which the Government will not be able to modify the commitments reached in the Withdrawal Agreement without the express authorization of Parliament.

Specifically, the President of the Commission, Ursula von der Leyen, announced the sending of a "formal notification letter" to open an infringement procedure that will take the case before the Court of Justice of the EU, under whose jurisdiction the United Kingdom remains during the current transitional period (*The Guardian*, 2020b). The infringement file is not initiated due to possible violations of the Agreement to which the Internal Market Law may give rise, but due to violation of article 5 of the Withdrawal Agreement, which includes the need to negotiate in good faith between both parties.

The legal process of the sanctioning file would not be paralyzed with the end of the transitional period. Article 87 of the Withdrawal Agreement establishes that the European Commission has a period of up to four years, once the transitional period is concluded, to initiate a procedure against the United Kingdom, if it considers that it has breached any of its obligations under the Agreement. The text of the Agreement also provides that if one of the parties considers that there has been a violation of the agreement, it may request the creation of an arbitration panel before the Joint Committee, which would be constituted within three months of the request. If the issue that is the subject of the complaint is related to Union law, the panel would not pronounce itself and would direct the matter to the Court of Justice of the European Union as the ultimate interpreter of Community law.

Although the legal effectiveness of the procedure is limited and, above all, slow, it represents a gesture of firmness on the part of the Commission in the bilateral trade negotiation that remains open. Given the antecedents of Boris Johnson's political behaviour throughout this prolonged negotiation plagued by stunts, Brussels has not ruled out that it may be a new theatrical wink directed at the most intransigent sector of the Conservative Party before reaching a final commitment on the trade agreement under negotiation, which, to be concluded in the coming weeks, will require some renunciations with respect to its initial postulates (*El Confidencial*, 2020a).

Whether or not it is a stratagem in the final stretch of the negotiation, the reality is that the protocol on Ireland is a highly complex legal instrument that will require, for its

⁵ "This can only weaken the UK in the eyes of the world (...) our reputation as a country that sticks by its word will have been tarnished". John Major, Tony Blair, Gordon Brown and David Cameron have also spoken out against the bill.



correct application, not only the goodwill of both parties but also an exhaustive and rigorous application of the controls envisaged to avoid creating a black hole in the internal market of the Union. It is an ugly cloud on the horizon that threatens the future relationship that is finally agreed between the UK and the EU.

3. The trade agreement that would govern future relations between the UK and the EU

Although future relations between the two partners cannot be exclusively circumscribed to the commercial sphere, the future trade agreement will be the key to underpin the bilateral relationship that is established.

The EU does not have a single model for association with its trading partners. In fact, it is extremely flexible in the type of commercial relationship it establishes with third states. At present, up to five different forms of connection can be identified (Table 1): through membership of the European Economic Area, where Iceland, Norway and Liechtenstein participate; the European Free Trade Association, where Switzerland is located; the Customs Union Agreements, such as the one with Turkey; a Free Trade Agreement like the one in force with Canada; and the general framework established by the World Trade Organization.

Table 1.- Types of commercial relationship between the European Union and third States

Type of agreement	Countries	Characteristics
European Economic Area (EEA)	Iceland Norway Liechtenstein	<ul style="list-style-type: none"> - Membership of the EEA implies access to the common internal market with free movement of people, goods, services and capital. - Despite not being member states, their participation is necessary to adopt around 20% of EU legal acts. - The Common Agricultural Policy and fisheries policies, the Customs Union, the Common Trade Policy, the Economic and Monetary Union, the Common Foreign and Security Policy, and justice and home affairs are outside the agreement, although these countries are part of the Schengen Area.
European Free Trade Association (EFTA)	Switzerland	<ul style="list-style-type: none"> - It participates in the European Economic Area through EFTA. This implies accepting European legislation, contributing to the Community budget and the jurisdiction of the Court of Justice of the EU. - Outside the Customs Union. - It is part of the Schengen Area



		- No right to establish banks.
Customs Union with the EU	Turkey	<ul style="list-style-type: none"> - Practical freedom of movement of GATS⁶ goods on services - No rules of origin and reduced customs costs for most products. - EU regulations and standards checked at the border. Adoption of EU tariffs for non-EU trade. No influence on regulations or trade agreements signed by the EU with third States. - Trade in financial services as a third country. - Restricted movement of workers.
Free trade agreement	Canada	<ul style="list-style-type: none"> - Access to the single European market with very low tariffs. In general, goods are the least affected, but services have limited access. - Rules of origin and customs costs, with border controls to verify conformity with community regulations. - Trade in financial services: prudentially, under a third country regime. No automatic establishment of banks. - Possible movement of workers, not completely restricted.
World Trade Organization (WTO)		<ul style="list-style-type: none"> - Most Favoured Nation tariffs and GATS fees for services. - Rules of origin and customs costs. - Enforcement of the set of EU regulations and standards verified at the border. - Trade in financial services under third country regime. - No provisions for the movement of workers.

Source: Vega, 2019:12 y 17; author's own list.

With such an example of flexibility, it is hoped that the UK can find a tailor-made fit in its future relationship with the EU, but this is not being easy or fast. Of course, the future agreement governing trade relations between the EU and the United Kingdom does not necessarily have to conform to one of the formulas described above and it is likely that, as was the case with Switzerland at the time, a custom fit is defined for this specific case.

⁶ GATS: General Agreement on Trade in Services (1995).



Switzerland's situation (European Commission, 2019) is truly special, insofar as after rejecting its accession to the EU in 1992 in a referendum, the Swiss government tried to seek the closest possible link with the European Economic Area (EEA), except in those aspects that had provoked the rejection by the electorate. Consequently, the result of this negotiation, conducted in two phases, was the signing of ten bilateral treaties that regulate areas such as the free movement of people (Switzerland participates in the Schengen Agreement), air and road traffic, agriculture, public procurement and science. Switzerland contributes to the Community budget and is outside the Customs Union. It has a cooperation agreement in the repression of fraudulent financial activities but its banks do not have the right to establish themselves in the territory of the Union.

Undoubtedly, the touchstone of the future relationship lies in the UK's non-membership of the Single European Market. After leaving the Union, it left the EEA at the same time, which led to its withdrawal from the single market. Of course, it can join the EFTA and participate in the EEA through it. But in such a case, it would have to adopt European law, contribute to the Community budget and accept the jurisdiction of the Court of Justice of the European Union. All of which would imply returning to square one, but in worse conditions.

In any case, in view of the available options, the United Kingdom could achieve a status similar to that countries such as Norway, Switzerland, Turkey or Canada now have: outside the institutions and with a very limited capacity to influence the policy of Brussels. It will be a third country in the face of a commercial bloc that, until now, has managed to preserve its unity and its negotiating strength.

The British Government's aspiration is to reach a free trade agreement with the EU, similar to the one established between the EU and Canada. This was stated at first by the Government of Theresa May and has been confirmed by the Johnson Government, a proposal that has not been rejected by the Union. Trade negotiations began in March 2020, after the withdrawal was complete, and have been particularly difficult. It is a conventional international negotiation whereby each party tries to pursue interests that, in principle, are not convergent. The EU has managed to overcome, to date, the inherent difficulty of establishing a common negotiating position involving 27 states. These circumstances, present in all trade agreements signed by the EU, are responsible for the fact that the negotiating periods that have traditionally required this type of agreement before reaching its conclusion were particularly long. In the case of the Global Economic and Trade Agreement between the European Union and Canada, known as CETA (Comprehensive Economic Trade Agreement), it lasted seven years, and did not enter into force, provisionally, before 21 September 2017 (European Commission, 2017). It would be a truly unusual fact if the agreement with the United Kingdom could be concluded in just seven months, before the end of the transitional period.

The time pressure introduced in the negotiating process was a deliberate action by the Johnson Government, by not requesting an extension of the transitional period. If the objective pursued was to make Brussels' negotiating position more flexible in the face of the threat of a "hard Brexit", this negotiating strategy has not obtained the desired results. The negotiation remains stalled at a number of critical points on which no



agreement has been reached when there are barely a few weeks before the time limit available to close an agreement runs out.

The points where the greatest divergences are concentrated are the content of the future agreement on fisheries (the EU wants to maintain a situation as close to the current one while the United Kingdom aspires to impose an annual negotiation on licenses and volume of catches), regulatory harmonization (a common alignment of the respective regulations that would make it possible to reduce border controls) and what is possibly the central issue: the so-called level-playing field.

This expression refers to the preservation of fair competition under market conditions by preventing the United Kingdom from carrying out a kind of dumping that harms the single market. Brussels' fear lies in the possibility that the British economy could transform itself into a model based on low taxes and low regulation, lowering its environmental, social or labour standards and authorizing public aid to companies, in order to make unfair competition regarding European competitors.

Within the EU, companies cannot receive State aid so as not to distort competition, and they have to comply with demanding social, labour and environmental standards and maintain taxation in line with the rest of the European partners. Thus, the creation of an enclave across the English Channel, like a new Hong Kong with access to the European market, would break the domestic market.

The fear of this possibility was expressed by the EU in the Political Declaration on future relations with the United Kingdom (Declaration, 2019), a non-legally binding political document. It established the bases on which the future trade agreement would be negotiated, committing to establish "an ambitious, broad and balanced economic association" (point 17). This commitment is terribly difficult to materialize because it affects the very foundation on which the Brexit legitimizing discourse has been built: the recovery of lost sovereignty through full normative and regulatory capacity (O'Toole, 2020).

The conclusion of the trade negotiations has proven enormously difficult. It is not a dispute raised in diplomatic terms that allows the best possible agreement to be reached, satisfying both parties. Apart from its extraordinary technical complexity, the negotiation faces two strategies that are non-negotiable for the parties: the preservation of the internal market for the Union and the satisfaction of the expectations aroused during the Brexit campaign among the British population. The promises made by the Brexiteers, mostly false or impossible to fulfil, compromise not only the stability of the current government but the future strategy that the United Kingdom intended to follow after its withdrawal from the EU.

4. The uncertainty of Global Britain as a future strategy for the United Kingdom

Although the hopes of reaching an agreement at the last moment have not been extinguished, the feeling of disbelief in the political circles of Brussels and also among senior British officials with respect to the negotiating position of the Johnson Government



is perceptible (*El Confidencial*, 2020a). One last pirouette is expected, as happened in September 2019, that will allow the commercial negotiation to be closed in extremis. And for the same reasons, it is also feared that the British Government will subsequently fail to comply with the agreed commitments.

The United Kingdom sometimes looks like a prisoner running away from the prison that was holding him. The wish to achieve the desired freedom prevails over any other consideration, although in the attempt, the reputation and good name of the country that had been one of the most compliant European partners of EU law is tarnished (Mangas, 2020)⁷. Forty seven years locked up in the community “jail” may have made them overestimate their own capacities and also idealize the outside world where they intend to return to and which bears so little resemblance to that of half a century ago. In the midst of the geopolitical struggle between the Chinese and the United States, along with other lower-ranking powers, the possibilities of becoming an autonomous relevant actor are certainly limited.

However, Boris Johnson is not daunted by the challenge. In his first speech as head of government, he presented the idea of recovering the “natural and historical role” of the United Kingdom as “an entrepreneur, who looks outwards and is truly global, generous and committed to the world” (Johnson, 2019). This idea was invoked again by the Secretary for Foreign Relations, Dominic Raab, before Parliament at the time the withdrawal materialized (Raab, 2020). Thus, the narrative of a Global Britain that aspires to pass on the image of the country as a world leader was retaken. This idea was originally created as a slogan to counter fears that Brexit could lead the country to international marginalization. Enunciated as a great political project by Theresa May, it constitutes a kind of strategy to guide the British international image in the new stage that is beginning (Glencross and McCourt, 2018). Still, its conception and enforcement raise serious doubts.

One of the illusions that fuelled Brexit consisted of being able to free itself from the restrictions that the EU imposed on the United Kingdom in its relations with third States, which made it lose economic opportunities. Once the withdrawal is complete, the country will regain the freedom to negotiate trade agreements with the entire world.

Indeed, since 1 February 2020, the United Kingdom has been able to negotiate and conclude trade agreements with full autonomy, but the results achieved by its diplomatic efforts have been limited. The structure of British foreign trade, as is common to all Member States, is highly conditioned by its membership of the EU. 60% of its exchanges were carried out through community channels (11% directly with the Union and 49% through EU trade agreements). Due to its membership of the Union, the United Kingdom was part of around 40 trade agreements signed by the EU with more than 70 countries. Until the end of August 2020, British trade diplomacy had managed to transfer 19 of these agreements, so that they could be used from 1 January 2021 (Table 2). Together they represent 8% of the total volume of its exchanges (BBC, 2020b).

⁷ In 43 years (1973-2015), the UK was sued for breach of EU law before the Court of Justice 139 times. In 30 years (1986-2015) Spain was sued 244 times.



Table 2.- United Kingdom trade agreements that will enter into force on January 1, 2021 (August 2020)

Country or territory	Value of trade with the UK in 2018	Country or territory	Value of trade with the UK in 2018
Andean countries	£3.4bn	Liechtenstein	£146m
Caribbean countries	£3.7bn	Morocco	£2.5bn
Central America	£1.1bn	Pacific Islands	£163m
Chile	£2bn	Palestinian Authority	£41m
Eastern and Southern Africa	£2bn	South Korea	£14.8bn
Georgia	£123m	Southern Africa nations	£10.2bn
Israel	£4.2bn	Switzerland	£32.4bn
Jordan	£448m	The Faroe Islands	£252m
Kosovo	£8m	Tunisia	£542m
Lebanon	£762m		

Source: BBCb, 2020.

There are still pending negotiating agreements with countries that currently do not have trade agreements with the EU: the United States, Australia and New Zealand, among others. London's diplomatic efforts with such close political and cultural partners have so far not borne fruit. The expectations aroused in the United Kingdom by belonging to a shared past do not compare with the reality of a world market in fierce competition. As New Zealand's Deputy Prime Minister Winston Peters has stated, "the United Kingdom seems to be a bit rusty" and has forgotten to negotiate (*El Confidencial*, 2020b)⁸, which does not necessarily imply that agreements cannot be reached in the next few months.

The greatest achievement attained by British diplomacy to date has been the signing of a free trade agreement with Japan in September 2020 (*El Confidencial*, 2020c). The agreement, which is basically a transposition of the existing one with the EU, although London has insisted on highlighting that it goes further, represents 2% of British foreign trade and is expected to have a positive impact on British GDP of 0.07%, in the long run.

As it could not be otherwise, trade alternatives to the EU, although feasible, are not proving quick or easy to achieve for a diplomacy that has not faced negotiations of these characteristics for decades. Due to proximity, market structure and integration between

⁸ "They have never had a test, so to speak. It's like entering Ashes [famous cricket competition between England and Australia] when you haven't played for 30 years; It is the same thing that is happening now to the United Kingdom".



the respective economies, the European internal market will continue to be, at least for the next decade, an essential factor for British prosperity. The paradoxical consequence of this reality is that only the signing of a trade agreement with the EU will be able to offset the trade damages for the United Kingdom arising from Brexit (Brakman et al, 2018).

In the event that this agreement with the EU cannot finally be concluded within the limited timeframe available, once the transitional period has expired, bilateral exchanges will take place, as of 1 January 2021, in accordance with the basic rules established by the World Trade Organization (WTO). This will imply applying tariffs to most of the British exports to the continent (obviously, the United Kingdom could do the same for Community products). It will also mean restoring merchandise controls at the border, which will imply customs saturation and, predictably, an increase in the delay in supplies. And the British service industry will also lose guaranteed access to the European market. All this in a context of economic recession aggravated by the COVID-19 pandemic, which has led to a historical drop in GDP of 20.4% in the second half of the year (*The Guardian*, 2020c).

The Government of Boris Johnson is trying to outline some guidelines to re-establish the position of the United Kingdom on the board of global power, but the Global Britain project will hardly be able to be the adequate strategy. In the first place, because it is contradictory to the very social bases that supported Brexit. A project that aspires to full integration in the globalization process collides head-on with the perception of threat that many British citizens feel when facing this opening to the outside (Gaston, 2020). Secondly, due to the lack of connection that underlies its conception with respect to the current international context, the UK will hardly be able to regain the predominant position occupied during its imperial past as a medium-sized economy in a world dominated by great powers and trading blocs. The UK cannot hope to become a commercial superpower on optimism alone (Saunders, 2019).

The material limits to aspirations embodied in the Global Britain project are easily evidenced in practice. Faced with the pressure exerted by the Trump Administration, the British government has not hesitated to join the US policy against China, limiting its access to the domestic market by prohibiting investments in strategic sectors such as the nuclear one or excluding Huawei from launching 5G in British territory (Sendagorta, 2020). While the fundamental British interest would lie in reaching a broad trade agreement with China, its strategic autonomy is conditioned by the geopolitical influence of the United States. In any case, the negotiating capacity of British diplomacy to conclude a trade agreement favourable to its interests with a power like China remains to be seen.

5. Provisional conclusions

Although the process is still ongoing and the level of uncertainty about its outcome is considerable, some conclusions can be drawn on a provisional basis.



The first one has to do with the integrity and survival of the European Union. The confusion bordering on the chaos in which the UK has plunged will surely discourage any further attempt to activate Article 50 of the Treaty on European Union by another Member State. Still, while the British withdrawal does not trigger the dismantling of the Union, this should not hide the evidence that the EU needs to rethink its integration model in the face of the avalanche of challenges it faces. The *functionalist path* followed in the European integration process since its inception has yielded all possible results. The problems that we face exceed the partial technical decisions that can be made. The future of the Union only seems assured by initiating a new *federalizing path*.

To the long list of difficulties that afflict us, the threats to security at our external borders, geopolitical competition or the growing social and territorial dualization of the Union, it cannot be ruled out that a new and unforeseen problem is added: the future relationship with the UK. If the British withdrawal fails to satisfy the political and economic aspirations of British society, it will be thrown into a crisis whose effects will undoubtedly affect the Union. If, on the contrary, the Global Britain strategy succeeds in becoming a commercial and financial node in the global economy, the EU will have to be extremely vigilant to preserve the integrity of its internal market. It cannot be ruled out that the future relationship with the United Kingdom may evolve through conflicting channels that will make us direct competitors, if not rivals.

And finally, regardless of the commercial relationship that may be established between British and European Community, the last great paradox of Brexit will occur, in any case: to have started this traumatic, uncertain and divisive process to achieve an international, political, and commercial position, which, in objective terms, will be indisputably worse than at the starting point. It is ironic that the great hope that Brexiteers seem to embrace is to turn the United Kingdom into an enclave in the style of what Hong Kong was during its colonial era: an economy parasitic of a large market.

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THE UNITED NATIONS CIVIL SERVANT: AN IMPORTANT ROLE IN INTERNATIONAL RELATIONS

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Abstract

Many factors play positively and negatively in international relations. International civil servants are among the most important. They are appointed to work in an international organization (regional or global) to carry out various types of assignments and to influence the conduct of international relations between the country concerned and the organization where they work or between the Member States at other times.

Sometimes international civil servants help to maintain international peace and security (here we are not talking about the peacekeepers). They encourage development in different countries of the world, as it can unfortunately be the cause of bad relations between countries. They may even commit serious violations qualified as criminal offenses in the exercise of their functions, invoking professional immunity granted by the 1946 United Nations Convention on Privileges and Immunities.

Therefore, the need for a legal framework of their position within the international organisations is of the utmost importance, the same applying to the need to reassess their immunities, since the number of international civil servants has reached tens of thousands in these organizations around the world. The way the European Union has addressed the question of international civil servants is one of the best to date and an example that other organizations should follow.

Keywords

International Civil Servant, Functional Protection, UN Dispute Tribunal, Global Administrative Law, International Civil Service Commission.

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THE UNITED NATIONS CIVIL SERVANT: AN IMPORTANT ROLE IN INTERNATIONAL RELATIONS¹

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Introduction

International organizations are entities with a legal personality independent of the countries that contributed to their creation and must have employees to manage their affairs and implement the objectives they have set for themselves. Of course, the United Nations has a central role to play in the achievement of international peace, security and development. In order to guarantee an efficient and impartial service, certain criteria must be defined for the people working for the organization. It is also important to distinguish the category of international civil servant from other categories staff working in these organizations.

Thus, it is necessary to define the role played by people who manage the UN and ensure the achievement of the above-mentioned objectives, considering the constant increase in the number of employees linked to this organization, which exceeds tens of thousands. It is important to look at the criteria for selecting UN civil servants, because it is an issue that is growing in importance due to the sensitivity of the work and the missions international civil servants are entrusted with.

In addition, the relevance of this issue is linked to the existence of political considerations required in the selection of UN officials, in particular for senior positions. Some Member States intervene in the process of appointing a specific person, sometimes to oppose him. This intervention has a negative impact on the level of loyalty of the organizations' international staff and on their neutrality in the performance of their duties. Thus, many of them have become the reflection and the extension of the policy of their countries, even an extension of the representation of their state within the headquarters of the Organization².

I. The emergence of the European international civil service

Some jurists believe that the idea of the international civil service dates back to what are known as the International River Commissions, such as the Organizing Commission for the Navigation of the Rhine, established in 1851, and the Danube Commission, created

¹ Article translated by Carolina Peralta.

² Lemoine, Jacques (1995). *The International Civil Servant*. The Hague: Kluwer Law International, p. 18.



in 1856³. These organisations had in their ranks a number of officials entrusted with specific powers and who were independent, in the exercise of their functions, from their country, in order to be able to carry out their tasks impartially and fully for the benefit of all Member States. The creation of these commissions required holding regional and international conferences. These conferences had general secretariats, and, therefore, permanent officials working in these conferences to monitor the implementation of the resolutions.

Another example was the Hague Conference for the Peaceful Settlement of International Disputes, which took place between 1899 and 1907 and whose general secretariat had 25 members, appointed by the countries participating in the conference⁴. In addition, the so-called semi-international associations specializing in a number of technical issues have greatly contributed to the emergence of the international civil service. They are the result of the evolution of links and growing exchanges between states, unlike international conferences, as international cooperation and exchanges are continuous and coherent. And there are only administrative powers, subject to the supervision of one of the member states⁵. It should be mentioned that some of these Unions recognized privileges and immunities to officials who occupied their secretariat, such as the International Institute of Agriculture. Its officials enjoyed immunities and privileges vis-à-vis member states and even the host country in the course of their official duties, both internally and externally⁶. In general, these Unions, and before them, the International Conferences, were not considered to be international organizations and did not have their legal personality or mandate. Thus, the sovereignty of their member states was not restricted. Rather, they were seen as technical coordination bodies in a specific area between countries. It cannot therefore be said that international administrative officials already existed⁷.

After the end of the First World War, there were world events whose impact was to disseminate the rules of public international law and the holding of the 1919 Versailles Conference, linked to international organizations, in particular the evolution from the idea of a conference of a few days to an organization that will stay for decades. With regard to our subject, the term "international civil servant" was also used there for the first time and these civil servants were placed in charge by the civil servants of the general secretariat of the League of Nations and those of the International Labour Office in Geneva.

The workforce of the League of Nations, from several European countries, had grown to over 800 employees, including the world's highest administrative official, the Secretary

³ Blanquet, Marc (2001). *Droit communautaire général*, 8th edition. Paris: A. Colin, p. 41

⁴ Guilhaudis, Jean-Francois (2017). *Relations internationales*, 4th edition. Paris: Lexis Nexis, p. 182.

⁵ Some federations and unions established at this time included: the International Bureau of Weights and Measures; the International Bureau of Rail Transport; the International Telegraph Union, the World Postal Union, the Union for the Protection of Industrial Property, the International Health Bureau; the International Union for the Publication of Customs Tariffs, the Union for the Manufacture of Sugar. See Pingel, Isabelle, «Observations sur la convention du 17 Janvier 2005 sur les immunités juridictionnelles des États et de leurs biens», (2005) 132 *Journal de droit international* 1047.

⁶ Pellet, Alain, and Ruize, David (1993). *Les fonctionnaires internationaux*. Paris: PUF, p. 32 ff.

⁷ Bawindsomde, Ouedraogole (2012). *Le statut Juridique du Fonctionnaire international sous l'angle des fonctionnaires de l'ONU et des fonctionnaires des Communautés européennes: Contribution à l'actualité de la notion de fonctionnaire international*, Ph.D. thesis presented on 23 March, p. 72.



General of the League of Nations, considered the first administrative head of an international organization. This organization published a policy governing the rights and obligations of its employees⁸.

With the establishment of the United Nations in 1945, the international civil service achieved great fame. Indeed, the rights and duties of international civil servants, and the privileges and immunities that they enjoy have been enshrined in international conventions. The most notable was the 1946 UN Civil Servants Privileges and Immunity Convention⁹. In addition, the establishment of the International Civil Service Committee, in accordance with resolution 3357 of 1974, has had a significant impact on the development of the international civil service¹⁰. There is also the advisory opinion of the International Court of Justice concerning the definition of the international civil servant of 11 April 1949, which is one of the most important provisions of international justice and organized an important aspect of the rules applicable today to international functions¹¹.

II. The UN civil servant: from international administrative law to global administrative law

It is clear from the above that the concept of international function has evolved and affirmed itself away from the influence of the member states of the international organization, notably with the creation of the League of Nations and then the United Nations. The international function notion has become the reason for creating a new branch of public international law: international administrative law, which has split jurisprudence as to its existence as a branch of international law.

French jurists support the existence of this branch of international law and define it as the set of legal principles governing relations between international organizations and their staff. They believe that the objective of this branch of international law is international cooperation and that, like domestic administrative law, it has administrative jurisdiction¹².

The example given in this regard is the creation of an administrative tribunal by the League of Nations to rule on disputes between itself and its employees. The UN also created the United Nations Administrative Court. French jurists also claim that supporting the existence of international administrative law would lead to the recognition of the existence of the international civil service and administrative staff. The other view is that adopted by Italian case law and by some German jurists. Indeed, its supporters believe

⁸ For additional information see: Zavala, Daniel (1976). «La Commission de la fonction publique internationale», 22 *Annuaire français de droit international* 501; Klabbers, Jan, «The EJIL Foreword: The Transformation of International Organizations Law», (2015) 26:1 *European Journal of International Law* 55.

⁹ Lewis, Patrick (2014). «Who Pays for the UN Torts: Immunity, Attribution, and Appropriate Modes of Settlement», 39:2 *North Carolina Journal of International Law and Commercial Regulation* 263.

¹⁰ Sur, Serge and Combacau, Jean(2008). *Droit international public*, 8th edition Montchrestien, Paris, p.724.

¹¹ For additional information on this topic, see: ICJ, 11 April 1949, Advisory Opinion, Reparation for Injury Suffered in the Service of the United Nations, Rec. 1949, p. 177.

¹² Nada, Taha (1986)., *Le fonctionnaire international*, [in Arabic], General Egyptian Book Organization, Cairo, p. 33; Lorenzo Casini (2019). Global Administrative Law, in Jeffrey, Dunoff and Pollack, Mark (eds), *International Legal Theory: Foundations and Frontiers*, Cambridge University Press, p. 6.



that there is no international administrative law and deny the existence of international bodies in the form of organizations.

Therefore, they believe that administrative activity within these international organizations is only an internal activity of member states, falling only under national administrative law. They do not recognize the existence of an international civil service¹³. Recently, jurists of public law in general and of international law speak about global administrative law (GAL) as a new branch of international law. The first appearance of the term global administrative law dates back to a study published in 2002 in a legal journal, adopted later in 2004, precisely by a research project prepared by the University of New York, then disseminated to other research institutions. The term global international law replaced what is traditionally called international administrative law, the emergence of which was associated with the creation of international federations, which paved the way for the creation of international organizations¹⁴. Global administrative law attempts to avoid being part of general international law, as is the case with international administrative law. Global administrative law covers broader subjects than those included in international administrative law, as it regulates the rules relating to international organizations. It is a rule body of international organizations. It also regulates the rules of global private and public institutions where certain public functions are conducted.

It also regulates the bases of non-governmental organizations or civil society ones, both local and international. Therefore, global administrative law is a broader term for what used to be called international administrative law. Global administrative law has two levels of rules: local rules and international rules, because it transcends national borders and addresses individuals directly without the need for an intermediary. It is also linked to what is called global governance. The sources of this law are international treaties of all kinds, rules of customary international law, and general principles of customary law, in addition to the national law of states¹⁵.

III. The evolving definition of international civil servant

Many jurists classify all employees of international organizations, whether civil servants or other categories, in the group of international employees, while other jurists reject this view and believe that a distinction is necessary. The supporters of the first opinion are inspired by the definition of the ICJ, in its advisory opinion of 11 April 1949 on the question of the compensation of United Nations officials, which states: "an international employee is any person, paid or not, who works permanently or temporarily, assigned by an organ of the Organization to exercise functions or provide assistance to the functioning of this entity, or each person acting under its authority"¹⁶. For them, this

¹³ Kingsbury, Benedict (2009). «The Concept of Law in Global Administrative Law», 20:1 *European Journal of International Law* 24.

¹⁴ Lorenzo Casini, *supra* note 11- 8.

¹⁵ Kingsbury Benedict, *supra* note 11-25.

¹⁶ *Supra* 10-177; it must be referred that the Community official is defined as (any person who has been appointed under the conditions provided for in this statute in a permanent post of one of the institutions of the Communities by a written act of the power of appointment of this institution). See: Bawindsomde, Ouedraogole, *Supra* note 6-226.



definition is broad, due to the inclusion of international civil servants and other categories, as is the case today of the Blue Helmets, special representatives assigned to mediation and even technical experts given specific tasks¹⁷. Of all these categories, only international civil servants provide permanent and exclusive services to the organization and are the only ones to be selected on the basis of the principle of equitable geographical distribution among Member States¹⁸. On the other hand, another opinion, opposing this view, considers that to regard temporary international civil servants and permanent international civil servants as being all civil servants is unacceptable. In its advisory opinion of 11 April 1949, the ICJ dealt with an individual case involving temporarily appointed international employees, namely Count Folk Bernadotte, and referred to the need not to distinguish between employee and international civil servant in order to justify the organization's right to claim compensation. On the other hand, other categories are subject to their own rules in matters of selection, appointment, rights and obligations, even if they perform missions linked to international organizations, as is the case of international judges, whether they are members of the ICJ or of the International Criminal Tribunals (ICT)¹⁹. Based on this distinction, we must mention some of the definitions introduced in the law regarding international employees and international civil servants.

An international employee can be defined as follows: "any person carrying out an international assignment on a temporary basis for an international organization". This description applies to those the international organization assigns temporary tasks, such as experts and mediators²⁰.

As for the definition of an international civil servant, jurisprudence has provided several, of which the one advanced by Professor Paul Ruter was chosen: "an employee of an international organization governed by a specific legal system, not subject to internal law, exercising international functions on a continuous basis".

It can be seen that this definition contains the following elements:

- A time-based element: the function is permanent and continuous.
- A legal element: the worker's compliance, in his working relations with the international organization, with the legal system that it establishes to regulate such a relationship and not with the legal system of a given state.
- The employee performs his work in accordance with the interests of the organization and not those of a state. This element does not prevent the employee from carrying

¹⁷ Dubois, Valerie (1985). *La condition juridique des agents internationaux*, in: Les agents internationaux, Colloque d'Aix-en-Provence, Editions Pedone, Paris, p. 30.

¹⁸ Pellet, Alain (1989), *supra* note 5-10; ICJ Advisory Opinion, 15 December, Applicability of Section 22 of Article VI of the UN Convention on the Privileges and Immunities, Rec, p. 194.

¹⁹ Note that Susan Bastid adopted this view in her definition of the international civil servant, but later deviated from it, specifically in the 1970s. For additional information see: Bettati, Mario (1987). «Recrutement et Carrier des Fonctionnaires Internationaux», IV *Recueil Des Cours de Droit International* 373.

²⁰ Fakhory, Ammer (2017). «Le statut juridique des fonctionnaires internationaux», [in Arabic], 13 *Revue des droits et sciences politiques*, 114.



out his activity within the territorial framework of a given country, insofar as it is in the interest of the organization²¹.

This is what distinguishes international civil servants from other employees of international organizations, who are appointed on the basis of national rights, such as service employees and minor employees. After reviewing these definitions, it is necessary to realize that there is a clear difference between them. This difference is sometimes not clear, in particular because of the complexity of the concept of international function. In the United Nations, for example, the recruitment system allows employees on short-term contracts to benefit from all the privileges and immunities of an international civil servant. Some consider this to be an exception to the general rules that distinguish an international civil servant from an international employee²².

There is no doubt that the state representatives within international organisations do not enjoy the same status as the international civil servant, because of the nature of their work, the immunities and privileges they enjoy and the official name assigned to them²³. This is quite normal given the entity to which international civil servants and state representatives report. According to the 1946 United Nations Convention on Privileges and Immunities, the representative category included all representatives, assistants, advisers, technical experts, and mission secretaries²⁴. It should be noted that although their place of intervention is the offices of the international organizations, there is a distinction between the two categories. It can be attributed to several factors, including the nature of the work they do.

A representative of a Member State has a dual activity: he participates in affirming the objectives and principles of the organization and in achieving its objectives by voting on its resolutions. However, he works in favour of the interests of his state within the organization. The state representative here places the interests of his state before other interests. As a state representative, even if he serves the organization, he is not considered an international civil servant. The terms of appointment of the two are different: the state appoints its representative in accordance with its national legislation. On the other hand, the international civil servant is appointed by decision of the Secretary General of the Organization or by one of its bodies²⁵. A state representative cannot invoke the privileges and immunities granted by the Organization and, in the event of damage, claim the responsibility of his state.

²¹ Bettati, Mario, *supra* note 18-375.

²² Fouda, Guillaume (2013). «Agents et fonctionnaires internationaux dans un ordre international en mutations», *le journal de droit* 5; Jean-Marc Coicaud(2007), «Lafonction publique internationale en question», 5 *Les carnets du CAP* 47.

²³ Langrod, George (1963). *La fonction publique internationale: sa genèse, son essence, son évolution*, Sythoff, Leyden, p. 32.

²⁴ The 1946 Convention on the Privileges and Immunities of the United Nations. It should be noted that according to the Community Law Regulations, European experts are civil servants of the Member States or international civil servants working on a temporary basis, for a period of 6 months to 4 years, for an institution of the European Union. Pingle, Isabelle, *supra* note 4-1048. Bawindsomde, Ouedraogole, *supra* note 6-230 ff.

²⁵ Kladders, Jan, *supra* note 7-56.



On the other hand, an international civil servant, appointed by the international organization itself, has the right to benefit from immunities and privileges vis-à-vis all member states. Wrongdoing is also the responsibility of the organization itself and not of the state of his nationality. Finally, the organization exercises functional protection towards its employees, while the state exercises diplomatic protection towards its nationals and its representatives within the organization²⁶.

IV. The UN and the appointment of its officials

The United Nations enjoys a certain degree of freedom in the selection process of international personnel, since it can dispense with the consent of the state to which the candidates belong. Article 101 of the Charter of the United Nations states in its first paragraph: "The staff shall be appointed by the Secretary-General under regulations established by the General Assembly"²⁷. This is actually a theoretical basis. In its concrete application, the interventions of the countries appear very clearly, some states intervene in order to designate or prevent the designation of some of their citizens or even of persons belonging to other countries²⁸.

One notes that the legal qualification for appointing international civil servants has split into two groups: the first considers that it is the same as that applied to civil servants in the internal legal system of the state. The second thinks that international functions have a specific character and are distinct from the public service of domestic law, because the work is carried out in an international community characterized by the weakness or absence of social solidarity between its members²⁹. In addition, the civil servant within the state is subject to national laws, and to strict penalties if he violates them.

On the other hand, at international level, the rules for appointing an international civil servant are done in accordance with a contract between him and the UN. The recruitment letter constitutes the agent's affirmation and consent, commonly referred to by international organizations as an employment contract³⁰. The individual's membership in the UN requires the publication by the SG of a single appointment decision, whether the individual is recruited by appointment or by selection process. In this regard, he must cease his work in his country of origin, whether governmental or private, when he joins the UN³¹.

However, sometimes the major states intervene in the nomination of the candidates, in particular for important positions in the organization. The state proposes certain names with a high record of effectiveness for higher functions and rarely for lower functions³². It should be noted that the selection mechanisms are multiple and vary depending on

²⁶ Lewis, Patrick, *supra* note 8-274.

²⁷ The UN charter 1945.

²⁸ Jordan, Robert (1991). «The Fluctuating Fortunes of the United Nations International Civil Service: Hostage to Politics or Undeservedly Criticized? The Fluctuating Fortunes of the UN International Civil», 51:4 *Public Administrative Review* 354.

²⁹ Fakhory, Ammer, *supra* note 19-117.

³⁰ Fouda, Guillaume, *supra* note 21-6.

³¹ Fouda, Guillaume, *supra* note 21-6.

³² Devin, Guillaume (2011). «Les Evolutions de l'ONU: Concurrences et Intégration», 53:4 *Critique Internationale* 9.



the nature of the contract between the person and the organization: temporary (fixed-term) or indefinite. The former is generally applied to organizations and specialized agencies and those related to the United Nations³³.

One of the countries' illegal forms of interference in the recruitment process is to exert pressure on the United Nations through the Secretary-General or senior officials, to appoint or prevent the appointment of some of their citizens, for internal or external political reasons. The pressure exerted by the US administration on former United Nations Secretary-General Trygve Lie between 1952 and 1953 is an example. The United States had wanted and succeeded in expelling a number of American and Communist staff from the Secretariat.

In addition, other forms of pressure have been exerted by certain states on the UN and its organs and specialized agencies, with the aim of hindering the selection of employees, such as the enactment by these states of national legislation prohibiting their nationals from entering the service of the international organization without their authorisation³⁴.

V. Selecting UN officials: Towards a fair and equitable system

There is the need to select highly qualified persons to the organs of the UN and support its bodies in adopting certain principles to be taken into account when selecting candidates for administrative and technical posts.

1. Membership

International organizations tend to exclude applicants from non-member countries. They must therefore belong to one of the member states of the organization, which is a natural consequence of a country's membership of the entity. The international organization cannot include nationals of countries that do not belong to it, because their principles may be different from its own. We can therefore wonder about the intentions of people among the nationals of these non-member countries who come forward to work there. According to current jurisprudence, the refusal of the international organization to accept the appointment of persons belonging to third countries, despite a potentially higher level of competence than nationals of Member States, is accepted. And the third-country national does not have the right to appeal to international tribunals and administrative jurisdictions³⁵.

2. Amount of the financial contribution to the organization

³³ Bettati, Mario, *supra* note 18-303.

³⁴ Lemoine, Jacques, *supra* note 1-49; It should be mentioned that some countries in the Middle East such as Iraq before 2003, Syria and Gadafi's Libya have criminalized their citizens who have been selected to international organizations without their consent. See: Guilhaudis, Jean-Francois, *supra* note 3-187.

³⁵ Pellet, Alain (2007), *supra* note 5-32; Cot, Jean-Pierre et Allain Pellet, *La Charte des NU*, 3rd edition, Economica, Paris, p. 1349 ff.



This rule is based on the principle that who pays the most should have the largest share of employees in the organization. The United Nations decided in resolution of the GA no. 42/220 of 29 January 1988 that the minimum amount in the bank account should be US \$2,700 for a state to appoint its nationals as UN international civil servants.

3. Principle of equitable geographical distribution

This principle is mentioned in article 101, paragraph 3, of the United Nations Charter, which was a pioneer in its implementation. In accordance with the declaration made by United Nations Secretary-General U Thant in 1968, this principle means that the organization must be concerned with the experience and culture of each nation or Member State³⁶.

According to this point of view, this principle envisages the contribution of the state or culture or a people to the activity of the organization, the minimum which should not be waived in its demands for the appointment of its nationals. The number has been set at four officials per country. This means that, according to United Nations statistics, the staff of the Secretariat, which includes thousands of people, must be from all Member States and have at least four employees per Member State³⁷. The report issued by UNESCO is an example of the imbalance with regard to the nationality of international civil servants, as the majority of people employed by this IO comes from Western countries³⁸.

In addition, 60% of the staff of the UN General Secretariat were from European countries and North America³⁹.

Adopting this principle is one of the most difficult issues facing international organizations in the selection of staff. Some countries may not be able to provide the required number of citizens to work in the organization. This principle will automatically give the state the inherent competence to identify employees who may not have the required qualifications, which will affect the performance and activity of the organization itself⁴⁰. But some countries, such as the countries of Eastern Europe during the communist era and of the Middle East, have chosen candidates for positions in the UN and specialized agencies supposed to be in favour of the current regime. This means excluding qualified skills belonging to these countries from standing as candidates for an international civil servant position⁴¹.

³⁶ Plantey, Alain (2005). *Fonction publique internationale*, CNRS Éditions, Paris, p. 285.

³⁷ Weiss, Thomas (2010). «The John Holmes Lecture: Reinvigorating the International Civil Service», 16:1 *Global Governance* 47; Jordan, Robert, *supra* note 26-354.

³⁸ Ismayil, Meryll (2014). «Les politiques de présence des Etats Occidentaux au sein des Organisations Internationales», 45:2 *Etudes Internationales* p. 287.

³⁹ *Ibid.*

⁴⁰ Cot, Jean-Pierre and Allain Pellet, *supra* note 32-1352.

⁴¹ It should be noted that the UN Administrative Tribunal says that the only way to recruit international civil servants is through the calls organized by the UN. For more details on these judgments, see Ruize, David (1988). «Jurisprudence de Tribunal Administratif des NU», 44 *Annuaire française de droit international* 422.



4. Applying the principle of merit

In order to deal with the problems raised by the previous principle, jurisprudence began to search for a principle or a rule aimed at limiting it. The appointees must be highly qualified and competent with scientific qualifications and have received specific training. Supporters of this principle believe that they strive to revitalize the work of international organizations by providing them with scientific and professional skills, through candidates with varied skills, chosen from among the most qualified, even if they must belong to a Member State that has exceeded its quota. This is what the UN Legal Adviser and its specialized agencies has authorized⁴². It should be noted that Article 101, paragraph 3, of the Charter of the United Nations refers to the principle of merit, which states: "The paramount consideration in the employment and determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence and integrity". It is based on this principle that the United Nations and its agencies select and appoint their staff⁴³.

5. Principle of the independence of the international civil servant

The principle of independence is one of the fundamental principles enshrined in all the fundamental charters and regulations of international organizations. The member states of each IO are bound to respect the international character of this official and do not have the right to influence him in his functions, even if he has their nationality⁴⁴. In its advisory opinion on the request for reform of judgment no. 33 of the United Nations Administrative Tribunal (UNAT), the International Court of Justice (ICJ) affirmed that the independence of the international civil servant is a fundamental guarantee of the proper functioning of international organizations. This independence is protected in the event that the heads of these organizations have appointed persons for a fixed period⁴⁵.

The guarantees of the independence of international staff are found in international legal documents⁴⁶, in particular in the legal system that governs relations between international organizations and states (charters and treaties, agreements between the organization and Member States and organization's individual acts)⁴⁷. International civil servants enjoy less privileges and immunities than those granted to diplomats. They are conferred on them on the territory of the Member States, since they must be able to

⁴² Lemoine, Jacques, *supra* note 1-194.

⁴³ Udom, Udoh (2003). «The International Civil Service: Historical Development and Potential for the 21st Century», 32: 1 *Public Personnel Management* 102.

⁴⁴ David, Meryll (2008). «Les stratégies d'influence des États membres sur le processus de recrutement des Organisations internationales: Le cas de la France», 126:2 *Revue française d'administration publique* 269.

⁴⁵ See Advisory Opinion of 27 May 1987 on the Interpretation of the UNAT Judgment No. 333 of 1984, p. 226.

⁴⁶ The enjoyment of the immunities and advantages of an international civil servant is enshrined in all legal documents produced by international organizations. The Convention on the Privileges and Immunities of the United Nations of 13 February 1946 constitutes the fundamental basis of other international organizations. These immunities sparked a legal debate, in particular on the level of profits by the experts of the special missions and the rapporteurs of the sub-committees. This forced the United Nations to ask the ICJ to issue an advisory opinion on the possibility of applying the 1946 Convention to these categories. Members of special missions and human rights commissions benefit from the scope of the Convention. Read: ICJ Advisory Opinion, 15 December 1989, Applicability of Section 22 of Article VI of the Convention on the Privileges and Immunities of the UN, Rec.

⁴⁷ Jordan, Robert, *supra* note 26-354.



exercise their functions independently of the influence of different countries. On the other hand, senior international officials such as the Secretaries General and the Director General of the World Organization enjoy immunities similar to those of foreign diplomats⁴⁸.

There are two types of immunities granted to United Nations officials. Ordinary officials enjoy only one type: immunity related to office. It is only granted to them during their work. The United Nations accepted this immunity on the grounds that the crime committed by its ordinary officials does not fall within their professional obligations. The official must therefore be held responsible. As for senior officials, including the Secretary-General, his assistants, heads of cabinet, his special representatives and heads of agencies linked to the United Nations, they enjoy two immunities: that relating to office and personal immunity. They are not prosecuted for their acts even if they constitute crimes within the meaning of the law of the host country⁴⁹.

6. Gender parity: a new challenge for the UN system

In addition to the previous principles, many international organizations started adding a new principle related to gender equality two decades ago. This is a new term, somewhat broader in scope than the traditional principle of equality and than the principle of non-discrimination on ethnic, religious, linguistic, cultural and national grounds. This new principle finds its origin in the rule of non-discrimination between genders as an international legal principle. Gender parity was instituted by the Cairo Conference on Population in 1994 and by the Beijing Declaration in 1995, as indicated in article 7, paragraph 3, of the Rome Statute of 1998 of the ICC, which aimed for equality between genders⁵⁰.

Historically, for centuries women have been the subject of blatant discrimination within the national framework, especially at the level of work: lower wages and benefits - fewer employment opportunities, which has pushed the UN to act and deal with this apparent marginalization. The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), to which a large number of UN member states have adhered, attempted to avoid this discrimination⁵¹.

With regard to gender discrimination, in IOs such as the UN and specialized agencies, it should be noted first of all that the European Union has made great progress in implementing the rule of prevention of discrimination based on gender in a way unmatched in other international organizations, in particular by introducing the prohibition of discrimination based on gender as one of the rules for recruiting officials of

⁴⁸ See Articles 18-19 of the 1946 UN Privileges and Immunities Convention.

⁴⁹ Freedman, Rosa (2018). «UN accountable: A New Approach to Peacekeepers and Sexual Abuse», 29:3 *European Journal of International Law* 966.

⁵⁰ Weiss, Thomas, *supra* note 34-43.

⁵¹ Devin, Guillaume (2017), *supra* note 29-16; Achieving Gender Parity on International Judicial and Monitoring Bodies - Report presented by the International Human Rights Law Clinic in the University of California, October, p. 16.



the European Union. The occupancy rate of important positions and lower jobs by women in institutions of the European Union is very high⁵².

For the UN and its related bodies, it should be noted that the quota of women obtaining jobs is still very low and tends to strongly favour men. In an important report published by the UN Secretariat in December 2017, the situation was considered very negative: among the high-level positions in the UN and in the bodies and institutions associated with it, the occupation quota for positions of responsibility by women does not exceed 29% against 71% for men. As for those of the assistants to the Secretary-General, special rapporteurs, special representatives, chairpersons of committees and even research institutes associated with the UN, the same applies. When it comes to lower jobs, although the rule of preventing gender discrimination is spelled out in the United Nations recruitment rules, the rate of women getting a job and even entering the selection process is very low compared to men.

In view of the criticisms that continue to be led by NGOs concerned with women's rights on the imbalance of jobs, the UN Secretariat set up a task force in January 2017 to study this great disparity in the percentage of women applying for a job. This team has developed a strategy entitled "Women and the United Nations" to be applied to all organs of the organization without exception, even in peacekeeping missions. Since the beginning of 2018, the strategy obliges each organ or administration of the United Nations to set up a mechanism for monitoring the application of the rule of preventing gender discrimination in the occupation of jobs. And the issue did not stop at this point, but spread to the Member States themselves, the General Secretariat informing them and urging women to apply to the organs of the organization⁵³.

VI. The legal link between the International Organization and its officials

The qualification of the legal link between international civil servants and the UN is one of the questions whose emergence was linked to the development of the international function within the UN, making it necessary to define the nature of these relations. This resulted in the emergence of three points of view⁵⁴.

Supporters of the statutory character consider the relationship between the official and the UN as a statutory or disciplinary one. The civil servant is completely subject to the organization and to its will, his legal status being similar to that of a civil servant in administrative law within a state. It should be emphasized that this compliance is not limited to the rules applicable to the civil servant at the time of his entry into the international post, but also to upcoming changes in his status or in what are called resolutions relating to civil servants. They consider that the counterpart is the existence of rules relating to the rights of civil servants, in the event of a dispute. Administrative

⁵² Udom, Udoh, *supra* note 38-123.

⁵³ ITU Gender Parity Strategy: Report presented by the ITU to the UN secretary General in April 2018. Doc C18/63-E, p. 7.

⁵⁴ Guilhaudis, Jean-François, *supra* note 3-183.



tribunals have been created by the various international organizations, which have given them the competence to examine the requests and complaints of their employees⁵⁵.

On the other hand, certain jurists criticize the statutory character and base the relationship between the civil servant and the UN or one of its organs on a contractual character, based on an employment contract between the official and the organization. This contract gives both parties an equal legal status, determines the rights and obligations of the parties, in particular in relation to the expiry of the contract, and is based on the principle *pacte sunt servanda*, which means that the parties cannot be freed from the obligations arising from the contract, where there is no similarity between the civil servant's relationship with his state and that with the OI. Consequently, the guarantees established during the exercise of the international function are more like those of the civil service at the internal state level, unlike the international function. In addition, the adaptation of the contract has the aim of restricting the UN from developing the rules of the international civil service⁵⁶.

The third opinion, considered to be conciliatory, recommends combining the two opposing points of view, by considering the relationship between the civil servant and the organization as an organic and contractual relationship at the same time, and that the civil servant is subject to the conditions of the contract. The organization gives him more freedom to face any circumstances that may affect the interests of the organization, forcing him to modify the terms of the contract⁵⁷. In our opinion, this point of view cannot be adopted at the level of international action, because it has not brought anything new to adapt this relationship. Rather, it combines two antagonisms. For us, we must give the organization more freedom to adopt the opinion that it considers appropriate to its own situation and to allow it to amend and even modify the regulations in its own interest, provided that the necessary guarantees are given regarding the rights of civil servants, giving them the right to be tried by administrative tribunals created for this purpose⁵⁸.

VII. The UN official: Exceptional protection and criminal liability

1. The criminalization of UN officials

The criminal liability of UN officials for the acts they commit, which sometimes constitute crimes under criminal law, has captured the attention of United Nations Member States, especially over the past three decades due to the large number of complaints against UN-affiliated peacekeepers, or even officials and experts of the UN⁵⁹. In addition, the issue of accountability was on the agenda of the Sixth Committee of the United Nations General Assembly at its annual meetings, notably with the release of Prince Zaid's 2006 report, which presented explicitly the question and identified how to address it. Hence the exceptional importance of this issue due to the fact that it has a significant impact

⁵⁵ Dubois, Valerie, *supra* note 16-25.

⁵⁶ Plantey, Alain, *supra* note 33-78.

⁵⁷ Pellet, Alain, et Ruize, David, *supra* note 5-26.

⁵⁸ Bawindsomde, Ouedraogole, *supra* note 6-416.

⁵⁹ Freedman, Rosa, *supra* note 44-963



on the reputation of the UN on the one hand, and, on the other, on the reparation of the victims of these acts⁶⁰.

As for the violations committed by the peacekeepers, the truth is that they are increasing dramatically and exponentially with their wide deployment in various areas of the world, especially in Africa, the Middle East and in the Balkans. These forces often commit the crime of sexual rape against the civilians they are supposed to protect. These civilians were shocked to find that members of these protection forces committed heinous and degrading crimes.

As for soldiers and officers of international forces, the principle is that they should be tried in military tribunals belonging to their country, but unfortunately intentional neglect of complaints from civilian victims has led to the spread of a culture of amnesty. In this regard, we cite the example of the complaint filed by a Somali citizen accusing these forces of having destroyed his property in 1992 during their missions in Somalia, known as the Askar case against Boutros Ghali (former Secretary-General of the United Nations). His complaint was rejected by the United Nations on the basis of Article 2 of the 1946 General Convention⁶¹.

The cholera issue in Haiti in 2010 has not changed much so far. The roots of this problem go back to October 2010, when a cholera epidemic suddenly spread to the world's poorest country. This happened after Nepalese forces who had just arrived from their country, Nepal, ranked by the WHO as the third country in the world where the epidemic is raging, were deployed as part of the peacekeepers. Despite the evidence from medical reports confirming allegations of the role of Nepalese forces in the spread of cholera, these forces were not examined prior to their deployment. Unfortunately, the UN has knowingly neglected the complaints presented by more than five thousand Haitians asking for the members of these forces to be trialed, especially since their arrival in Haiti, the number of deaths due to the epidemic exceeded two thousand a day.

In 2013, a UN report on the issue of Haiti concluded that the claims for compensation from people affected by the epidemic caused by Nepalese forces were unfounded, which confirmed the conviction of jurists that the UN and its officials enjoyed absolute immunity, even if this is not stipulated in the 1946 UN Convention on Immunities⁶². The same is true of United Nations officials and experts, as their serious violations qualified as criminal offenses continue in the countries where they are, a fact linked to the weakness of the legal and judicial systems of countries where they reside⁶³.

However, this has not stopped them from committing crimes in other stable countries where rule of law is enforced. Here, the issue goes beyond small offenses or even manslaughter, but rather theft, rape and other financial crimes. The UN has put in place mechanisms to reduce these violations, including the internal investigation unit within the UN itself. When there is a complaint or information regarding the involvement of a

⁶⁰ Weiss, Thomas, *supra* note 34-48.

⁶¹ Freedman, Rosa, *supra* note 44-966.

⁶² Lewis, Patrick (2014). «Who Pays for the UN Torts: Immunity, Attribution, and Appropriate Modes of Settlement», 39:2 *North Carolina Journal of International Law and Commercial Regulation* 260.

⁶³ Hovell, Devika (2018). «UN accountable: A Reply to Rosa Freedman», 29:3 *European Journal of International Law* 988.



UN official or expert in a crime in accordance with the law of the host country, this unit checks its validity. If it is committed in accordance with the requirements of his work, there is no liability^{64, 65}.

What is true, however, is that the officer committed the crime for his own personal gain, and in this case, UN officials must accept the jurisdiction of the host country's courts to try him in its domestic courts or accept his extradition to the country of his nationality, provided that in both cases there is no violation of fair trial standards or of human rights principles. As for the second mechanism, it consists in referring the person to the United Nations Dispute Tribunal, which is an organ created by the United Nations as an alternative to the United Nations Administrative Tribunal, which has two degrees: the first degree and the appeal. This judicial mechanism has been reserved for the trial of its officials and experts for the crimes they commit, violations that cannot be qualified as criminal acts, only as contractual or administrative violations relating to their work⁶⁶.

Some of the most significant obstacles to repressing violations committed by United Nations officials are those related to the fair trial standards we have explained above. If the two countries do not respect them, what is the solution for the accused official? In addition, there is no specific definition in criminal laws for sexual crime. This difference has therefore led to multiple interpretations by countries to define sexual crime, some of which allow the act and others criminalize it. Besides other objective factors, in particular the weakness of the judicial institutions in the countries which host these forces and even of the personnel of the United Nations. The UN is also under pressure from the state of the perpetrator to prevent his prosecution or hearing in the courts of other countries, otherwise it will withdraw its forces⁶⁷.

2. Functional protection

Public international law establishes for international civil servants a protection similar to that granted by the states to national civil servants and includes everything that may affect international civil servants in the exercise of their jobs. The protection exercised by the UN does not prevent the state of the civil servant's nationality from exercising diplomatic protection⁶⁸.

This was confirmed by the International Court of Justice (ICJ) in an advisory opinion on the case relating to compensation for the assassination of Count Folk Bernadotte. The ICJ had recognized the right of the state of Sweden, of which the Count was a national, to seek redress for his death from the Israeli government, as well as from the United Nations, since he was one of its officials. But the Court imposed the condition that this

⁶⁴ Freedman, Rosa, *supra* note 44-967.

⁶⁵ Klabbers, Jan, *supra* note 7-14.

⁶⁶ Freedman, Rosa, *supra* note 44-971.

⁶⁷ Freedman, Rosa (2014). «UN Immunity or Impunity? Human Rights Based Challenge», 25:1 *European Journal of International Law* 242.

⁶⁸ The Rules on the Staff Regulations of the West African Economic and Monetary Union provide in Article 20 that the staff member is entitled to the protection of the Union in the exercise of his functions and that the terms and conditions of this protection are defined by implementing regulations for these Rules. See: Fouda, Guillaume, *supra* note 21-12.



does not result in double compensation for the same act or damage, which is a stable rule from a criminal point of view⁶⁹.

On the other hand, nothing in public international law indicates which state or organization has priority in the exercise of functional protection and, therefore, in the compensation thereof. However, jurisprudence provides a theoretical solution to the problems that may arise in this regard. The Organization and its Member States can enter into agreements to resolve these issues⁷⁰.

In our opinion, granting the organization the right to exercise its protection on behalf of its officials, in the event of problems or harassment in the course of their work or even when they suffer prejudice, deserves to be taken into account so that the Organization can perform its task in the best possible way, especially given the complexity of the tasks conducted⁷¹.

Conclusion

We have discussed the issue of disagreement over the definition of the international civil servant and the possibility of including all employees of the international organization. Supporters of the idea of including all employees in this term have found support in the jurisprudence of the ICJ. With regard to the appointment of an international civil servant within an international organization, we can make a clear distinction between the international civil service and the national one, which is reflected in the nature of the sanctions imposed on each and by the weakness or the strength of the official's affiliation with the organization or state where he operates.

Regarding the independence of the organization in the selection of candidates, this often becomes fictitious because of the strong pressure exerted by large states, either by direct pressure on senior officials of the organization, or through internal legislation that restricts the process of selecting citizens in the international organization.

The result of this intervention is that appointees favour the policies of their governments over organizational representation, which undermines the performance of the organization at all levels and prevents it from moving forward.

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⁶⁹ Freedman, Rosa, *supra* note 75-967.

⁷⁰ Sur, Serge, *supra* note 9-718.

⁷¹ Klabbers, Jan, *supra* note 7-72.



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**BEYOND REPORTING.
MEDIA AGENCY IN TRANSITIONAL JUSTICE PROCESSES**

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Abstract

Despite the significant impact of the media in transitional justice processes, this relationship remains underexplored. The role of the media in building narratives of conflict and past human rights violations was traditionally framed within the dichotomy of *promoting peace vs inflicting war*. Yet, these roles, as well as the media systems themselves, need to be placed within more complex frameworks. This article analyses some of the key themes that connect transitional justice (the right to truth, justice, reparations and guarantees of non-repetition) and the media. The primary conclusion is that we need to go beyond the role of the media as an *observer*, and frame it as a possible *agent* of the overall process of conflict transformation and transitional justice.

Keywords

Human Rights and Media; Political Violence; Conflict; Transitional Justice; Peace Journalism.

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BEYOND REPORTING. MEDIA AGENCY IN TRANSITIONAL JUSTICE PROCESSES

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1. Introduction

In the last fifteen years, academia and practitioners have focused with particular emphasis on the politics of the past, and memory and transitional justice studies have proliferated (Teitel 2014). The concept of transitional justice has expanded quickly and closely connected to the area of human rights (Arthur 2009). The right to truth, justice, reparation and guarantees of non-repetition have been widely researched in theory and practice (Olsen et al. 2010; Gready 2010; De Greiff 2012; Buckley-Zisteil and Koloma Beck 2015; McEvoy and Mallinder 2017). Yet, the specific role of the media in transitional justice processes remains largely underexplored (Laplante 2009; Hodzic and Tolbert 2016). This article follows up the work of the few transitional justice scholars who have explored this connection (see, for instance: Laplante 2009; Price and Stremlau 2012; Tamayo and Bonilla 2014; Viebach et al. 2016) and makes a contribution to the conceptualization of the relationship between the fields of the media and transitional justice. The framework used is based on a comprehensive perspective that goes beyond the role of journalists as reporters and understands the media as an actor and focus of transitional justice initiatives. With this aim, the article focuses on several key themes, such as the responsibility of the media in truth processes, the mechanisms for media accountability and reparation programmes for journalists.

The vast literature on the media and conflict illustrates the connection between these two fields (Eytan 2009). News organisations are, by their nature, connected to politics (Borrat 1989) and they consequently relate to the dynamics of violent political confrontation. The extent to which they should be involved in conflict and post-conflict politics is however unclear. This role contains a paradox: one of the basic principles of journalism refers to its independence, but at the same time, complete objectivity, particularly in divided and contentious societies, is an unachievable goal. The first part of the article outlines the concepts of the media and transitional justice, whereas the second part explores the interconnections between the two fields.



2. The crossroads between transitional justice and the news media

The link between transitional justice and the media can be contextualised within previous studies. The theoretical background of most of the research is based on the work conducted by the scholar Johan Galtung, who conceptualised the term *peace journalism* as opposed to *war journalism* (2013). The rationale behind this area of research is clear: since the media “mediates public discussion around transitional justice processes”, it is also the media who “decides what will reach the public domain, whose voice will be represented and whether the focus will be on the substance — the circumstances and the causes of the abuse — or on the marginal” (Hodzic and Tolbert 2016: 10). Nevertheless, most of the time, research examining news coverage understands the media’s role as an *observer* of the transitional justice process and places its significance on the ways the media “sells” and “explains” mechanisms and policy. According to Price and Stremlau (2012), the following are some of the other issues to take into consideration:

“... attention must be paid to a myriad of issues, including how the local media function, how journalists (both private and government) frame the patriotic grain, and how they build trust between key actors by serving as a forum for elite negotiation, mediating competing ideas of justice, and strengthening or weakening other group approaches to violence and conflict resolution” (2012: 1081).

The following section analyses the role of the media through four key themes: the role of the media in truth processes, media accountability and press freedom, reparations for journalists and, finally, the significance of media agency in conflict transformation processes.

3. How can the media mediate transitional justice? Exploring complex and changing concepts

Transitional justice is commonly defined as “the conception of justice associated with periods of political change, characterized by legal responses to confront wrongdoings of repressive predecessor regimes” (Teitel 2000: 69). Nevertheless, the current understanding of transitional justice goes beyond legal responses (McEvoy 2007) and encompasses, according to the definition provided by the UN, “the full range of processes and mechanisms associated with a society’s attempts to come to terms with a legacy of large-scale past abuses, in order to ensure accountability, serve justice, and achieve reconciliation” (UN 2010: 2).

The initial steps in the field were connected with the democratization processes in Latin America in the 1980s, yet most authors trace the initial steps back to the post-war tribunals in Nuremberg and Tokyo (Arthur 2009). Currently, general consensus exists regarding the need for a transitional justice model that includes a holistic



(comprehensive) approach (Olsen et al. 2010; Nagy 2008) which does not impose “white man’s justice,” (Lincoln 2011; Andrieu 2010), takes into account culturally diverse communities (Brown and Ní Aoláin 2015), includes a gender perspective (Bell and O'Rourke 2007; Baines 2011) and, above all, is context-specific (Teitel 2014; McEvoy and McGregor 2008).

Furthermore, since the political transitions of the 1990s, several NGOs and international organisations have established communication and media related strategies in post-conflict places (Melone et al. 2002). Media connected with peace journalism has also expanded, with the news platform *iPacifista!*, from Colombia, being an example of this. In recent years, transitional justice specific media outlets have also emerged, such as the platform *JusticeInfo.net*, which aims at reporting on topics related to international transitional justice. Academics have also expanded research on the links between new information technologies and conflict (Zeitsoff 2018). Initially, the Arab Spring was the focus of most of the studies examining this connection (Hänska Hay 2016), although now this relationship is approached from many different perspectives. Social media and activism (Kavada 2015) and the impact of new technologies in promoting hate speech (Ben-David, Anat and Matamoros-Fernandez 2016) are some of the areas that are based on this view. Yet, as Laplante and Phenicie pointed out, “despite the plethora of academic and scholarly literature” in these fields, “the role and influence that the media has in these processes remain largely unexplored” (2009: 252).

Complexities of today’s media

The golden era of television (the 80s and 90s) is fading away and the impact, possibilities and regulation of social media is still unclear. The digital transition has brought new challenges to news organisations: the gap between citizens and journalists is getting smaller every day and new forms of interaction in the digital age are also transforming the impact of the media on politics. The new communication strategies of political leaders and the new challenges related to fake news illustrate the impact of the digital transformation on politics. The way that the US president Donald Trump uses *Twitter* and the so-called post-truth phenomena are the clearest examples of this trend. Eytan (2010: 87) explains this change further:

“Governments have lost much of their monopoly on information, and non-state actors and individuals have become much more active and significant participants in world affairs, both in warfare and conflict resolution”.

In spite of the research gap regarding the media and post-conflict politics, the link between the media and conflict has been widely examined, particularly during the 1990s, when the *CNN effect* was conceptualised. This term implies that global television networks, such as *CNN* and *BBC World*, had become decisive actors in determining policies (Eytan 2005). The concept was used at the end of the Cold War, a period marked by several wars, most of them inter-state conflicts (Eytan et al. 2016).



Since the 1990s, however, the media has changed dramatically. We have reached a situation of 24-hour news that we receive from many different channels (Cushion et al. 2015). Traditionally, the media has been associated with the quality of democracy and the *watchdog* role. Yet, in transitional contexts, this is “more complex, contested, and potentially more dangerous” (Viebach et al. 2016: 38). Post-conflict scholars and practitioners assume there is a need to use communication technologies to promote freedom of speech, conflict transformation, democratization and development. However, Schoemaker and Stremlau (2014) argue that “it is unclear how and in what cases” this policy should be put forward.

This article builds upon those of other scholars who have created theory in this area. Eytan, for instance, distinguished five levels of the media by geopolitical criteria: “local, national, regional, international, and global” (Eytan 2009: 103). Later, the same scholar added that two aspects must be considered: “(1) the multiplication and fragmentation of media outlets and their subsequent impact upon twenty-first-century news gathering technology; and (2) the role of local media such as outlets based in conflict districts or regions, or national media that cover conflicts in their immediate periphery” (Eytan et al. 2016: 656).

Transitional justice institutions design outreach and communication strategies and make use of new media platforms to reach their audiences (the ICC has its own YouTube channel). On the other hand, news media have the duty to inform about these transitional justice mechanisms. However, transitional justice practitioners usually think journalists are biased and politicised, whereas journalists complain about the limited information delivered by transitional justice institutions (Viebach 2016: 55). Since systems of communication are essential for building trust within and with transitional justice mechanisms (Price and Stremlau 2012: 1081), a transparent healthy relationship between the two sectors seems to be one of the elements for the success of the transformation process.

4. Tensions in dealing with transitional justice: the truth process

Transitional justice and the media share the duty of *truth*: the truth process concerning past human rights violations is at the centre of transitional justice processes and, similarly, the media has a social responsibility in terms of both truth seeking and truth telling. According to communication theory, social responsibility is one of the four traditional theories of the press (Siebert et al. 1963), the other three being the *Soviet-Communist* theory (media solely controlled by the State), *Authoritarian* theory (strict State control) and *Libertarian* theory (absence of any State control). The media systems framed within the *Social responsibility* theory have a duty towards investigative journalism and they are not subject to censorship. This theory includes external and internal mechanisms of media control: codes of conduct for journalists is the clearest example of these mechanisms. A certain tension, however, exists within the social responsibility theory: too much control by State-led organisations can lead to a lack of freedom of speech, controlled narratives and criminalization of alternative historical



narratives; whereas, on the other hand, a lack of regulation can lead to revisionist narratives ([Belavusau 2015](#)).

Societies transitioning from conflict, dictatorship or serious and systemic human rights violations are particularly sensitive to manipulation as there will always be actors trying to hide past violence. In these contexts, there is a particular need to stress the social responsibility of the media and its duty to tell the truth. This responsibility for truth goes beyond reporting and frames the media as an actor in the overall democratization and reconciliation process. In its truth seeking role, according to Ware, media narratives must be “rooted in facts” and should avoid using a “language that doesn’t admit to the limitations of what few new facts are ever likely to see the light of day anyway” (Ware 2017: 17). To that end, Barbeito argues that one of the key aspects refers to writing the news “using a variety of sources”, such as the judiciary, academics, archives, NGOs and other news organisations (2009: 53).

Rather than the media as a truth-seeking mechanism, the research studying the media and transitional justice has focused on reporting. News coverage of the proceedings and outcomes of Truth and Reconciliation Commissions (TRCs) has been one of the most researched topics. In fact, the way the media behaves during transition is critical in places attempting to deal with a violent past (Laplante and Phenicie 2010). In South Africa, for example, the media played an instrumental role in the early successes of the country’s TRCs (Verdoolaege 2005; Krabill 2001). In contrast, news coverage of the TRC in Peru had a negative impact upon the process. According to Laplante (2009: 252), the media in Peru failed “to adequately mediate conflicting views of a country’s history — its causes and consequences, its villains and heroes”. Thus, news media coverage may exacerbate conflict and undermine attempts at peace building, but it also has the potential to function as a tool of conflict resolution through public education (Nagy and Gillespie 2015: 5).

The role of the media in truth seeking and building narratives on the past (news coverage) can change over time, especially during transition. For instance, Nagy and Gillespie (2015) conclude that the attitude of the media changed regarding news coverage of abuse committed in Indian residential schools in Canada. However, they also point out that newspaper coverage “still falls quite short of challenging Canadians to think about Indian residential schools in expansive terms that frame reconciliation as requiring decolonization and systemic change” (2015: 37).

Traditionally, the media has assumed one of the most significant roles of investigating the conditions in which human rights violations have taken place (Barbeito 2009: 47). In the past, the monopoly of mediated truth lay with journalists and powerful news organisations, but, with the transformation of the media and the expansion of citizen led news coverage, this realm is also constantly evolving. The role of the media does not seem to focus solely on giving news anymore, but on offering context to stories and creating narratives. In addition, there are currently several actors sharing the responsibility towards *truth* in transitional places: the actors involved in the conflict, the media and, due to the emergence of social media and other new technologies, citizens too. In recent years, new platforms and mobile applications have emerged to help citizens uncover these types of abuse, such as People’s Intelligence (PI) and Eyewitness, which



seek to encrypt videos and protect authors to be able to use this data as evidence in court cases.

5. Towards society: accountability and press freedom

Two of the critical aspects in a transitional justice process are the initiatives to unveil the truth and accountability mechanisms. Transitional justice generally looks at the traditional actors in conflicts, such as armed groups and State controlled forces, but it can also look at third parties, such as business companies and the media. As the field expands, the performance of these third-party actors is also being held accountable. Moreover, there are some precedents of this practice in the 1990s, in South Africa and Rwanda. One of the institutional hearings held in the TRC in South Africa studied the role of the media, and the *media case* in Rwanda (*The Prosecutor v. Nahimana, Barayagwiza and Ngeze*) is one of the most well-known cases of media accountability. In this case, three individuals connected to *Radio Télévision Libre des Mille Collines* (1993-4) and the *Kangura* newsletter (1990-95) were prosecuted, allegedly as the masterminds behind a media campaign to desensitize the Hutu population and incite them to murder the Tutsi population. In 2003, the Trial Chamber found all three defendants guilty of genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, persecution, and extermination as crimes against humanity (Thomson 2007). However, after several appeals and procedural mistakes, the Appeals Chamber reversed some aspects of the Trial Judgment and acquitted all three of conspiracy to commit genocide and extermination as a crime against humanity. Two of the prosecuted were still found guilty of direct and public incitement to commit genocide. Although most of the media accountability cases (i.e. when media holds political responsibility of the events) will not go as far as being involved in genocide, an analysis of media responsibility during conflict should form part of the overall strategies of dealing with the past.

The lines separating propaganda war, media crimes and freedom of press and speech are sometimes blurred. Along with the *boom* in memory laws passed in recent years, terminology related to violence and the past has been banned in several places. In 2018, for instance, Poland outlawed the use of the term *Polish death camps* in the new legislation passed about the Holocaust. The aim of this initiative was to avoid any accusation of the country's complicity in crimes committed by Nazi Germany. In an attempt to criminalise certain terms and concepts (particularly, in social media), Spain passed a National Security Law in 2015 that considerably expands the crime of 'the glorification of terrorism'. Under this law, for instance, comments made on Twitter which have been considered offensive to victims of terrorism and the monarchy have been punished with jail sentences. It is yet unclear how news information and personal opinions can promote hate speech and other forms of discrimination and, particularly in the context of the digital age, these debates overlap with attacks on freedom of speech. The contestation of the past in societies facing transitional justice processes intertwines with initiatives to protect victims but also with the right to freedom speech and press. The roles of the media in transitional societies are caught up in this backdrop of changing media systems and institutional initiatives to control what it is acceptable to say, and what it is not.



6. Towards journalists themselves: trauma and reparation

Although journalists can commit crimes in their professional practice, the reality is that most of the media-related crimes are actually in the form of abuse against journalists. The freedom of the press is always violated in places of conflict or/and dictatorships and, consequently, measures concerning its restoration are usually found in the transitional agenda. Legislation to guarantee these liberties (freedom of speech and freedom of the press) is the most common mechanism to promote the democratization of the past, however, in recent times, reparations for journalists who have suffered abuse are also becoming part of the transitional justice package.

The right to reparation for victims of serious human rights violations has expanded along with transitional justice literature. Today it is widely assumed that transitional societies have to establish reparation programmes for victims of political violence. Transitional justice has become victim-centred and most of its mechanisms have developed strategies to consider victim participation and visibility (May and Edenberg 2013). Despite the concept of *reparation* being broad, the UN understands that it can have an individual and collective approach, and include measures for restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition (UN 2006).

When it comes to reparations for journalists, one of the key aspects that arises is the type of reparation they should receive. Individual reparations for journalist victims are not in doubt, but the collective dimension of these initiatives falls into a controversial area. Yet, there are two dimensions to violence against journalists that justify the collective nature of these abuses: violence against journalists can be used as a war weapon, and this violence also represents an attack on the freedom of the press and the right of a community or a society to receive information (FLIP 2015: 13). For instance, Colombia's Victims Law (2011) opened up the possibility of granting collective reparations to journalists (also to indigenous communities and other groups).

One aspect to be taken into account in this respect is the need for a comprehensive approach to violence and reparations for journalists, including a gender perspective, as well as a cultural diversity view in this conceptualisation and practice. In this sense, the International Women Media Foundation recommends considering how gender inequality and sexist practices manifest themselves in the phenomenon of violence against journalists (Botero Marino 2013: 155).

Another aspect that connects news media with reparations refers back to news coverage. So far, we have referred here to official and State-led reparations, but the transitional justice process and the reparative nature of past violations should also take a bottom-up approach (McEvoy and McGregor 2008). In this sense, news organizations have a critical role to play in giving a voice to victims and to people's silenced stories. Transitional justice can take a variety of forms and storytelling - that is, to give voice and visibility to certain individuals or groups- can work as recognition and reparation itself. In this direction, Hodzic and Tolbert argue that "sharing victims' stories can be a form of restoration, a relief from the harm they suffered (another principle at the heart of transitional justice), and even a catalyst for broader public acknowledgment." (2016: 5).



7. Looking forward: Media agency in the transformation process

Apart from truth, justice and reparations, guarantees of non-repetition is the fourth angle of transitional justice. Although many different strategies and mechanisms can be established to pursue guarantees of non-repetition (the overall transitional justice process seeks this end), most of the literature connects this principle with DDR (Disarmament, Demobilization, Reintegration) processes, institutional reform and measures for building democracy and reconciliation. A wide range of measures could be included in this area, but, in terms of the media, we find two interconnected strategies seeking to promote media agency in these processes: media reform and media assistance.

According to Martin (2011), media reform covers both the transformation of the system and measures to assist journalists and the media. In his research about media reform in Bosnia, he identified four key areas of activity: journalism education, media business development, free speech and the protection of journalists, and the creation of associations and networks of media professionals designed to develop professional standards and codes of conduct (Martin 2011: 86). Although all these elements relate to media reform, from a transitional justice perspective it seems necessary to distinguish between efforts that pursue the democratization of the system itself (media reform) and the measures directed to improve the quality of journalism practice (media assistance).

Transitional justice literature highlights that the processes should be context specific and led by local actors, rather than directed by the international community through one-size-fits-all formulas. If we apply this idea to the reform of the media system, this process has to aim at ensuring plurality and the participation of different communities and groups. For these reforms to be transformative, the promotion of community media and initiatives to regulate media concentration seem necessary. The recent peace agreement in Colombia (2016), for instance, includes a new call to deliver community radio licences (Point 2.2.3 of the Final Accord) and new regulations for assigning institutional advertising (Point 2.2.3.2).¹

A fully comprehensive media reform strategy will have to look at the media system in a holistic way. In addition, legislation on press freedom and freedom of speech may be revised and adapted to the new digital landscape, and issues regarding media access will have to be reconsidered. The limitations of some countries to access social media (Turkey, Iran and Pakistan, for instance) and the technical elements needed to allow this access (only 3% of the population in Chad have access to the Internet) are issues to consider. In many cases, the models to follow in the media system reform cannot be based on Western models of democracy nor liberal models of independent media (Voltmer 2013). The end aim should be that local actors own the media system and they follow the rules of public interest, rather than the interests of the political and economic elite.

In order to achieve these aims, media assistance also has a role to play: professionalism, as pointed out above, is critical in ensuring the social responsibility of the media. These

¹ The final peace agreement was signed on the 24th November 2016.



strategies can take many different forms: training for journalists, technical assistance for news organisations, supporting the establishment of entities such as complaints commissions and ombudsmen, promoting networks for media workers and codes of conduct/best practices and guidelines for journalists. Several codes of conduct and ethics for journalists during conflict exists (see, for instance, the UNESCO's principles for journalists covering conflicts, from 1978²), but there is a need to promote new norms covering the specific challenges in post-conflict sites. The European Union, for instance, included the preparation of a TRC Journalists' Code of Conduct in its journalist training programme (Price and Stremlau 2012) and new draft guidelines for journalists were presented in Northern Ireland in May 2018³. In a similar vein, a set of norms have been agreed in Bojayá, Colombia, in order to establish a code of conduct for journalists covering exhumations. These guidelines are an attempt to balance the victims' right to intimacy and the right to information of journalists and communities (Newman Pont et al., 2018).

Ultimately, the purpose of media reform and assistance is to promote democratization by facilitating the free flow of information, transparency, accountability in the government, and economic growth (Kumar 2007). In order to promote media agency in the transitional justice process, media reform should be part of the overall conflict transformation strategy.

8. Conclusion

Anderson's concept of imagined communities (1989) has been widely used in cultural and media studies (Tsaliki 1995). A significant part of the way we shape and imagine our societies and communities relates to the way the media frames the news. The media, thus, plays a crucial role in shaping our narratives on the past. When these narratives are part of a divided society, the role of the media is also contested: one or other narrative will be promoted depending on the power relationships within the media system. The realm of transitional justice works in the same way: one or other mechanisms and models for dealing with a violent past will be established depending on who holds hegemonic power. There is, therefore, a direct relationship between the media, transitional justice and the process of constructing narratives, truth, and justice.

The role of the media in building narratives of conflict and past human rights violations was traditionally framed within the dichotomy of *promoting peace vs inflicting war*. Yet, these roles, as well as the media systems themselves, need to be placed within more complex frameworks. This article has analysed some of the key themes that connect transitional justice (the right to truth, justice, reparations and guarantees of non-repetition) and the media. The primary conclusion is that we need to go beyond the role of the media as an *observer*, and frame it as a possible *agent* of the overall process of conflict transformation and transitional justice. This agency can, however, be flawed if

² UNESCO, *Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racism, apartheid and incitement to war*, adopted on the 28th November 1978.

³ The draft guidelines were launched in the 'Victimhood and dealing with the Past' conference at Queens University Belfast, held on the 14th May 2018.



the media does not use appropriate genres and ethics (Rolston, 2007); for this reason, further guidelines that focus on media agency are critical. There is also a need to give value to the social responsibility theory of news organisations in transitional contexts in order to find the right balance between press freedom and accountability.

This article has examined some of the different roles that connect the media with transitional societies. In the light of transitional justice, media strategy in transitional societies should be as follows: comprehensive (consider all the actors involved in the media system); transformative (democratization of the media landscape should include mechanisms against concentration of media and regulation of institutional advertising, for instance); context-specific (local actors should own and direct the strategies) and bottom-up (community media that does not follow political and economic interests should be encouraged). In conclusion, the link between transitional justice and the media lies in the fact that the conflict and past human rights abuse cannot be told or narrated solely by one set of actors. In the process of building truth and narratives on the past, the media has to consider giving a voice to victims, perpetrators, academics and civil society organisations (Newman Pont et al. 2018).

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THE IMPACT OF CYBERSECURITY ON THE REGULATORY LEGAL FRAMEWORK FOR MARITIME SECURITY

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Abstract

The concepts of maritime safety and maritime security were based, originally, on different aims, objectives, and perspectives. However, currently, most of the international maritime safety conventions have started to cover both aspects. In the analysis of most incidents and accidents at sea, it is quite difficult to delimit safety and security matters and, normally, after a breakdown, it is useless to do it since the planning and response to risks are usually given in an integrated manner. On the other hand, we are witnessing a progressive extension of the concept of maritime safety to include protection (or security) matters simultaneously with the emergence of a new type of threats that are always present from the moment computers are connected to networks anywhere the world: cyber threats! With ships equipped with new advanced technologies, protection against cyber-attacks is more important than ever. These technological advances have become an easy and high-priority target for cyber criminals. With this behaviour, they can pursue their purpose of attacking ships' systems and, from them, different systems ashore. The digitization of the maritime industry took place very quickly. However, it has become essential for seafarers not only to understand and adopt these new technologies, but also to take a cautious attitude towards certain events that can follow in the wrong direction in a short period of time. A new stage of maritime readiness is envisaged, which needs a robust and well-defined "code" that broadens and concretizes a "new" concept of maritime safety in the broad sense that reinforces international maritime conventions and their application. The responsibilities of the "Flag States" and "Port States", under the terms of the United Nations Convention on the Law of the Sea (UNCLOS) and international maritime conventions as laid down in the different Memoranda of Understanding (MoU) at world level and in the documents of the IMO and other international organizations (such as the European Union), should be updated and start to consider, also, maritime security matters. In addition, it is essential to support close cooperation in the fields of maritime safety and maritime security with a view to drawing up a new and robust "Maritime Code". This will be the guideline pursued, with the intention, at this moment, to "shake and roll" this matter towards a new regulatory stage.

Keywords

Maritime safety; Maritime security; Cybersecurity; Flag State; Port State.

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THE IMPACT OF CYBERSECURITY ON THE REGULATORY LEGAL FRAMEWORK FOR MARITIME SECURITY¹

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I. Introduction²

When in July 2017, the world's largest shipping company in container transport (the Danish "MAERSK") suffered a cyber-attack that completely paralyzed its information technology systems for several weeks, the maritime-port sector "woke up" to the huge impact of this new threat.

The damage amounted to 250-300 million dollars³ and involved the reinstallation of 45.000 workstations and 4.000 servers worldwide. The "culprit" was the "NotPetya" ransomware. Moreover, this malware had already attacked the Dutch company TNT Express in June 2017, as recognized by the FedEx (NYSE: FDX)⁴.

In fact, with ships equipped with the most modern technologies for the bridge, the engine room and the whole vessel in general, the threat of cyber-attacks is more important than ever since most of the new systems work automatically and are extremely dependent on IT and data flows.

¹ Article translated by Carolina Peralta.

² This article was close to its conclusion when the COVID-19 pandemic broke out. In addition to compelling to (re)think the global world - with its strengths and weaknesses, its opportunities and threats (in a true SWOT analysis) - it is important to mention that "infectiology" can also far exceed the health domain. The example of the virulence of different malware at the level of all systems connected to the network can also, in times of crisis such as the one we are going through, drastically limit the response of health equipment and civil protection that require the adoption of pre-planned responses associated with different systems. For this reason, it is also necessary to plan the adoption of alternative measures, albeit with less efficiency, but with greater resilience to the fragility that some systems still present, particularly in these periods of greatest danger to mankind.

³ Direct costs. According to more recent estimates, total costs may have reached 600 M €. Let us check the threats to cybersecurity in 2020. In a recent article entitled "2020 Vision: Check Point's cyber-security predictions for the coming year", of 24 October 2019, in <https://www.checkpoint.com>, blog.checkpoint.com, <https://usercenter.checkpoint.com/usercenter/index.jsp>, the situation related to cybersecurity has been described as follows:

1. A new cyber 'cold war'; 2. Fake news 2.0 at the U.S. 2020 elections; 3. Cyber-attacks on utilities and critical infrastructures will continue to grow; 4. High profile US brands, beware of cyber-attacks targeting high-profile American companies; 5. Increased lobbying to weaken privacy regulations.

Regarding the perspectives related to cybersecurity technology, the main threats and forms of action expected for 2020 are as follows 2020:

1. Targeted ransomware; 2. Phishing attacks go beyond email; 3. Mobile malware attacks step up; 4. The rise of cyber insurance; 5. More IoT devices, more risks; 6. Data volumes skyrocket with 5G; 7. AI will accelerate security responses.

⁴ See news in John Gallagher, *Freight Wave*, 29-03-2019.



These are just two examples of targets at the mercy of cyber-attacks. As in other economic sectors, the maritime-port sector tends to increasingly rely on technology for being more competitive, more efficient in the management of its resources or responsible for complying with standards or policies.

On a global scale, there is an increasing procedural integration of the actors in the logistics chains and, consequently, of the ports, using services based on information systems.

The "Single Logistics Window" (commonly known in Portugal as "JUL"- "Janela Única Logística") - developed by Portuguese ports establishes the connection on an electronic platform between each port and authorities, shipping agents, freight forwarders and port, rail, road and logistics operators, securing the flow of goods traffic and passenger movement without the production of paper documents. This is a good example of this type of systems and of the level of integration of optimization provided for ports and other platforms included in the logistics chains.

These new technological advances have become an easy target for criminals⁵. There are several cybersecurity challenges that ports and associated platforms must face, whatever the type of technology or information system shall be used in the various activities.

The threats are so many, from interception of communications to service blocking, malware, identity theft, data theft or manipulation and information leakage, among others. The impacts can also be of various kinds and harmful, such as, for example, total paralysis of operations, death or injuries to people, kidnapping, cargo theft and financial or reputation losses, which must be avoided at all costs.

It is critical to prevent criminal entry into the ship's systems by unauthorized and uncertified persons, which implies an effective control of the access of a crew member who uses, for example, a free "Wi-Fi" network for telephone calls and emails next to land. Vulnerability is the immediate result of the almost permanent interconnection that today a modern ship has, which means that, due to the use of the same equipment as the ship's systems with unauthorized access to common networks, the onboard systems can be easily "infected" and thus compromised (for example, the opening of a phishing e-mail attachment or hyperlinks or a previously "infected" media news⁶).

The impacts of this unauthorized and criminal access can be very serious: disruption of the network, absence of information flows between the ship's control systems, unauthorized access to control and IT systems, unauthorized changes to the system parameters, harmful consequences on the environment, maritime safety on board jeopardized and the ship's critical and emergency procedures, and, if nothing is done in a timely manner, a security problem can quickly become a safety one⁷.

⁵ Since the introduction of new technology in each process increases the risk of human failure and the vulnerability degree.

⁶ *Infected removable media.*

⁷ Some authors are also beginning to envisage the chances of an occurrence of "safety" becoming a "security" incident in the maritime sector. These are, for example, sea events (stranding, collision, open water, etc.) that imply that a set of threats to the IT systems - now being degraded - materialize, preventing them from contributing to reducing on-board breakdowns.



Another very popular mode of action is the spoofing of the GPS⁸ signal through ground stations - that can also take advantage of the differential GPS systems ashore (which use the platforms of many lighthouses) that have been designed to improve the accuracy of that positioning system - as reported in 2018 in the Eastern Mediterranean, the Black Sea and the Persian Gulf.

In 2019, "aggressive" spoofing of the GPS signal in 20 coastal areas of the PR of China, including the ports of Shanghai, Fuzhou (Huilutou), Qingdao, Quanzhou (Shiyucun), Dalian, and Tianjin was reported⁹ by several entities and in particular by the US Coast Guard. The November 2019 MIT Technology Review magazine featured an article on this phenomenon, where the analyst Bjorn Bergman evaluated a substantial amount of information contained in the AIS (Automatic Identification System) of ships. In this analysis, he identified at least 20 locations close to the Chinese coast where the spoofing occurred in similar ways during 2019, some of which in oil terminals.

The organization C4ADS (Center for Advanced Defense Studies), based in Washington DC, also found that the spoofing of the signal was maintained for some time in those same areas¹⁰.

These occurrences were more persistent in the port of Dalian, in northern China, next to North Korea. It can be suspected that, given the chosen moment - when the US sanctions prohibiting the purchase of Iranian oil were in force- and it was proved, by third parties, that China had received that product, it would have been an operation to avoid the exact location of the ships involved in the oil transfer. In other cases, the spoofing of the GPS signal may also be related to important official visits, a resource also used by Russia to protect (i.e., cover up) official VIP visits.

This type of "mass" spoofing is easier to detect in coastal areas where there is a wide availability of AIS data provided by terrestrial or satellite channels, and may be caused by the spoofing of a satellite signal and another type associated with a land station or device.¹¹

⁸ The Global Positioning System (GPS) is a satellite navigation system designed to indicate the position of a mobile receiver from the simultaneous reception of at least three satellites. Two such systems are in operation: The North American GPS and the Russian GLONASS. However, two other systems are being launched: the European Union GALILEO and the Chinese COMPASS (or Beidou-2). The North American system is managed by the United States Government and began to be used exclusively by the military (however, the accuracy of the encrypted system for military use, namely, to aid in the direction of cruise missiles, was maintained). Its civilian use can quickly be altered or even lead to its blocking in periods of tension or crisis, including giving incorrect positioning information ("spoofing" from an internal source), as can happen with the use of differential GPS stations (which are able, in normal operation, to increase the accuracy of the geographical position of the receiver) for the introduction of errors in the positioning of the vehicle. GPS spoofing is the deliberate introduction of signals in the mobile receivers by other stations and which aims to indicate a wrong geographical position. This GPS spoofing signal usually coincides with unauthorized access to the IT systems that seeks to hide the user's true identity.

⁹ See the article by Goward, Dana A., "Patterns of GPS Spoofing at Chinese Ports", MAREX, in *Daily Collection of Maritime Press Clippings 2019-356*, pp. 31-32.

¹⁰ C4ADS is a private non-profit organization that aims to analyse and report data in a context of conflict or transnational security issues.

¹¹ See the U.S. Coast Guard's account of situations related to the spoofing of the GPS signal in <https://navcen.uscg.gov/?Do=GPSReportStatus>. See also the article in China, "The American Club", "Mass Global Positioning System (GPS) spoofing at ports in The People's Republic of China" in "Daily Collection of Maritime Press Clipping 2010-002", p. 25.



The spoofing of electronic signals goes back to the time of the "Cold War", together with jamming and counter-jamming measures, and ECM and ECCM measures (Electronic Countermeasures and Electronic Counter Countermeasures, respectively). Thus, the transmission of false radar echo to mislead the opponent on his radar console was classified as deception jamming.¹²

When the GPS system went into production, it was easy to see that its code was vulnerable to spoofing since it was an open code,¹³ reproducible by anyone, through a simulator (i.e., the spoofing of the GPS signal). Naturally, this was the reason for the GPS system to also transmit an encrypted military signal (the so-called "P (Y) code"), in addition to allowing much higher precision in the conduct of military operations, particularly directing weapons.

However, as the GPS system started to have a universal civilian use, the vast majority of receivers are not capable of receiving coded signals and the development of coding for civilian purposes is not easy to harmonize and decide for system management. However, there are currently vulnerable critical infrastructures that should deserve special attention regarding the reception of GPS signals, particularly regarding the vehicles that use them daily¹⁴.

It turns out that the exponential growth in the market of certain specific transmitters (acronym SDR – "Low Cost Software Defined Radio") has currently made spoofing available to anyone who can simulate satellite transmission on the very same frequencies and signal characteristics. The time when communication frequencies with satellites were only available to the military is long over... and there are even instructions on the Internet on how to spoof the radio control signals of drones.

These new threats clearly demand a reflection on how to approach "safety at sea" because, on one hand, the traditional divisions between "safety" and "security" are not closed and are mutually influential and, on the other, they themselves demand the consecration of a new instrument that fits them and also benefits from the strategic (and sovereign) thinking of States regarding the "use of the sea".

Although the concept of "safety at sea" is not a new one, the role of the maritime environment in the safety of States today assumes a strategic relevance that has been reinforced since the beginning of this decade, in an increasingly holistic view, particularly at European Union level¹⁵. In fact, it is "over the sea and in the ports" that most of the

¹² See <https://www.gpsworld.com/spoofing-in-the-black-sea-what-really-happened/>. It happens, however, that what was restricted to the military field - list of threats, contingency plans, timely detection and cancellation/limitation of damages - is now shared by the entire society. Therefore, it is necessary to face a new reality, especially in the scope of the so-called soft kills, i., e., the use of equipment and systems that neutralize threats without physically destroying them through, namely, their disruption and that should also be used outside the strictly military field.

¹³ See Kaplan, Elliott D., and Hegarty, Christopher J., "Understanding GPS Principles and Applications", 2nd Edition, ARTECH HOUSE, Boston-London, Norwood, MA, USA, 2006.

¹⁴ To mitigate this situation, the European Union, within the framework of the GALILEO system, will provide a set of additional services, called Public Regulated Services (PRS), which aim to provide, to state entities and providers of essential services and critical infrastructure, a signal of geolocation more resistant to spoofing and jamming.

¹⁵ See Pedra, José Rodrigues, "A União Europeia e a Segurança no Mar", in Cajarabille, Victor Lopo and others, "A Segurança no Mar – uma visão holística", Mare Liberum, Aveiro, 2012, pp. 143-162. The author makes a brief reference to the concept of "Security at Sea" based on the work of Grove, Eric, "Maritime Strategy



trade essential for the well-being of the population is to be found, with special reference to the imports of hydrocarbons (or energy sources in general) and as an alternative to land-based assets.

It is, therefore, desirable that the conceptual paradigm is progressively changed and expanded, i.e., on one hand, traditional maritime safety will have to be strengthened with measures to protect against illicit and disruptive attacks and, on the other, in legal terms, the "excusable" or "negligent" conduct of the crews should be less and less applied in view of the existing regulations - which include codes of good practices - and the serious consequences that can result from them. Those measures have a precautionary or preventive nature, but also reactive features, both in limiting the damage and in adopting alternative procedures provided for in contingency plans.

This approach will necessarily have consequences regarding the characterization of the reaction to and the combat of serious maritime accidents (such as, for example, oil spills in the jurisdictional spaces of a State), which is considered to have a strong security component since its origin, i.e., considering "wilful" (and not "negligent") the conduct of the crew that violates the rules of maritime safety resulting in the creation of a "danger" or "damage", legally qualified as "serious".

So, it looks that by extending the "malicious" conduct of the agent (and by reducing the "negligent" acts which, at times, exonerated or limited the liability of agents and companies), the way for the great majority of large maritime disasters is paved. This includes, for example, oil spills from ships, which will be considered from their origin an event in the scope of "security" and, consequently, as an increased regulatory role within the scope of the States¹⁶.

and European Security", London, Brassey's, 1990, which, reminiscent of the nuclear deterrence strategy of the Cold War, refers to the importance of the sea for European security. However, it is with the presentation of the Maritime Strategy for the Atlantic in 2011, together with the Green Paper for European Integrated Maritime Policy and the European Integrated Maritime Policy that this strategic perspective for the use of the sea is reborn. More than the value of communication and transport, the sea is a source of essential resources and an indispensable means for the control of activities on land with the very projection of power and defence in advance and "in depth" that are essential to assert the European interests. See Pedra, José Rodrigues, *op. cit.*, pp. 149-155. On the other hand, this strategic relevance has also emerged as a result of the impact that the exploration and exploitation of marine resources have impacted progressively in the economies of States, faced with the growing scarcity and limitation of access to terrestrial resources. This situation has placed on the international agenda the countries' disputes regarding the delimitations of the contiguous seabed and the candidacies for the extensions of the continental platforms. Among others, see Duarte, António Rebelo, "Políticas e Estratégias Marítimas da Europa e de Portugal", Cadernos Navais, no 48, April-June 2018, Centro de Estudos Estratégicos da Marinha, in www.marinha.pt.

¹⁶ At this point, it is appropriate to invoke a matter that also initiated its doctrine in Criminal Law and which, later, moved into the domain of International Law. It was about, in the criminal sphere, to legitimize, for example, the action of a severely disabled person (i.e., paraplegic) when he knew, with almost absolute certainty, that someone would come and murder him in the place where he was alone and without access to any contacts. And the question was whether it would be legitimate for the putative victim to neutralize the agent, shooting him in advance before entering the place where he was (for example, through a window). This example shows the difference, in International Law, between the "preventive" attack and the "preemptive" attack, legitimizing, in the latter case, the anticipated intervention in face of the intention (and evidence) of an imminent attack. Thus, the "preventive" attack falls to have legal legitimacy, given its arbitrariness and placed at the service of an "right of force" of impossible scrutiny, aiming only at pursuing a strategy to avoid changes in the balance of power that could favour the adversary. According to article 51 of the Charter of the United Nations, the "right of self-defence" is only recognized in the case of an armed attack and, with that extension, an attempt was made to include the intention of "armed attack". Now, in this case, the "imminent attack" (or to put it another way, the "real threat") exists from the moment



II. The influence of national security and sea environment on the concept of "Safety at Sea"

The word "security" has numerous meanings, albeit with a common sense, both within the scope of the activity itself and with regard to the result: *the protection (or guarantee) of a certain right or asset in the face of risks or obstacles that they come across*. This means that, in the absence of obstacles to its exercise, it is unnecessary to adopt additional guarantees¹⁷.

Several security classifications can also emerge according to different criteria, namely, the protected subject (or target entities), the assets or materials to be protected, the territorial scope of intervention, the structures that ensure it and the intensity of the disturbance carried out (i.e., the effect of threats, risks and dangers on said assets or rights)¹⁸.

In addition to these criteria, "security" can also appear on several other forms – in conjunction, sometimes, with the word "safety", but really with a "protection" sense – depending on its specific object¹⁹, including energy security, safety at sea, maritime safety, air safety and transport safety. In this small list, it is a question of delimiting security depending on the activity carried out, which, in some cases, involves different transport segments (land, river, sea and air) and, in others, certain essential equipment and networks that interconnect them (energy security and cybersecurity, for example).

The security activity that is projected in the territorial scope of action of the resources in a given State must obey an upper spatial and material dimension called "national security" (alongside local, regional, international and global security). This concept arose in defence matters, prevailing the word "security" or "protection" against wilful and illegal acts.

It is clear that, nowadays, traditional "national security" is no longer just prosecution against criminal acts, but also embraces the prevention and solution of natural risks, within the scope of civil protection, increasing it in the sense of "safety" without, however,

the ship's IT systems connect to the outside and, thus, it will be up to the Flag State to update its regulations and procedures to take into account the "preemptivity" of the exercise of the ship and the company. See, *inter alia*, Santos, Sofia, "Defesa preemptiva" e "Defesa preventiva" in Gouveia, Jorge Bacelar and Santos, Sofia (coord.), "Enciclopédia de Direito e Segurança", Almedina, Coimbra, 2015, pp. 102-105.

¹⁷ See Gouveia, Jorge Bacelar, "Direito da Segurança Cidadania, Soberania e Cosmopolitismo", Almedina, Coimbra, 2018, pp. 89 and following. The author supports the concept of a new branch of law: Security Law, and its dogmatic roots and autonomy and the analysis of State and international security entities that emerged. "Security Law" is defined as the "system of legal rules and principles that define the organization and functioning of security structures, establishing their powers and limits, with a view to protecting the fundamental legal rights and assets of citizens and political communities" (up to p. 119). This article is being framed on it, especially since in the future we will seek to "let go of the ropes and lines of the "new" Maritime Safety Law – that should embrace the security matters (as SOLAS Convention did with the ISPS Code). In our point of view, this is the moment to "grant" it its autonomy, in confrontation with the "Law of the Sea" and with "Maritime Law". However, the maritime world has started with the "safety" concept (rather than "security") and so it is easier to keep the word "safety" but now including "security" matters.

¹⁸ *Ibidem*, pp. 90-91.

¹⁹ *Maritime Law* deals with a specific object (the activity of maritime transport) within the scope of Commercial Law, which is more general but has not diminished its classification as a branch of Law. See also *ibidem* pp.93-96.



neglecting its "supra-state dimension, in line with the magnitude of the risks of terrorist attacks that are no longer national, localised, public and with conventional weapons, thus reinvigorating it in its sense of "security"²⁰. Thus, "national security" is associated with national defence which, of course, interacts with political and strategic options above "security at sea" itself.

The concept of "national security"²¹ embodies a strategy of the state itself traditionally focused on military threats to its border or other unconventional threats, such as climate change and global economic and financial crises, including those of a hybrid nature which, in the maritime domain, can have quite different implications²². For there to be a minimum definition of "national security", a relationship with the strategy is required

²⁰ *Ibidem*, p. 96.

²¹ In the Portuguese legal framework, the concept of "National Security" was not formally defined. However, regarding doctrine, see Gouveia, Jorge Bacelar, "*Direito da Segurança Cidadania, Soberania e Cosmopolitismo*", Almedina, Coimbra, 2018, pp. 92 and following and Couto, Abel Cabral, "*Elementos de Estratégia, Volume I*", IAEM, Lisbon, 1988, pp. 172 and following. See also Garcia, Francisco Preença, "*Defesa Nacional*" in Gouveia, Jorge Bacelar and Santos, Sofia (coord.), "*Enciclopédia de Direito e Segurança*", Almedina, Coimbra, 2015, pp. 99-101. This author discusses the difference between the concepts of National Defence and National Security, proposing that the latter be adopted "resulting from a set of state policies duly articulated, in the military aspect but also in other sectoral policies such as the economic, cultural, and educational system, which includes coordinated actions of internal and external security, whose frontier is currently blurred". On the blurring between internal and external security, see Santos, Ana Miguel dos, "*Uma segurança interna cada vez mais europeia? Uma segurança externa cada vez mais nacional?*" in RDeS - Revista de Direito e Segurança, Ano VI, Jul-Dec 2018, pp. 27-51, Guedes, Armando Marques, "*Segurança externa*" e "*Segurança interna*", in Gouveia, Jorge Bacelar and Santos, Sofia (coord.), "*Enciclopédia de Direito e Segurança*", Almedina, Coimbra, 2015, pp. 411-418 and 425- 431 and Lourenço, Nelson, "*Segurança interna*", *ibidem*, pp. 431-433. Regarding the concept integrated in the Constitution, see Gouveia, Jorge Bacelar, "*Direito Constitucional da Segurança*", *ibidem*, pp. 13-136. We chose this collection as it started to conceptualize "safety at sea", which should cover "matters of maritime safety and maritime security and, in spatial terms, on ships and ports." (p. 435) in the article "*Segurança no mar*", *ibidem*, pp. 433-439. However, the "Strategic Concept of National Defence" (CEDN), approved by Resolution of the Council of Ministers no. 19/2013, of 21 March, although based on the concept of "national security", includes very important elements on the relevance of the sea in this context, considering, namely, that "as a strategic asset, the sea must be integrated in a broad perspective of national security and defence". Another component that may influence "safety at sea" concerns the definition of sectoral strategies. At national level, the "National Strategy for the Sea for the period 2013-2020" (ENM), approved by Council of Ministers Resolution no. 12/2014, of 23 January, emphasizes the use and preservation of the sea as a national asset, which reinforces the strategic relevance of "safety at sea". See note 13. The new National Strategy for the Sea - ENM 2021-2030 (in <https://www.dgpm.mm.gov.pt/enm>) is currently under public discussion - of which the following framework is cited on pp. 3-4:

"Portugal started to monitor the economic relevance of the Sea in its national economy through a Satellite Sea Account, which resulted from a protocol between the National Statistics Institute (INE) and the Directorate-General for Sea Policy (DGPM) signed in 2013. According to estimates by the European Commission, in 2018, gross added value (GVA) in the blue economy represented 3.2% of the GVA in the national economy. The employment value generated represented 5.5% of national employment. These figures are among the highest in EU Member States. The sustainability of the blue economy depends on the conservation of the marine environment, and the services of its ecosystems, as well as the safeguarding of the maritime cultural heritage. The National Maritime Spatial Situation Plan, the Strategic Guidelines and Recommendations for the Implementation of a National Network of Marine Protected Areas approved in 2019, as well as the assessment of the Good Environmental Status of Marine Waters recently reported in compliance with the Marine Strategy Framework Directive, represented important milestones to ensure our commitment to the defence of marine ecosystems and nautical and underwater cultural heritage. Portugal should definitely assume the competitive advantages of its geostrategic position, its technological skills and its maritime tradition, minimizing administrative or fiscal barriers that prove to be harmful to it, and exercising the authority of the state at sea. The standards we set in the sustainable management of our sea will be a decisive contribution to the sustainability of the planet, in a future that we wish bluer for generations to come".

²² See The European Centre of Excellence for Countering Hybrid Threats, "*Handbook on Maritime Hybrid Threats – 10 Scenarios and Legal Scans*", November 2019.



and, more concretely, one that essentially contributes to the achievement of political-strategic objectives.²³

Accordingly, "safety at sea" - as defined above - only partially has something in common with "national security" because it continues to have a transnational aspect, regardless of the state concerned. However, it will be, essentially, the "security" requirements that can model "safety at sea" through "national security" instead of the "safety" matrices that tend to be perennial and technical, aiming at improving navigability conditions of the medium used, without prejudice to considering natural phenomena.²⁴

In fact and in the vast majority of cases, only "security" is of interest to the political-strategic framework, involving other international States or actors, which means that it falls within the scope of the sovereignty of States and their corresponding unilateral enforcement mechanisms".

In contrast, regarding "safety", maritime safety rules derive from international conventions and coercibility results from international law (or international agreements such as the MoU in the context of Port State Control).²⁵

Another component that may influence "safety at sea" concerns the definition of sector strategies. Today, it is essential to articulate the issues of the "sea" with those of the "ports", with "transportation" and "logistics", whether in a more vertical and/or transversal view of sea matters.²⁶

On the other hand, threats and risks exist in military or civil documents - because they result from the analysis of civil components (namely, of an economic, cultural, scientific, technological, or environmental nature) or in strictly military - but they have repercussions in terms of strategic policy of any maritime country and thus, ultimately, in national security.

²³ See Fernandes, António Horta., "*Conceito Estratégico de Defesa Nacional (CEDN) ou Conceito Estratégico de Segurança Nacional (CESN)? Um falso dilema*", Observatório Político, wp #43, April 2014, in http://www.observatoriolitico.pt/wp-content/uploads/2014/04/WP_43_AHF.pdf, p. 4 and following, and Branco, Carlos, "*Porquê uma Estratégia de Segurança Nacional?*", Opinião, *Expresso*, 2018-05-11. For all, Cajarabille, Victor Lopo, "*Enquadramento Estratégico*", in Cajarabille, Victor Lopo et al., "*A Segurança no Mar - uma visão holística*", *Mare Liberum*, Aveiro, 2012, pp. 21-35. See Escorrega, Luis Falcão, "*A Segurança e os 'Novos' Riscos e Ameaças: Perspetivas Várias*", *Revista Militar*, no. 2491, August/September 2009 (<https://www.revistamilitar.pt/>). This author is of great use to us because he admits that the modern concept of "threats" encompasses traditional "risks" and "threats" (p. 14). See also Duarte, António Rebelo, "*Políticas e Estratégias Marítimas da Europa e de Portugal*", *Cadernos Navais*, no. 48, April-June 2018, Centro de Estudos Estratégicos da Marinha, in www.marinha.pt. This author reinforces the development of "maritime security" under the terms of the Maritime Security Strategy, approved by the European Council on 24 June 2014, and its framework within the framework of the Common Security and Defence Policy (ESDP), with a description of the risks and threats to European maritime security, reinforcing the importance of "security" in that Strategy.

²⁴ See note 18 and the reference text.

²⁵ In Spain, the Maritime Security Committee reports to the National Security Council. In turn, in the United Kingdom, the "Ministerial Working Group on Maritime Security" reports to the "National Security Council". See "*Estrategia de Seguridad Marítima Nacional*", Gobierno de España, 2013 and "*The UK National Strategy for Maritime Security*", MOD UK, May 2014.

²⁶ The political and strategic options in terms of "Defence and Security" must be followed permanently when addressing sea matters, all the more so since the protection, inspection, prospection and sustainable exploitation of its resources require suitable means for this purpose, listing them permanently and avoiding its predation.



Having in mind the concepts of "safety" and "security" ("protection"), it is important to stress that "safety at sea" will always depend on the (global) strategy of the State²⁷, although its holistic perspective is based on the deepening of the technological conditions of activities at "sea" - in particular, in the context of maritime transport and ports - and the degree of demand in compliance with good practices and the consequent accountability of crews, companies and port operators.²⁸

²⁷ The introduction of the word "security" in conceptual documents emerges when the "strategy" based on a certain "concept" is developed. At national level, the "National Defence Strategic Concept" and the "National Defence and Security Strategy" are the main references.

²⁸ In traditional terms, "safety" is related to the minimization of "risks" (from navigation) whereas "security" aims to combat intentional "threats" - although not exclusively - starting with a simple oil spill. In other words, "security" has as its essential core the threat and the intention to cause damage and, for this very reason, it is necessary to state its human origin ("threat actors"). Rather, "safety" focuses on the "risk" of maritime activities, that is, natural or unintended events that have serious consequences and are likely to materialize (i.e., traditionally, unexpected breakdowns, natural elements, etc.).

Our challenge is to prove that, nowadays, "risk" tends to be reduced to the so-called "natural" situations, since the conduct of a ship's crew that was exposed to a "danger" or "serious" damage can, in most cases, must be assumed as a "wilful" (i.e., beyond "negligent") performance for violation - although not intentionally - of maritime safety rules. If so, it is an "upgrade" of these conducts - considered, until today, "negligent" - being assumed as "threats" and, therefore, also, a matter of "security".

Also in this field, the prevention and combat (or minimization) of damages resulting from occurrences of "security" and "safety", although with different conceptual origins, tend to increasingly overlap and articulate, in the actions, which is evident when moving towards global connections such as those that result from the fact that we live in a digitally interconnected world, whether physically or virtually, and thus permanently retaining its cybersecurity. On the website of the North American company CISA (Cybersecurity and Infrastructure Security Agency), created in 2018, it appears that one starts from the concept of "safety" to go to the one of "security" in a very simple way, stating that: "Being online exposes us to cyber criminals and others who commit identity theft, fraud, and harassment. Every time we connect to the Internet-at home, at school, at work, or on our mobile devices, we make decisions that affect our cybersecurity. Emerging cyber threats require engagement from the entire American community to create a safer cyber environment-from government and law enforcement to the private sector and, most importantly, members of the public". However, it is important to reiterate that it was the cyber threat and, consequently, cybersecurity, that came to leverage the thesis of the concentric relationship between "safety" and "security" and that a recent presentation on the repositioning of cyber threats in Operational Technologies (OT) systems - (Lisbon, at the PwC, on 5 February 2020). Its author (Rafael Maman), an Israeli expert in the area of cybersecurity who addressed the matter in a personal capacity, mentioned the following: "Corresponding to a shift in the cyber risk equation: traditional IT risks - data privacy, IP theft, etc. - are augmented by higher-order risks - to unman life, disruption of critical operations, environmental disasters, etc.(it should have as a consequence that) governments and industrial enterprises recognise the importance of OT Security for Critical Infrastructure protection and the risks involved, and initiate proactive action".

With this qualitative change in the cyber risk equation, it is increasingly important to identify the fundamental differences between cybersecurity in IT and OT, in all its dimensions - including the legal one - precisely because it is in the OT domain that the interdependencies between "safety" and "security" are more relevant, given that the OT links the cyber world to the physical one. As a direct consequence, the permanent presence of the risk of cyber-attacks to critical infrastructures and essential services (which include maritime transport and ports) implies that "security" must always be considered. In our case, the creation of conditions for safe navigation, in the present times, must always take cyberspace into account and, therefore, the representative figure that is proposed, consisting of two concentric circles in which the central one corresponds to "safety". In this light, Rafael Maman goes even further when considering that the micro trends of cyber threats present the following evolution: "From "military-grade cyberweapons" to "industrial-grade ransomware". What used to be considered cyber warfare weapons used by the armed forces can now be used to disrupt critical industries and essential services by any actor technologically able to do it. In Maman's "The Reshaping Cyber Threat Landscape of Operational Technology", presentation at the "Conference organized by the PwC "Cybersecurity - The Challenges of Operational Technology (OT)", Lisbon, 5 February 2020.

On the other hand, since the beginning of the century, the vast majority of incidents of appreciable size in sensitive industries have deliberate attacks (cyber and other), collateral damage from attacks or the poor functioning of systems as associated causes, not being possible, in most cases, to isolate sources according to the traditional "safety/security" bipartition or, if possible, it will lose all interest due to the need for an



"Safety at sea", when encompassing those two concepts, unfolds into two types of dangers: the "threats" and the "risks" that involve the use of the sea, either in ships or in ports.

"Threats" are essentially of two kinds: generic offenses at sea and specific offenses that influence freedom of navigation. The first includes, in particular, trafficking in narcotic drugs and psychotropic substances, general and arms smuggling, the proliferation of weapons of mass destruction, the illegal exploitation of marine resources, the platform or underwater cultural heritage, attacks (including pollution) and illegal immigration. The second includes terrorism, piracy, cyber-attacks on information systems and other criminal activities classified as such by international law.

In turn, "risks"²⁹ tend to be accidental or natural and identify mostly (but not exclusively) with "maritime transport security" and "port security". The potential associated damage (or the condition of creating a "hazard") can affect ships and vessels, people on board, platforms or infrastructure at sea (and, equally, aircraft and submarines) and the environment in particular through pollution accidents.

This tendency to associate "safety" (in the strict sense) with "risks" and "protection" with "threats" has the great advantage of being able to learn from areas that, until recently, evolved autonomously and that the 9/11 forced to be closely associated. This resulted from the need to adopt measures applicable to ships and port facilities in the scope of "protection" and to identify security threats and take of accident prevention measures, which started to take place, cumulatively and in coordinated from, in accordance with the ISPS Code³⁰.

Another circumstance that occurs with the deepening and development of maritime safety rules - translated, in essence, into the relevant IMO conventions - concerns the progressive exhaustion of exemption clauses and limitation of liability in maritime

integrated response. See <https://www.csis.org/programs/technology-policy-program/significant-cyber-incidents>.

For this reason, the intention is not only to prove that the crew conduct that violates the rules of maritime safety and causes a "danger" or "damage" qualified legally as "serious" falls within the scope of "wilful misconduct", and within the representation by two concentric circles.

The traditional division between neutralizing threat agents ("security") and helping to contain negative consequences ("safety"), in our opinion, may contribute to a common and consolidated plan that will form part of the maritime safety rules aboard, no matter their different origin or the measures to limit damage. The European Security Strategy and the Report on the Implementation of the European Security Strategy also highlight a set of "threats" with implications for the use of the sea, including illegal activities, organized crime, piracy, terrorism, proliferation weapons of mass destruction, regional conflicts, fragile States, maritime pollution, energy security and climate change. This means that this focus is essentially on "security". See <http://www.consilium.europa.eu/uedocs> (search for the respective titles). On the contrary, the EMSA (European Maritime Safety Agency) performs activities within the scope of "safety" and it is for this reason that it is nevertheless invoked in a common and broad perspective of "safety" (i.e., "safety" plus "security").

²⁹ A "risk" is the product of the probability of the occurrence of a threat (or damage) by the severity (or intensity) of its effects. Traditionally associated with "safety", the ship's rules compliance hamper applying a waiver clause to any crew's conduct that violates the rules of maritime safety with serious consequences. The origin of these concepts is rooted in international law and, more specifically, in conflict resolution theory. In a succinct way and in this context, "threat" corresponds to a circumstance or event that endangers the pursuit of political and strategic objectives and "risk" is perceived as the degree of exposure to the threat in question.

³⁰ The acronym ISPS designates the "International Ships and Port Facilities Security Code" that constitutes chapter XI-2 of the SOLAS Convention since 2002.



transport contracts (and conventions) that allow, for example, a carrier to discharge its liability whenever proceeding without a wilful misconduct. As a paradigmatic example, there is the "nautical fault" in international conventions on maritime transport that exonerates the carrier for damage to the cargo (at least, since the 1920s).

It means that the progressive technological requirements and good conduct for safe navigation (i.e., the rules on "maritime safety") make the circumstances initially considered to be "negligent", much more restricted in the scope of civil liability (contractual and in tort), including those present in oil spills³¹.

Accordingly, compliance with maritime safety standards, while minimizing "risks" (and errors), reinforces fighting "threats" and, at the same time, limits enforcing the exemption and liability limitation clauses present, for example and among others, in the conventions on pollution resulting from oil spills and in those concerning the maritime transport of goods³².

It is understood, therefore, that the broad notion of "safety at sea" (or "maritime safety" in the wide sense which is, in fact, one of the most common expression nowadays) must rule the material aspects of (maritime) safety (in strict sense) and (maritime) security and, in terms of its spatial range, focusing on ships and ports³³. Particularly, in terms of the object, "safety at sea" – in both aspects – covers maritime transport – in which the focus is the "ship" and her movement – and ports – which essentially rules the safety in

³¹ This matter was defined as falling within the scope of "security", even in its origin, since, in the assessment made, in most cases with serious consequences, it results from a "wilful misconduct" of the crew.

³² The "nautical fault" as an exemption (or waiver) clause is provided for in clause a) of paragraph 2 of article 4 of the International Convention for the Unification of Certain Rules of Law relating to Bills of Lading Knowledge, signed in Brussels on 25 August 1924 – known as "The Hague Rules". It specifically refers that the clause only applies to "Acts, neglect or default of the master, mariner, pilot or servants of the carrier in the navigation or in the management". Thus, if the "nautical fault" consists of a violation of the essential rules of maritime safety (in a broad sense), it can hardly justify the exoneration of the carrier/shipowner for damage to the cargo.

It should be noted that according to tort's doctrine and in accordance with the current conventions – particularly under the 1969 Liability Convention for Damage Due to Oil Pollution (Civil Liability Convention 1969 or CLC/69) and its 1992 amendment (CLC/92) – the owner of the ship is responsible for a navigation error that led to the vessel being stranded and the subsequent oil spill (case of the M/V "Exxon Valdez" with the spill of about 38,000 tons of crude on the Alaskan coasts). In fact, Article V/2 of the CLC/92 establishes that the owner can lose the ability to limit his liability as long as the damage due to pollution results from an action or omission attributed to him "committed with the intention of causing such damage or recklessly and in the knowledge that such damage could occur". This formula is very close to that used in paragraph 5 (e) of Article IV of the Visby Protocol of 1968 ("Visby Rules") to the Brussels Convention of 1924 referred to, which removes the limitation of liability if the action or omission had the intention of causing damage or was done recklessly and with the knowledge that damage would probably take place. It is a form not covered by "negligence act" but by a "wilful misconduct". See Coelho, Carlos, *Poluição Marítima por Hidrocarbonetos e Responsabilidade Civil*, Almedina, Coimbra, 2007, p. 86 and following.

In conclusion: it is understood that wilful misconduct in the violation of the rules of maritime safety should remove the benefit of the exemption clause "nautical fault" by the carrier/shipowner.

In our work *"O Contrato de Volume e o Transporte Marítimo de Mercadorias – Dos granéis aos contentores, do "tramping" às linhas regulares"*, Coleção Teses, Almedina, Coimbra, 2018, p. 73 and following, note 80, we have opened the discussion regarding this position although, at that time, without the generalization that we have made here.

³³ In terms of "value chain", the possibility of also covering agents and operators with responsibility in the logistics area is not ruled out as their performance is directly related to the information and communication systems, such as the Portuguese ports that use the modern "Port Single Window" (a "one stop shop" asset) or its upgrade, the new "Logistics Single Window" that now covers dry ports and land and logistic operators as well as freight forwarders.



areas under port jurisdiction, covering the various terminals, the adjacent land area and the contiguous wet area.

The "safety of maritime transport" (or "maritime safety in the strict sense") involves the set of measures in force for a safe navigation by ships, i.e., the conditions on board (qualification of the crew, stowage and cargo handling and, in general, the navigability conditions of the ship and its equipment), the navigation aid systems or the safe navigation in coastal waters, including, the ports.

On the other hand, "maritime transport protection" and "port protection" depending on the object - involve all physical safety³⁴ and other measures applicable in the area under port jurisdiction, regarding the ship's crew and passengers and other employees who operate in the ports, as well as the ships as carriers. Those measures are intended to secure normal trade activity according to the applicable technical rules³⁵.

III. The modern perspective of defence against cyber-attacks in the maritime sector

Therefore, it is expected that the contents of an autonomous "Maritime Safety Law"³⁶ should take into account both vectors of "safety" and "security", for several reasons: first, "safety" is the oldest³⁷, the most stable and the one that is dealt with in most IMO conventions; then, because the interpenetration between the two concepts is increasing; thirdly, because there are translations that no longer go back (the case of "cybersecurity"); and finally, because, nowadays, the two vectors tend to present themselves as two concentric circles - the "safety" (more interior) and the "security" that surrounds it.

³⁴ From this point of view, there is also the need to certify personnel who interact with IT systems according to the type of ship, ports of origin, type of goods, i.e., according to the standard of risk assumed for the ship, as it is done today to comply with maritime safety conditions in which, for example, the conditions for the replenishment of bunkers (fuel for ships) by barge in ports are evaluated.

³⁵ The Diplomatic Conference of the International Maritime Organization (IMO), meeting on 12 December 2002, amended the SOLAS Convention ("Safety of Life at Sea"), and adopted the International Ship and Port Facility Security Code (known as "ISPS Code"), which came into force on 1 July 2004. This new Code is an expression of the value of "protecting" maritime transport, terminals, and ports. It has been clarified that the SOLAS Convention includes several specific codes aiming at standardizing safety management on board (the case of the ISM Code - International Management Code for the Safe Operation of Ships and for Pollution Prevention, from 1992) or aimed at the rules for the investigation of maritime accidents or incidents (the CIA or Accident Investigation Code) that aggregates a set of IMO resolutions, with special reference to Resolution A.849 820) of November 1990 - which establishes the rules for the investigation of human factors in accidents and Resolution MSC.255 (84), of 16 May 2008, which contemplates the rules and recommendations to be adopted in investigations of maritime accidents or incidents.

³⁶ The autonomy of Security Law as a branch of law was defended by Gouveia, Jorge Bacelar in the work "*Direito da Segurança Cidadania, Soberania e Cosmopolitismo*", Almedina, Coimbra, 2018. In this work, in particular in the second part, which refers to the "explanation of Security Law as a new legal sector and in the context of the respective sources" (p. 17), the author takes a path which, to some extent, may make it difficult to "search some more complex points in depth" (p. 15). However, it was its scope and the innovative approach that, in our opinion, led to the emergence, among other special areas, of Maritime Security Law as a branch of Security Law and to cut off the old ties with the traditional law of the sea and maritime law.

³⁷ It is important to clarify that if it starts from an imminent commercial perspective, i.e., to establish the activity of maritime transport, it is necessary, in the first place, to use technologically safe assets. Only after that, it the importance of threat control can be assessed. Of course, in certain circumstances, it can be reversible, securing the aim of the minimum capacity for employing the assets.



In fact, the latter can strengthen (or weaken) the one at the centre³⁸, in a constant dialectic and interaction.

This proposed structure is in line with an increasingly present finding: "security" incidents can have serious consequences in terms of "safety", which means that it is necessary to consider security procedures as essential to prevent those incidents from having a serious impact on the "safety" framework, even including them in the mandatory international maritime safety management codes.

However, the strengthening of the importance of "security" did not affect, in conventional terms, an upgrade and revision of concepts, and, after all, such position was not expected. In fact, the SOLAS convention has begun its long journey in 1914, with an essential aspect of maritime safety together with the safety of human life at sea (which, incidentally, comes from its acronym SOLAS - Safety of Life at Sea), having embraced new subjects (the ISPS Code, for example), and the autonomy of others (for example, the case of the COLREG convention, which, in 1972, approved the Regulation to Prevent Collisions at Sea).

Thus, Maritime Safety Law, within the scope of International Law, has its own essential sources on the specific IMO conventions that are based on the traditional classification of "safety", gradually extending its regulation to "security" – as it happens with the ISPS Code annexed to the SOLAS Convention or, autonomously, with the SUA Convention³⁹.

This instrumental expansion of the traditional safety matter to maritime security (or "protection") will give response to the new risks and threats at sea and ports, which, however, still face the regulation difficulty in clear areas of the exercise of the sovereignty of States that traditionally would conflict with international law.

It is understood, however, that the new security environment requires a progressive capacity for harmonization and cooperation, including the employment of assets. Given the global dimension of risks and threats, this approach is of utmost importance. This is what happens currently with "maritime cybersecurity"⁴⁰, which is increasingly more important for ports, maritime transportation and assets.

³⁸ This means that "security" ("cyber") incidents can give rise to "safety" incidents, in a continuous interaction that should not be seen in an up and down approach. Thus, we are getting closer to the evolution of NATO's traditional "naval defence" mission towards a broad notion of "maritime security", whereby it is intended to "prevent the use of the sea for illegal activities and ensure freedom of navigation" cf. Pereira, Luis Sousa, "A NATO e a Segurança no Mar" in Cajarabille, Victor Lopo et al, "A Segurança no Mar -uma Visão Holística", *Mare Liberum*, Aveiro, 2012, p. 132. Our concept is not limited to the perspective of "naval defence" and requires a very significant "safety" component in the strict sense. However, for example, the Portuguese translation of NATO documents, such as the "Maritime Security Operations Concept" makes - once again - the term "security" correspond to the word "segurança" (and not "proteção"). In a recent paper (dated 30 August 2019), entitled "Polemologia da Segurança Marítima - Golfo da Guiné como estudo de caso" ("Maritime Security Polemology - Gulf of Guinea as a case study") (unpublished), written by Commander Luis Cuco de Jesus, within the scope of the Doctoral Degree in Law and Security of the Nova School of Law (Lisbon), this author uses the words "maritime safety" in order to elect legal mechanisms to suppress new threats at sea, which means that the proposed framework occurs, essentially and strictly, within the scope of "security".

³⁹ *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation*, 1988.

⁴⁰ Which, in fact, should be designated in Portuguese as "ciberproteção marítima" because it is a matter of "security". See also the article by Marques, António Gameiro, "Cibersegurança no Setor Marítimo", in *Revista de Marinha*, no. 1004, Jul-Ago 2018, pp. 30-32. The author approaches this matter in a pioneering way, examining the developments in the European Union and the recently approved laws regarding cyberspace.



Accordingly, the interconnection between a security incident and a safety incident, including the impact of the former on the latter, is, in this context, a real probability, since it is not difficult to predict that spoofing in the ship's geographical position leads to deviation and the consequent stranding or collision.

In 2002, the ISPS Code recognized the role of port structures (terminals and ports) in the context of maritime protection and established mandatory requirements and recommendations applicable to ships and those facilities. However, the requirements may also cover cybersecurity measures relating to access control and certification of authorizations⁴¹.

In fact, the ISPS Code requires terminals drawing up the so-called "Port Facility Security Assessment" (PFSA), which identifies structures and equipment, possible threats and countermeasures and the "Port Facility Security Plan" (PFSP), which identifies the procedures, measures and actions to be carried out at different alert levels. The PFSA must address the following aspects: physical safety, structural integrity, personal protection systems, procedural policies, radio and telecommunications systems - including computer systems and computer networks - and relevant transport infrastructure. The PFSP specifies conditions for access to infrastructure, restricted areas, cargo handling, delivery of supplies to ships, and monitoring of infrastructure protection conditions.

Also the SOLAS and FAL Conventions (Facilitation on International Maritime Traffic) define nine standard forms to be used in the exchange of information in the maritime ecosystem, especially between ports (or terminals) and third parties that have been mandatorily processed by electronic means since 9 April 2019, especially through the use of "single window systems" (or "one stop shop"). It is the standardization of information exchange that has a strong impact on IT systems and poses new challenges.

Regarding cybersecurity for the maritime "ecosystem", special for ships, it was not until 2017 that international recommendations begun to be more abundant.

The *IMO Facilitation Committee (FAL)* and the *IMO Maritime Security Committee (MSC)* wrote the action lines in risk management of maritime cybersecurity in the document MSC-FAL 1/ Circ.3⁴². Both structures recognize the urgent need to raise awareness of the threats and vulnerabilities of marine cyberspace and to make high-level recommendations for the management of cyberspace risks in relation to current and

See also, by the same author, "A Segurança do Ciberespaço em Portugal e no Setor Marítimo", *Cadernos Navais*, no. 52, April-June 2019, Centro de Estudos Estratégicos da Marinha, in www.marinha.pt. Regarding the concepts of cybersecurity and information security, see Santos, Lino, "Cibersegurança" e "Segurança da informação" in Gouveia, Jorge Bacelar Gouveia and Santos, Sofia (coord.), *op. cit.*, pp. 63-67 and 422-425. This author states that "cybersecurity can be seen from two perspectives, regardless of whether the object of cybersecurity is the State, organizations or individuals: the security of cyberspace (in the physical sense of it as an autonomous entity) and the security of the "cyber" component of any system (cyberspace security of that system)" (p. 63). For its part and according to the same author, information security is indispensable to "guarantee confidentiality, integrity and availability of information at all times" (p. 422).

⁴¹ See, more recently, the document ENISA ("European Union Agency for Cybersecurity"), *Port Cybersecurity - Good practices for cybersecurity in the maritime sector*, Nov. 2019, ISBN 978-92-9204-314-8, DOI 10.2824/328515.

⁴² See "Guidelines on Maritime Cyber Risk Management" (MSC-FAL.1/Circ.3) in [http://www.imo.org/en/OurWork/Security/Guide_to_Maritime_Security/Documents/MS-C-FAL.1-Circ.3%20-%20Guidelines%20on%20Maritime%20Cyber%20Risk%20Management%20\(Secretariat\).pdf](http://www.imo.org/en/OurWork/Security/Guide_to_Maritime_Security/Documents/MS-C-FAL.1-Circ.3%20-%20Guidelines%20on%20Maritime%20Cyber%20Risk%20Management%20(Secretariat).pdf).



emerging threats and vulnerabilities, including key areas that are considered essential to support cyberspace management (identify, protect, detect, respond and recover).

These action lines constituted the basis for distinguishing between IT systems (information technologies, i.e., use of data as information) and OT (operational technology, i.e., IT systems are increasingly linked to the OT of companies, which requires a new management perspective in the use of data to control or monitor physical processes, in a constant and bidirectional cyber-physical interaction). They reveal that all organizations in the shipping industry are different and that the role of governments and Flag States in their regulation is essential. These should also be guided updated recommendations of the most relevant international instruments and good practices, aiming at the improvement of the protective measures.

It was up to each State to take the measures considered to be most appropriate, in an environment far from the progressive uniformity required by the global connection of the systems.

At European Union level⁴³, the important role of its specialized agency (ENISA - "European Union Agency for Network and Information Security") on the maritime sector has begun in 2011 with the publication of the report on maritime cybersecurity⁴⁴.

This document characterized the systems that the maritime community uses. In general, they are highly complex, with different technologies, numerous manufacturers and a huge dispersion of nationalities. It turns out that issues associated with security (or protection in order to prevent intrusion and disruption) are, generally, considered negligible, increasing the risk of cyber-attacks, amplified by easy connections to the Internet without adopting good practices.

But even more serious was the lack of capacity to deal with both incidents and even cyber-attacks, denoting a complete lack of coordination among the various actors in the maritime-port sector.

In general terms, future chapters of the SOLAS Convention regarding "security" may include actions to respond to cyber-attacks, particularly when part of the general measures for the protection of ships, ports and personnel.

In this regard, the following Community legislation deserves special mention:

- Regulation (EC) No. 725/2004 regarding the enforcement of the ISPS Code for ships and port structures;
- Directive No. 2005/65/EC regarding port security;
- Regulation (EC) No. 336/2006 on the enforcement of the ISM Code (*International*

⁴³ Page 3 of the European Union's Maritime Safety Strategy of 24 July 2014 reads: "Maritime security is understood as a state of affairs of the global maritime domain, in which international law and national law are enforced, freedom of navigation is guaranteed and citizens, infrastructure, transport, the environment and marine resources are protected". This paragraph also contains the idea of the 2 concentric circles that correspond to "safety" and "security", that is, the guarantee of freedom of navigation in safe conditions for citizens, for infrastructures, for transport, the environment and marine resources. See COUNCIL OF THE EUROPEAN UNION, Brussels, *European Union Maritime Security Strategy*, 24-06-2014, doc. 11205/14.

⁴⁴ <https://www.enisa.europa.eu/news/enisa-news/first-eu-report-on-maritime-cyber-security>.



Safety Management Code) for the maritime sector – that excludes, however, the ports included in the above directive; and

- Directive 2010/65/EU, which stipulates the acceptance by Member States of standard forms ("FAL forms") to facilitate traffic. This Directive also introduces "SafeSeaNet" systems at national and European Union level in the legal system, promoting secure data traffic between the maritime administrations of each state and other authorities.

Briefly, Regulation (EC) No. 725/2004 and Directive No. 2005/65/EC constitute the legal reference framework that supports the assessment and plans for the protection of ports and port infrastructure, as well as ownership and maritime carriers' companies.

Meanwhile, in 2014, the document that approved the European Maritime Security Strategy (EUMSS), revised in 2018⁴⁵, was defined as an instrument to identify, prevent and respond to any challenge that may affect the protection of Europeans, activities and means in the maritime ecosystem including ports.

The EUMSS identifies threats and risks that are embodied in "terrorism and other intentional and unlawful acts at sea and in ports against ships, goods, crews and passengers, ports and port infrastructure and critical maritime and energy infrastructures, including cyber-attacks". The 2018 version of the Strategy essentially focused on the reporting procedure with a view to improving the alert and monitoring subsequent actions.

Only after Directive No. 2016/1148 on Security of Network and Information Systems (NIS)⁴⁶ came into force, the European Union started to have legislation to harmonize

⁴⁵ See the 2014 original version in "The European Maritime Security Strategy" in https://ec.europa.eu/maritimeaffairs/policy/maritime-security_en. It is clear that strategy documents on "safety" and/or "security" issues are almost invariably translated as "safety", an argument also in favour of proposing the "new" Maritime Safety Law as covering both aspects that are increasingly interrelated and whose limits are increasingly fluid. And its 2018 version in <https://www.consilium.europa.eu/en/press/press-releases/2018/06/26/maritime-security-eu-revises-its-action-plan/>. In 2016, Regulation (EU) 2016/679 ("General Data Protection Regulation"), which was intended to protect the personal data of natural persons and their communication, also naturally covered the maritime sector, but without any specialization.

⁴⁶ This Directive was transposed into Portuguese legislation by Law No. 46/2018, of 13 August, which establishes the legal regime for cyberspace security. Meantime, last September, the European Commission launched a public consultation as part of the review process of the NIS Directive with the aim of strengthening the resilience of networks and systems against cybersecurity risks. In this context, the Directive identifies "operators of essential services", including seaports. One of the problems identified by the Commission was the lack of harmonization on the part of the Member States in identifying those operators, which was also reflected in the selected seaports (for example, whether or not smaller ports should be excluded from the enforcement of the Directive). For this reason, it is also intended to revisit the terms foreseen for "sea ports" in the definition established therein that follows: "*Managing bodies of ports as defined in point (1) of Article 3 of Directive 2005/65/EC, including their port facilities as defined in point (11) of Article 2 of Regulation (EC) No 725/2004, and entities operating works and equipment contained within ports*". One of the core issues to be considered concerns the obligation that the Directive imposes on the notification of cybersecurity incidents to the competent authorities. In our opinion, all operators that are part of a "network or system of essential services", should be covered by the Directive, regardless whether the seaport (or other network member) is large or small. Thus, the obligations carried out by an "essential services operator" should be mandatory for all, regardless of their classification as "operators".



national cybersecurity capacities, border collaboration and supervision of critical sectors within the Union.

This is the first European Union legislation on cyberspace security, aimed at increasing cooperation and creating a culture of security in sectors essential to society that rely heavily on IT.

Paragraphs 10 and 11 of the Directive are specific to the maritime sector:

"10. In the maritime and inland waterway transport sector, safety requirements for companies, ships, port facilities, ports and maritime traffic services under Union legal acts cover all operations, including radio and telecommunication systems and information systems and networks. Part of the mandatory procedures to be followed includes notification of all incidents and, as such, should be considered as "lex specialis", insofar as these requirements are at least equivalent to the corresponding provisions of this Directive".

"11. When identifying operators in the maritime and inland waterway transport sector, Member States should take into account the international codes and guidelines - current and future - written by the International Maritime Organization in order to allow different maritime operators to follow a coherent approach".

According to Article 4, paragraph 4 of the Directive, an "operator of essential services" is a public or private entity belonging to one of the types referred to in Annex II and which fulfills the criteria set out in Article 5, paragraph 2 (that is, an entity provides an essential service for the maintenance of crucial society and/or economic activities, and the provision of that service depends on information networks and systems; and an incident can have major disruptive effects on the provision of that service).

However, as regards the maritime and inland waterway transport ecosystem, the operators listed in Annex II are as follows:

- Inland waterway, maritime and coastal transport companies for passengers and goods, as defined, for maritime transport, in Annex I to Regulation (EC) No 725/2004 of the European Parliament and of the Council, not including ships operated by these companies;
- Port management entities within the meaning of Article 3, paragraph 1 of Directive No 2005/65/EC of the European Parliament and of the Council, including their port facilities within the meaning of Article 2, paragraph 11 of Regulation (EC) No 725/2004, and the entities that manage the works and equipment existing inside the ports;
- Maritime traffic service operators within the meaning of Article 3, clause (o) of Directive 2002/59/EC of the European Parliament and of the Council.



Finally, in 2019, the "European Cybersecurity Act"⁴⁷ strengthened ENISA's position vis-à-vis Member States and defined the framework for cybersecurity certification for ICT products, services and processes, demanding compliance with certain requirements.

In addition, several Member States have strengthened the enforcement of international and EU regulations and policies on cybersecurity, developing their own initiatives to improve cyberspace risk management through national legislation⁴⁸.

IV. Conclusions

Since old times, the sea has been a path for trade and, therefore, for globalization. Nowadays, this has led to the emergence of several risks and threats that require more demanding conditions for ICT products and associated services.

Cyber-attacks in the maritime-port sector have reinforced the need to approach the new maritime safety in a holistic way, integrating the two vectors ("safety" and "security"), which rely on the national strategy conducted by each State.

Thus, we can say that "safety at sea" is balanced between two concentric circles: "safety", from a technical nature, and "security", which reinforces the protection against wilful misconduct, strengthening resilience against those acts and detecting the systems' vulnerability, evaluating, preventing and deterring the threats.

The new stage attained by the European Union on cybersecurity was achieved by Directive 2016/1148 on the Security of Network and Information Systems (NIS), a new framework able to harmonize, among Member States, their national cybersecurity capacities, border collaboration and the supervision of critical and essential sectors in the Union.

A "secure navigation in cyberspace" requires, after all, facing and defeating new "obstacles" - accidental or deliberate - where the "unruled" globalization is the true enemy. It is the new Cape of Good Hope, in South Africa, that Portuguese navigator Bartolomeu Dias has "defeated" and overcome in the 15th century.

As the Cape was turned safely then, cyberspace should also be safe, with tight regulations and new instruments, as Pedro Nunes did with the "grown latitudes" chart⁴⁹, or with

⁴⁷ <https://ec.europa.eu/digital-single-market/en/eu-cybersecurity-act>.

⁴⁸ Law "CIIP" in France - <https://www.ssi.gouv.fr/en/cybersecurity-in-france/ciip-in-france/>.
UK specific port law - <https://www.gov.uk/government/publications/ports-and-port-systems-cyber-security-code-of-practice>;
"IT-Grundschatz" Law in Germany:
https://www.bsi.bund.de/EN/Topics/ITGrundschatz/itgrundschutz_node.html;

At national level: Law no. 46/2018 of 13 August transposed Directive (EU) No. 2016/1148 and the Resolution of the Council of Ministers No. 92/2019 of 5 June into national law and established the National Cyberspace Security Strategy.

It should be noted that cybersecurity was a relevant topic on the agenda of the NATO Summit in London, in December 2019.

⁴⁹ Even, at this stage, in small-scale charts, leaving for Gerardo Mercator, later, the glory of its generalization (Mercator chart). Pedro Nunes, as the first major cosmographer of the Portuguese Kingdom, appointed in 1547, born in Alcácer do Sal, nearby Sado river and Maths Doctor in Coimbra University, played a crucial role in the development of the study of the mathematical problems of nautical cartography that became essential in the methods and equipment used in oceanic navigation by the Portuguese. He was the first to



Bartolomeu Dias' courage and expertise, looking for new knowledge and navigation techniques, a step further to beginning, then, "Globalization"!

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conceptualize the difference between a "rhumb line" (loxodromic) and "orthodromic line", i.e., the constant heading (course) line was not the shortest distance between two points. In his "*Tratado em Defesa da Carta de Marear*", he argued that a nautical chart should have parallel circumferences and meridians "drawn as straight lines". But we could mention others and, more recently, Admiral Gago Coutinho and his amazing preparation - mathematical and cartographic - for the trip of the first aerial crossing of the South Atlantic, between Lisbon and Rio de Janeiro, in 1922.



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NATIONAL SECURITY. A NEW APPROACH TO MARITIME TERRORISM IN AFRICA

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Abstract

The operational conceptualization of National Security is often identified as being diffuse and increasingly comprehensive, especially since it is currently related to the geopolitical context and the actors in reference. The conceptual analysis that we present here has as main objective to approach the concept of National Security, making a correlation with the growth of maritime terrorism in the African continent in general, having as a particular focus its incidence in its regions, framed by the debates of international relations. The central hypothesis of the work is that the approach to the phenomenon of maritime terrorism on the African continent should be treated at the level of a joint security regime between African States. In this perspective, in parallel to the conceptual framework, the central role of states in addressing the role of States in territorial security in the face of the growth of terrorist threats on the continent and the identification of the main challenges facing national security in this region of the globe, where the joint security approach among states proved to be fundamental, in order to counter the upward trend of transnational terrorism movements.

Keywords

National Security, Maritime Terrorism, Africa, Oceans.

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NATIONAL SECURITY. A NEW APPROACH TO MARITIME TERRORISM IN AFRICA¹

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Introduction

In the context of International Security Studies, following the attacks of September 11, 2001, the importance given to the topic grew exponentially, particularly in the debates on how to protect the state from external attacks, since it meant a paradigm shift, changing the dynamics of international politics and resulting in a declaration of global fight against terrorism and against all organizations that support terrorist movements.

In the African continent, with the beginning of the 21st century, terrorist movements have emerged as a threat to the security and political stability of African states. In fact, Africa today has been marked by the proliferation of terrorist groups, where the intensification of terrorist movements such as *Boko Haram* and *Al-Shabaab* has affected the security and stability of states in the region, particularly in the West and East African regions. These terrorist groups have in their agenda the destabilization of power structures in these regions, thus promoting the Islamization of these nations as opposed to Western civilization (Omuoha, 2013; Schmid, 2011).

Therefore, the approach presented here aims to deepen the debate on national security issues within the main stakeholders on issues that address the African cause in general, and national security issues in the regions of the continent, in the face of maritime terrorism, thus serving as a further element of analysis on the state of fragility of the borders of African countries, where the lethargic stance of African authorities seems evident. An approach to national security in Africa is not only a socio-political reflection on the facts, but also a vision of human development and empowerment of African nations, thus listing the main challenges in the face of maritime terrorism and pointing out some lines of action in view of the new paradigm.

In fact, the analysis will not focus on terrorist movements, but on the dynamics of national security, especially in the Gulf of Guinea, in order to confront these threats, and it will be important to understand: what should be the role of African states as guarantors of security, sovereignty, and territorial integrity in the face of growing waves of maritime terrorism? The article makes a systematic analysis, based on a bibliographic review, adopting a qualitative approach, through deductive reasoning, starting from a central

¹ Article translated by Cláudia Tavares.



objective, based on the starting question; and is structured in three points, the first being a conceptual approach, followed by an analysis of the state of continental insecurity, ending with a description of the role of African states in dealing with the phenomenon.

Conceptual approach

In order to address the concept and problem of National Security, it is important to mention the scope of International Security Studies, in the English acronym ISS (*International Security Studies*). Therefore, its interdisciplinarity covers the field of study of other sciences, namely that of International Relations, since the boundaries between one and the other sciences are difficult to draw (Buzan and Hansen, 2009: 16). However, given the goals recommended in this scientific article, the conceptualization of the themes brought here will be within the scope of International Relations, while respecting the theories of the main Schools within the framework of Security Studies, among which the *International Peace Research Institute, Oslo (PRIO)*; and the *Copenhagen School of Security Studies, based on the Copenhagen Peace Research Institute*.

The term security in its etymological origin derives from the Latin "*securus*", which means without fear, and refers us to the absence of risk, predictability, certainty regarding the future. As Philippe David says, the concept of Security has been the object of a profound conceptual renewal, considering the capacity of the State to contain the threats to its sovereignty, due to the evolution of the classic levels of analysis of national, regional, international and cooperative security, to the common, global and human security level (2001: 29-30). The concept has thus lost its almost exclusively public, national, and military dimension (Guedes and Elias, 2010: 28). Thus, according to the concept defended by Admiral António Sacchetti, the concept of National Security consists of:

"the situation that guarantees the unity, sovereignty and independence of the Nation; the integrity of the territory and the security of persons and goods; the unity of the State and the normal development of its tasks; the freedom of political action of the organs of sovereignty and the regular functioning of the democratic institutions contained in the constitutional framework" (2008:19).

It is thus understood that National Security translates the ideological complex, which aims to guarantee and protect the integrity and sovereignty of States and all the material and abstract values that represent the vital objectives of States. Therefore, the concept of National Security currently defended, in the scope of International Relations, refers to collective security, understood as an essential pillar for the maintenance of the structure of modern states and of the present World Order, encompassing the spectrum of internal security of the countries, or of a regional or continental space, in which the area of



interests of those states that are part of it is centered, thus giving rise to the notion of a security regime within international organizations².

Furthermore, in the current international order, the concept of National Security has evolved to a more comprehensive vision as a result of the complexity, instability, and insecurity of the international conjuncture, considering a greater space for cooperation and dialogue at internal and external levels.

It is thus understood that the "feeling of security" presupposes not only the concept of Defense *vis-à-vis* the outside world, but also a political-strategic vision, in which one is less insecure when the goals set that guarantee the desirable security are achieved and not only when ensuring the very survival of the Nation (Ginga, 2014).

Thus, as in other contexts, there is a greater scope for the pillars of National Security in African States, thanks also to the greater "demilitarization" of the elements that are at the base of this factor, thus overcoming the military security dimension by encompassing the economic, social, cultural spheres, among other essential fields, as to the implementation of the feeling of security of any State³ (Moreira, 2002). As Guedes and Elias argue, the concept of "Security" has become a broadband concept, as it now encompasses "the action and commitment of public institutions but also private, local society and civil society in a broader sense - as well as international institutions and organizations, be they from neighboring states, intergovernmental or other, supranational entities" (Guedes and Elias, 2010: 28).

In turn, and with regard to the resurgence of the phenomenon of terrorism in the post-Cold War order, materialized by the attacks on the twin towers, it will also be important to perceive and approach its concept, having as its matrix its typology, according to the violent act, the objectives, the actor who performs, and its motivation⁴. Terrorism is an ancient phenomenon, rooted in history and geography, which has changed over the years, varying organizational structure, *modus operandi*, area of activity, target goal, and prevailing ideology (Lousada, 2007: 20).

Therefore, to conceptualize the phenomenon and characterize its historical path to the present day, would be the most correct way to approach the subject, however, and by rationalizing space, the approach in this article will be limited to modern transnational terrorism or neoterrorism, more specifically to its maritime aspect. Thus, it is understood that the contemporary definition of the term terrorism is not only related to history, but also to the culture, policies of the nations, and the geopolitical context in question, which

² As a result of increasing globalization, the figure of the national state is losing importance, which forces us to review the systems of governance of contemporary societies, in which the public participation of citizens and the emergence of new international institutions acquire greater weight, and in the specific case of security, lead us to two essential dimensions, that of human security and collective security (Lourenço and Machado, 2013: 94).

³ Moreover, the tendency of states to integrate into the "big spaces" that have tried to counter the inadequacies of the old sovereign model, has implied the transformation of the perspectives of territorial security and the greater recognition of cross-border solidarities, in a context of globalization.

⁴ Over the centuries terrorism has experienced different variants as an instrument of non-state actors, and it was highlighted in the 18th-19th century because of anarchists. More recently, in the 21st century, the violent demonstrations led by al-Qaeda, responsible for the terrorist attacks of September 11, 2001, in the United States, and March 11, 2004, in Madrid, have resulted in a new version of terrorism emerging within societies, more focused on internationalizing its effects, that is, modern terrorism (Galito, 2013).



leads to various conceptions of terrorism, while for some the correct definition of the phenomenon is terrorism, for others it is a fight for freedom, but regardless of the geopolitical context, there is no exclusive definition of terrorism⁵.

It will be important to present an academic conceptual view of the phenomenon, so according to Tore Bjorgo (2005: 2), terrorism consists of a "set of combating methods rather than an identifiable ideology or movement, and involves the premeditated use of violence against noncombatants in order to achieve a psychological effect of fear on others, the immediate targets...", to the extent that its understanding is centered on the nature of the act and not on its motivation. The United Nations, in its concept presented in February 2002, argues that terrorism "includes any action that causes harm to persons or property when the purpose of the action, by its nature or context, is to intimidate the population or to pressure a government or international organization to refrain from drafting a certain act". In their view, the United Nations does not address the nature of the terrorist actor, that is, whether he is limited to organized crime groups or whether states can be included as fostering or financing elements of the phenomenon.

In fact, although the concept of maritime terrorism is often confused with the notion of maritime piracy, due to its nature, the difference lies mainly in the motivations and objectives of both activities, i.e., piracy is generally motivated by private interests not underlying political-ideological objectives, while maritime terrorism is perceived as one of several forms of armed rebellion for some higher cause, usually of an ideological political nature, aiming at provocation - repression - destabilization; as Bjorn Moller defends, when he states that "... terrorism is a strategy or tactics which an actor may choose, either fully and permanently or, much more frequently, partly and periodically, either alternating between or combining non-violent political struggle with guerrilla war and/or terrorism" (2009: 23).

However, regarding the concrete definition of Maritime Terrorism, it is important to make a cross between the definitions presented here and the definition of Maritime Piracy, defended by the United Nations Convention on the Law of the Sea (UNCLOS), which defines as:

"(...) any unlawful act of violence or of detention or pillage committed for private purposes by the crew or passengers of a ship or a private aircraft and directed against: a ship or an aircraft on the high seas or persons or property on board thereof (...), persons or property in a place not subject to the jurisdiction of any State; and any act of voluntary participation in the use of a ship or aircraft, when the perpetrator is aware of facts which give that ship or aircraft the status of a pirate ship or aircraft" (CNUDM, 1982: Art. 101º).

With this and after a brief conceptual analysis, it is considered consensual that maritime terrorism is characterized as an illegal act of a violent nature, against individuals,

⁵ According to Pierre-Marie Dupuy's research, there are at least 109 possible definitions of terrorism (*apud* Galito, 2013: 3).



structures, organizations or states, at or from the sea, with political-ideological motivations, aiming to achieve gains for a certain group of individuals or international organizations. The existence of an organization or "network structure", supported by a complex web of political, religious, economic, and financial instruments, underlies (Moller, 2009).

Maritime piracy emerges as an instrument or component of the global spectrum of maritime terrorism⁶, and the latter covers all illicit activities in the maritime space, which are politically-ideologically motivated. Maritime terrorism comprises various manifestations, including acts of piracy⁷, the acts of deposition of substances and illegal spillage into the oceans⁸, acts of violence against ships at sea or on land, acts of illegal extraction and plundering of marine resources, acts of using a ship as a weapon, acts of using the sea as a logistical means to support terrorist activities, and the use of the sea as a platform for launching attacks against states, among other manifestations (Cottim, 2008: 131). Therefore, the approach presented here will focus on maritime terrorism, in its different variants.

The context of insecurity on the continent

The geopolitical situation of the African continent is very marked by problems and threats to its security, since these are older than its constitution as a continent formed by sovereign states, since it has always faced obstacles, among them the conquests and occupations promoted by various peoples over several centuries, later by the attempts at domination perpetrated by the great powers during the 19th century, having given place to the Berlin Conference, and currently for the third phase of the "Scramble for Africa", motivated by geopolitical and geostrategic reasons, making the major international powers more attentive to the dynamics of this continent; where mineral and energy resources occupy a central place in this new interaction.

⁶ Maritime terrorism is not easily dissociated from piracy, particularly because of its complex character and at the same time transversal to all other manifestations of organized crime at sea. There are not many statistical reports on international 'maritime terrorism', not only because it is usually associated with piracy, but also because the targets of maritime terrorism are not always targets at sea, but also on land, one of the factors that distinguishes terrorism from piracy, where targets are always maritime (Moller, 2009).

⁷ Among the various manifestations of maritime terrorism throughout history, the hijacking of the Italian cruise ship Achille Lauro in October 1985 in the Mediterranean by a group of terrorists from the Palestine Liberation Front, which culminated with the American citizen Leon Klinghoffer, and later resulted in the implementation of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, stands out (SUA 1988). Later, after the events of September 11, 2001, the 22nd session of the Assembly of the International Maritime Organization (IMO) in November 2001 agreed to develop new measures regarding the protection of ships and port facilities, resulting in the adoption, on December 12, 2002, of the International Code for the Protection of Ships and Port Facilities (*International Ship and Port Facility Security Code* – ISPS Code). Still in 2002, the IMO implemented two other systems with a view to enhancing safety on board ships and maritime infrastructure, namely: the Automatic Identification System (*Automatic Identification System* – AIS); and the Ship Secure Alert System (*Ship Secure Alert System* – SSAS) (Simioni, 2011).

⁸ In the post 9/11 era, the attack on Limburg, a French-flagged tanker in the service of Petronas, on 6 October 2002 by means of a small boat loaded with explosives off Yemen, which caused the death of a crew member and the spillage of 90,000 barrels of crude oil into the sea, highlights the potential damage terrorism can have to the marine environment (Cottim, 2008).



The history of the continent, particularly the sub-Saharan region, is thus marked by three critical vectors, co-responsible for the low levels of development and prolonged periods of political, security and socio-economic crises. The former is associated with its "potential in natural resources" that is, its natural riches that for several centuries have aroused the interest of other states; the second is related to the "internal fragilities" of states, which have resulted in successive intra-state conflicts and contributed to sociopolitical instability in these countries; and the third is linked to the marked "democratic deficit" and the breakdown of most African states, which has favored the spread of widespread violence across the continent (Ginga, 2014: 161).

As a result, the last decades have seen an evolutionary change in the typology of regional conflicts in Africa, which have moved from within states to the oceans, affecting local development, regional and continental dynamics, and weakening the socio-political structures in these states. This new contemporary regional context has led African States and Regional Organizations (ORA), as well as the international community, to attach greater importance to the security factor at sea, since without peace, stability and tranquility in these spaces, there are no conditions for States to develop⁹.

In this context, more recently, at the beginning of the 21st century, terrorist movements associated with other forms of organized crime such as piracy and trafficking in drugs, goods, arms and human beings have contributed to the academic debate on the geopolitical dimensions of security on the continent, especially in its maritime dimension, which has been the "Achilles' heel" for the states in this region, where the actions of the local authorities have not been sufficient to put an end to these attacks on sovereignty and the rule of law on the continent in isolation. This is the reality of a continent that has been weakened by insecurity, with consequences at the level of socio-economic development, and where states with weak structures further weaken the continental condition¹⁰.

In fact, new actors on the international and continental scene have competed with states, often diminishing their autonomy, making their dynamics more complex in international relations, and sometimes jeopardizing local, regional and even continental stability. The binomial "security-insecurity" in the continent has been represented by the set of vulnerabilities - internal and external - that threaten or have the potential to reduce or weaken government structures, bodies or institutions, and political regimes.

According to the data presented annually by Global Firepower, it is perceived that in parallel to this threat, African states face a deeper problem, translated by the lack of resources to face the context of insecurity in general, and maritime terrorism in particular¹¹. The latest reports of the *International Institute for Strategic Studies* (IISS)

⁹ Attacks on the oil sector along the west coast of the African continent cost billions of dollars in lost revenue, destabilize global energy prices and lead to environmental disasters. According to the United Nations assessment mission report on piracy in the Gulf of Guinea in 2011, these crimes caused economic losses of up to USD 2 billion annually, mainly hitting local economies (Gorce and Salvy, 2012: 62, free translation).

¹⁰ Illegal activities have multiplied in African maritime spaces, fundamentally because many states do not have the capacity to continuously exercise the authority of the state at sea, and those that are capable have their action limited under UNCLOS (Gorce and Salvy, 2012: 59).

¹¹ The Ranking presented by the Global Fire Power platform is based on the military potential of each state, in terms of land, sea and air military means. Thus, in most of the African coastal states, great vulnerabilities are observed at the naval component level, specifically in terms of the means necessary for the permanent



– *The Military Balance* - describe a panorama of disinvestment in the Navies of War¹², in some African states, which in the medium and long term may determine a lesser presence of the Authority of States at sea. In fact, “*despite increasing international commitment, and amid persistent military operations, the security situation in west Africa and the sahel region continues to deteriorate*” (IISS, 2020: 444).

As previously underlined, the present approach is mainly about the last wave¹³ of maritime terrorism on the continent, as terrorist movements on the continent have emerged over time with different motivations, which have caused the phenomenon in Africa to undergo several transformations. As a result, in recent years the continent has been greatly affected by organized maritime terrorism, especially with the defeat of the Islamic state in Iraq and Syria, terrorist movements have expanded their extremist cause throughout the regions of the continent, particularly in the Sahel, Gulf of Guinea and Gulf of Aden. Maritime terrorism has also been a point of intersection of local politics and violence, and this is where the problem lies, since its effects are structural and go beyond national borders and constitutions (Schmid, 2011).

In this context, the progressive increase in kidnappings, attacks, arrests, and attacks by terrorist groups on the continent has aggravated concerns that organized crime movements are gaining momentum, as terrorism targets on the continent now vary depending on the objectives of the movement. Several insurgent groups have made extensive use of the sea, as an extension of their affirmation on the continent, and a greater connection between organized crime networks on land and at sea can be observed (Moller, 2009: 27).

Among the terrorist movements on the continent, it will be important to focus on some groups that have made use of 'liquid spaces' for their progression and cell-linkage: *Movement for the Emancipation of the Niger Delta* (MEDN), with strong performance in the Niger Delta region; *Boko Haram*, which operates mainly in West and North Africa; *Al Qaeda of the Islamic Maghreb* (AQIM), which operates in the region of Mali, Mauritania and North Africa; *Movement for Unity and Jihad in West Africa* (MUJAO), a military and terrorist organization, of Salafite jihadist ideology that separated from AQMI, and one of its cells gave rise to the Islamic State in the Great Sahara; the *Janjaweed* in the region of Sudan; the *Ansar al-Sharia* ("Sharia advocates"), Yemeni-based Islamic militia, advocates strict implementation of Islamic law in several African states in the northern and western regions of Africa, particularly in the *Maghreb* and *Sahel*, in countries such as Algeria, Tunisia, Libya, Egypt and Mali; *Hizbul Shabab or Al-Shabab* (Youth), whose

exercise of State Authority at sea, in its various dimensions (sub-surface, surface and air). See. <Consulted on 15/09/2020> <https://www.globalfirepower.com/navy-ships.asp>

¹² According to the *Military Balance 2020*, in 2019, defense spending by sub-Saharan African states represented only 1% (USD 17.1 billion) of global spending, with South Africa spending the most (USD 3.54 billion).

¹³ In the context of the history of terrorism, its evolution is commonly presented in stages or "waves of terrorism", the first being the Wave of Anarchists, also symbolized by the anarchist movements that have emerged since the French Revolution, led by Robespierre; the second was the Anti-colonialist Wave, represented by the liberation and independence movements of the 1st Pan-African Conference of 1919; the third was the New Left Wave, which mixed nationalism with terrorist radicalism; the fourth is the Religious Wave, marked by religious fundamentalism, which has been gaining more and more political outlines (Schmid, 2011).



bases and origins are in Somalia, and who operate in East Africa, more specifically in the 'Horn of Africa' region; among other terrorist movements (Goïta, 2011; Thurston, 2017).

In recent years, these groups, taking advantage of the fragile structures of African states and using funds originated by organized crime networks, have expanded their cells on the continent. Associated with this, the discontent of the populations towards the local authorities has favored the recruiting of combatants for their cells, such as the *Ansaru* faction, within the African communities. (Stohl, Burchill and Englund, 2017).

In this case, the western region, the internal discontent in the states of the region regarding the mismanagement of resources, has caused radical movements to emerge, against the 'backdrop' of constituting an alternative to the power elites in these spaces, whereas it is important to underline the concrete cases of the *MEDN* and the *Boko Haram*, which in the name of the self-determination of peoples, aim at establishing Muslim caliphs in these areas, spreading terror and Islamic radicalism (Thurston, 2017). The case of the Bonga oil rig, attacked 60 nautical miles from the Niger Delta in June 2008 by the MEND, forcing production to stop, reflects the insurgency of these movements; the case of the disappearance of the Kerala Tanker¹⁴, of Liberian flag, at the service of the National Fuel Society of Angola, in January 2014; or also the case of the Norwegian flagged Grand Ship MV Bonita, approached by pirates on November 2, 2019 (Ploch, 2013; IMB, 2019).

In fact, unlike a few years ago, when the concerns of international authorities rested on the Gulf of Aden, today the challenges of eradicating terrorist groups are found in the Gulf of Guinea (GG). In the year 2019, according to the International Maritime Bureau, about 162 incidents of maritime piracy and armed robbery against ships were reported worldwide, 40% of which were recorded on the African continent (IMB, 2019: 5).

In fact, in the Gulf of Guinea, unlike the Gulf of Aden, where they opted for cargo and people rescue premiums, the terrorist movements have changed their *modus operandis*, to the extent that they have favored the capture of cargo and maritime means for their commercialization on the 'black market', which has also favored the growth of criminal cells (Kamal-Deen, 2015). Most of the vessels approached by these militias are retained for the time necessary to carry out the transfer of cargo, which is then routed and traded on the 'black market'; the other part of the vessels, namely sailboats and speedboats, are captured, remaining at the service of these organized crime cells.

As a result of weak state authority at sea, maritime terrorism has grown in 'continental waters', particularly in the western region of the continent. In this particular and according to Bjorn Moller (2009: 28), "...there are claims that Al Qaeda has assembled its own small fleet in the form of 'ghost ships,' i.e. hijacked ships which have been re-flagged and re-registered... it also seems that Al Qaeda has tried to develop what one might call a strategy for maritime terrorism...", as a result, the means used by organized crime are evolving, with anchorages and oilfields being the preferred stages of terrorists (Chatam House, 2013).

¹⁴ See. <Consulted on 12/03/2018> <https://www.reuters.com/article/us-angola-piracy/pirates-hijacked-tanker-off-angola-stole-cargo-owners-idUSBREA0P0QY20140126>.



These developments, in the techniques and modes of action of the terrorist movements, have made it possible for organized crime networks, at certain latitudes, to plead with local authorities, leading several times to negotiations between government authorities and errant groups, or even to political-ideological links between organized crime groups and political elites (IE&P, 2017).

The UNODC annual report on transnational organized crime on the west coast of Africa describes the weak capacity of some states to exercise state authority in maritime and coastal spaces, particularly due to insufficient economic, material, and human resources as the catalyst for the proliferation of criminal activities, as maritime terrorism has emerged in recent years as the channel for strengthening these terrorist movements (UNODC, 2018).

Finally, the profound changes that have occurred in the political order and economy of African states in recent years, the failures, the permanence of borders and the lack of expectations of African nations, justify the shaping of a new doctrine of regional security, that is capable of empowering States, in order to assume their dimension as the cradle continent and affirm the local project of a continent in transformation, oriented towards the sustainable development of its nations.

The role of the State and future challenges in the face of Maritime Terrorism

At a time when the new threats, within the framework of the *International Security Studies*, do not fit the conventional parameters of "who" threatens, "how," "when," and "where," the effectiveness of military security has been questioned because the arms race is no longer sufficient to contain transnational terrorism, the notion that 'security cooperation' emerges as the best way to contain it; not only because of the greater scope of the actors it presupposes, but also because of the deeper ties of friendship and cooperation, which weigh heavily on international relations (Singh, 2019; Ginga, 2014).

Surely, "*maritime boundary management is always a collaborative process between a country and its neighbors, thus cannot be done unilaterally, and is always better to be done jointly at the regional level...*" (Okonkwo, 2017: 66), there is therefore a need to rediscover and develop more partnerships in the field of regional security, particularly in the fight against maritime terrorism, leading to a rescaling of national infrastructures and national borders, and aiming to provide adequate responses to the nature of these new challenges and risks to the integrity and sovereignty of the State.

Human security, as the central pillar of national security, must justify the intervention of African states in favor of their internal weaknesses, otherwise the threats and challenges that beset transnational crime within the borders of these regions will proliferate, especially due to the inability to control part of their territories on their own.

In this regard, on the African continent, the ORA associated with the African Union (AU) appear as the main actors at the continental level, in order to respond to some of the various problems faced by states, including maritime insecurity and terrorism, among others, which can most easily be resolved together.



United Nations Security Council (UNSC) Resolutions 1368 and 1373, in accordance with Article 39 of the United Nations Charter, declare that terrorism, in its various forms, is a global threat and should therefore be combated at all levels by all means (Cottim, 2008: 141). Thus, in parallel with non-African action to ensure peace and stability on the continent, African leaders are already aware of the need to create an increasingly less conflictive environment within their states in order to make sustainable development possible in these regions; which led to the operationalization of the so-called "African Peace and Security Architecture" (APSA) as a platform for the institutionalization of the continental security regime.

In fact, measures to combat maritime terrorism cut across the fight against piracy in the region, and vice versa, particularly as the latter is a component of the former, so the UNSC, through Resolutions 2018 (2011) and 2039 (2012), urged ONP states to take appropriate measures at the national and regional levels, with the support of the international community, to implement national maritime safety strategies.

As a result, on June 24 and 25, 2013, in Yaoundé, Cameroon, the summit of Heads of State and Government on Maritime Protection and Security in the Gulf of Guinea was held, culminating in the creation and subsequent implementation of the well-known Yaoundé Code of Conduct of 2013. This code appears, within the framework of the maritime component of APSA, as a continuation of the Djibouti Code of Conduct and a complement to the "Jeddah Amendment" to the 2017 Djibouti Code of Conduct (Singh, 2019).

In addition, for the Gulf of Guinea, and in compliance with its Resolution A.1069 (28) of February 5, 2014, the IMO has developed and implemented a program of "*TableTop Exercises*", aimed at promoting an intergovernmental approach to maritime protection and law enforcement in West and Central Africa.

In parallel, the Lomé Charter, adopted at the AU Special Summit on Maritime Protection and Security and Development in Africa on 15 October 2016 in Lomé, also emerges as an essential tool with regard to maritime insecurity issues and the fight against maritime terrorism, reinforcing the need to implement the *Memorandum of Understanding* (MoU), signed between the IMO and OMAOC (West and Central Africa Maritime Organization) in July 2008, in the framework of the *Global Maritime Security Integrated Technical Cooperation Programme*; aiming to establish a sub-regional Integrated Coast Guard Network in West and Central Africa.

To these instruments, the *Interregional Coordination Center* (ICC) was associated, established through a MoU signed between the bodies of the Economic Community of Central African States (CEEAC), the Economic Community of West African States (ECOWAS) and the Gulf of Guinea Commission (GGC) on 5 June 2014, on maritime safety in West and Central Africa, which establishes the creation of the *Interregional Coordination Center* (ICC) (ICC, 2014). Within this regional maritime safety network, states are grouped into five maritime zones, each supported by regional coordination centers, which include CREMAO (West African Regional Maritime Safety Center) and CRESMAC (Central African Regional Maritime Safety Center).



In general, it is considered that an anti-terrorist concept should be born within African states, based on a set of measures of a defensive nature, which allow a timely alert on threats, giving priority to international cooperation, at the level of the information system, in financial and political assistance to each other among those involved in the fight against terrorism, in order to avoid the further strengthening of crime and terror organizations, and as a last ratio and in a harmonized manner, should declare a preventive war at the continental level (Lousada, 2007: 42).

Conclusion

After highlighting the main lines of thought drawn throughout this scientific essay on National Security in the current context of maritime terrorism on the African continent, it is considered that the sustainable development of these regions is dependent on the adoption of a continental cooperative maritime security project, namely because these threats have a strong impact on the economy of these states.

Indeed, it follows that the fight against maritime terrorism must be conducted in a continuous and harmonized manner, based on a strategy of mutual assistance of African states, in order to overcome any type of threat that might hinder local and continental development. This is because the methods of terrorist movements on the continent have evolved due to the very global and local dynamics of organized crime networks.

The current continental situation of territorial insecurity requires states to guarantee national security and the defense of their singular and collective interests within the international community, far beyond the traditional concept of security limited to territorial sources, so security aspects should be a priority for investment by all states, because of their close relationship with factors of economic development and national stability, which and in this case the Gulf of Guinea region should be at the forefront of the major objectives of regional cooperation.

In short, African authorities should also collect data and information to enable research into the involvement of terrorist movements in the spread of other forms of organized crime on the continent, mobilizing cooperation between the different police forces in the most affected regions of the continent, at the risk of seeing the multiplication of these organized crime networks across the continent.

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**THE CHARACTERIZATION OF MANAGEMENT PROCESSES IN HIGHER
EDUCATION INSTITUTIONS IN MOZAMBIQUE.
COLLEGIALITY, MANAGERIALISM AND OTHER CONJUGATED FACTORS**

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Abstract

This article discusses the transposition of the principles normally applied in business management to Higher Education Institutions (HEI). In particular, it discusses the influence exerted by managerialism in the structuring and operation of Higher Education Institutions. In the empirical study conducted in Mozambique, the positions of different actors on different dimensions and categories of the problem are analyzed, supported by a methodology of qualitative analysis from a sample of 9 IES. The main conclusions reveal that in Mozambican higher education there remains a certain resistance from the higher education communities, particularly from its professionals, to the intrusion of managerialism, highlighting a position favorable to collegiality and democracy. Despite the existing criticism, some (minority) actors recognize the influence of managerialist contributions to the objectives of higher education and the design and materialization of HEI management, proposing a hybrid model that associates the two dimensions. The study also reveals a deficit in the participation of the higher education community in management and decision-making processes, making it difficult to apply the collegial model.

Keywords

Higher Education, Management, Managerialism, Mozambique.

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THE CHARACTERIZATION OF MANAGEMENT PROCESSES IN HIGHER EDUCATION INSTITUTIONS IN MOZAMBIQUE. COLLEGIALITY, MANAGERIALISM AND OTHER CONJUGATED FACTORS¹

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RENATO PEREIRA

Introduction

This article aims to contribute to the understanding of the management and governance processes of Higher Education Institutions (HEIs) in Mozambique.

To fulfill our purposes, we organized the work in two parts. The main objective of the first part is to reflect on governance and the different influences exercised on the management of Higher Education Institutions in Mozambique, highlighting the implications of managerialism and, particularly, the presence of the new public management in the context of its functioning and activities. In the second part, an empirical study is conducted on the positioning and perceptions of different actors regarding HEI management in Mozambique. The analysis results from the application of a qualitative methodology, in which dimensions and categories relevant to the subject under study were considered, namely: the characterization of HEI management; the participation of teachers, students and administrative staff (CTA) in HEI management processes; the choices about the organizational structure; the framework of academic degrees in HEI management; the quality of HEIs and the internal and external evaluation processes; the implications on the functioning of HEIs due to the insufficient number of full-time teachers and their qualifications; the financial management of HEIs in Mozambique: financing modalities. On each of the points listed, it was possible to establish a set of lines of force, which allow us to arrive at conclusive summaries, through which we seek to portray the results of our analysis.

¹ Article translated by Cláudia Tavares.



1. The influence of managerialism and the New Public Management in the functioning of Higher Education Institutions (HEIs)

1.1. Background

The proclaimed crisis of the welfare state in Europe, among other factors, was an important milestone for the emergence of other modalities in the organization of the state, namely the managerial models (Deem *et al.*, 2007). This condition arises as a result of the pressures exerted by the market economy on the administration of public organizations, leading them to profound transformations aimed at making them more efficient and effective. Within these reforms, understanding the influence of market mechanisms on public business becomes a key factor in framing what is called "New Public Management" (NGP). In fact, economic and market pressure is considered by Santiago *et al* (2005) to be one of the reasons that explain the intrusion of managerialism in the public sector.

With regard to higher education and its context, the neoliberal changes in the economy have led to the questioning of the mission, organization and functioning of HEIs with greater emphasis since the 1980s. This framework, which generates transformations and crises, while not preventing the maintenance of the fundamental role of IES as a producer and diffuser of knowledge, seeks to impose a model of economic rationality, competitiveness and efficiency - "managerialism" - which results from the growing influence of globalization and the market in higher education. This movement implies the change of organizational and management assumptions, as well as the development of new human capacities and the reorientation of material, financial, technological and information resources, generating debates around higher education, its policies, governance and management. Although this discussion is developed in multifaceted contexts and perspectives, one of the striking aspects that deserves particular attention is the relational change between the State and the HEIs, that is, "(...) more specifically the changes in government measures that lead to changes in the relationship" (Maassen, 2003: 31) between these two entities. The same author points out that in the above context, any discussion on changes in the institutional management structures of higher education should take into account that it is the governments, at the various levels, who are responsible for the regulatory frameworks that influence the performance of HEIs and the management of their activities. This perspective, in our opinion, may continue to be valid in higher education systems where the State, even maintaining the regulatory function, does not intend to grant itself the model of control over HEIs. In fact, current trends are increasingly leading to a State supervisory action on HEIs. In this model, also called external control, HEIs have a broad autonomy in different areas (Han & Xu, 2019).

Another important factor seems to be the change in the form of regulation addressed to professionals, which translates into a change in the traditional policies and practices of human resource management. In fact, these principles are supported by the work of Ekman *et al.* (2018). This study establishes that in the framework of the reforms and the affirmation of the autonomy of HEIs, they assume the main responsibilities in the management and governance of all their activities, especially financial and human resources (Marques, 2012), notwithstanding the regulatory power of the state.



1.2. The redefinition of the role of the State and the emergence of the New Public Management

Changes in the structure of the state, in the sense of increasingly replacing classic forms of intervention with regulation and guidance, the diversification of traditional forms of public action and, in general, changes in forms of governance, have imposed structural changes in the ways in which administration operates. Waring (2017) refers to these changes as the deconstruction of many of the instruments and organizational schemes that supported traditional state administration, leading to the discussion, always current, around the functions of the state and the means to carry them out. In addition to the above assumptions, and before addressing specific aspects, the contextualization and understanding of the emergence of the New Public Management (NGP) involves an analysis of the different forms of management in public administration that have emerged throughout the history of modernity. In the following chronological description, some particular circumstances of African countries are exemplified, including Mozambique, largely because of its recent history linked to colonialism. Thus, according to Omar (2005), the Public Patrimonialist Administration designates the imperial or colonial domination period. This framework also includes bangs of forms of patrimonialism (neo-patrimonialism) resulting from the local social organization. Fundamentally, in this type of administration, the State functions as an extension of the sovereign power of the Kings and Lords, the rights are granted according to personal criteria and the positions held as "gifts". In this case, *Res Publica* equals *Res Principis*.

The "Bureaucratic Public Administration" is characterized by the establishment of a rational-legal power, based basically on the idea of career and professionalization, formalism and impersonality and the concept of functional hierarchy. In this model, administrative controls are carried out *a priori*, constituting the guarantee of the State's power and becoming its own *raison d'être*. "To this model corresponds an administration that bases its relationship with citizens on formalism, based on standardized routines and procedures" (Rocha, 2002: 37).

The authority of this model based on Max Weber's theoretical principles (e.g. Braun *et al.*, 2015), is stifled through the obedience of the followers. The fundamental characteristics of the weberian bureaucracy, such as regulation, stability and continuity based on formal authority, impersonality of compliance with norms and professionalism of positions, constitute elements that, although called into question by the most current substitute models, subsist as central themes for discussion on the organization of public administration. In our view, this set of regulatory instruments continues to be useful in modern times as they constitute factors of influence and integral elements of the state both in developed countries and, for the most part, in developing countries.

It is in this wake, and also as a result of the crisis in administrative theory, that the managerialist or managerialist model emerges, based on a managerial orientation of public purposes, aiming at greater efficiency and effectiveness of services. This model, which is inspired by and tends to approach business management, highlights the need and importance of the study and the combination between public policies and public



management. Referring to the model, Rocha (2002), advocates the need to decentralize and deconcentrate skills. The model also highlights the differentiation between policy and administration. It is up to the policy to draw up the guidelines, to be complied with by the administration, in a framework regulated by the principles of private management.

The "Managerial Public Administration" is considered by some the public management *par excellence*. The model advocates a posteriori control of results. It is based, as mentioned above, on the efficiency of flexible and horizontal organizational structures and, at least in rhetorical terms, on an approach to the citizen. On the other hand, the need to decentralize decision making using a proactive and innovative language is advocated. This model, which fundamentally configures the New Public Management (NGP), presupposes a neoliberal aspect. Carapeto and Fonseca (2005) consider that what is valued is the logic of the market.

1.3. The link and importance of managerialism in Higher Education

Reversing the set of considerations highlighted above, the assumptions and practices of the NGP also extended to the field of governance and management of higher education. The changes that have emerged have been characterized by a shift from a model characterized by tight state control and regulation of higher education to a less restrictive model of supervision (Dopson *et al.*, 2019; Santiago *et al.*, 2006). These new forms of state regulation of higher education systems are largely the result of the process of globalization (Seixas, 2001).

Growth in student numbers, political pressures, the rise of the knowledge economy, among other reasons, have placed the governance and management of Higher Education Institutions (HEIs) on the agenda of educational reforms in developed and developing countries. This movement emerged mainly from the 1980s, when explicit references were made to the managers of the HEIs. The legitimization of the principles and managerial models, particularly the NGP in the higher education systems of the various countries resulted, also, from international trends considered inevitable and recommended by supranational agencies such as the Organization for Economic Cooperation and Development (OECD) and the World Bank (WB). Thus, the role of international organizations in the dissemination of a transnational higher education model that conveys and accentuates market logic trends in higher education systems is relevant (Seixas, 2001).

According to Santiago *et al.* (2005), these external pressures to which the system has been subjected are the result of the confluence of financial restrictions due, in part, to the dismantling of the provisions of the welfare state to which we have already referred, but also of expectations and social demand, and also of the relativization of the symbolic capital of the HEI and the demands of the new economy (new qualifications, skills and profiles). They converge towards a relationship between the State and higher education rethought in the light of management, with the objective of orienting HEIs to the market. In this context, the introduction of financial autonomy mechanisms is one of its main mottoes (David, 2008).



Other substantive factors, present in the intention of managerialist narratives in higher education, find support in two types of arguments, which constitute one of the pillars on which this intention seeks to legitimize itself. On the one hand, the belief is widespread that the higher education system and its institutions do not reform themselves as quickly as the changes taking place in the surrounding environment; on the other hand, collegial governance is connoted with traditional academic practices and structures, aligned with corporate interests (Santiago & Carvalho, 2004). This positioning supports the rhetoric about the irrationality and inefficiency of collegiality supported in the exercise of professional power by academics.

In fact, managerialism combines political, institutional and organizational premises with rational principles that seem not to be well organized but in which it is possible to detect some coherence around notions of market, competition, individual choice, responsibility and efficiency (Santiago *et al.*, 2005). These authors consider that, in this context, there is a feeling that managerialism influences higher education at different levels, in particular at the level of strategies for reorganizing the system; management and governance of institutions, including their institutional cultures and the individual behavior of their professionals. These two levels influence the conceptualization of the mission of institutions and also their final objectives, which play an important role in mediating between political intentions and concrete institutional practices. The perception of the different actors about the purposes and objectives of higher education constitutes, in fact, the guiding framework of the decision-making process and, in this sense, influences the strategies and policies of the institutions (Akanji *et al.*, 2020).

In addition to being configured as a political and managerial tool for pressure on HEIs, managerialism in general and the NGP in particular also find support within the academy itself, since "(...) processes of accommodation emerge (...) that create some facilitating conditions for the acceptance of pressures and their naturalization in and by academic actors" (Santiago *et al.*, 2005: 35). The reasons given by the authors for this are diverse. Some are linked to the growth and development dynamics of higher education itself; others are inherent to the difficulties of traditional HEI structures and forms of government in dealing with outside pressures. On the other hand, this acceptance and materialization is also rooted in the dissemination and fragmentation of scientific and technological knowledge, as well as in the transformations of the representations of the academic actors regarding the purposes and forms of organization of higher education (Kozyrev *et al.*, 2019).

However, the issue of the influence of the NGP on the IES *métier* does not gather consensus and consists of two main distinct positions. According to David (2008), NGP advocates proclaim the advantages of models that stimulate the competitiveness and efficiency of HEIs regulated by the market, under supervision and with occasional interventions by the State. This would aim to increase the quality of teaching, research, technology transfer and the relevance of the services provided to the community. For their part, opponents of these models allege the reduction of internal democracy in the life of HEIs, the excessive subordination of HEIs to the logic of financial profitability, devaluation and lack of freedom of research, including the risk of excessive institutional control over teaching and research for commercial purposes.



This latter position, especially with regard to what many scholars tend to refer to as "good old times", in which decisions at the Academy were taken in a collegial atmosphere, without serious external interference, are regarded by the defenders of managerialism as nostalgic and idealistic. On the other hand, by examining the nature of management reforms in higher education, it is possible to highlight the general feeling that academic life "is no longer the same thing. Many changes have taken place. Among those that can be listed we highlight that the very impact of the massification of higher education has been altering the social recognition of higher education systems and therefore taking away credit from them.

To illustrate the position of those opposed to managerialism, Maassen (2003) portrays some common positions among academics. They consider that HEIs, when supported by the collegial model, present themselves in an advantage, occupying a higher academic level. They criticize the managerialist current for being conducted more for economic reasons than for academic ones. They emphasize their position postulating that the IES are not "shoe factories" and cannot therefore be managed as if they were "shoe factories".

According to Readings (2003), most of those who address the problem of the HEI choose one of two positions: either nostalgic exhortations in which a return to the humboldtian ideals of a modular community and social functioning is advocated; or technocratic demands that advocate a HEI to welcome with open arms its corporate identity, becoming more productive and more efficient.

We can therefore state that the difficulty - or the impossibility - of reconciling the "entrepreneurial HEIs", inspired by a market culture, with the idea of teaching and research, understood as public goods, seems to be the fundamental puzzle of the new paradigms of governance of HEIs and their relationship with society. As a consequence of these positions, a relevant and inevitable question arises. What and who currently dominates the higher education systems and in particular their institutions? Anyone familiar with the complexity of higher education issues will admit that it is not easy to formulate a reliable answer to this question. In a peculiar approach, Readings (2003) considers that no new identity is needed for HEI, emphasizing that we have to recognize that the loss of reference of the function of HEI opens a space in which we can think differently the notions of community and communication. Thus, it is considered that, even though the challenge of the present conjuncture is difficult, the construction of a better institution, the production of another efficiency model, another unified and unifying project is not required. What is required, with intelligence, is a type of thinking that does not seek to lend the work done at the HEI a unified ideological function (Barnnett, 2000), seeking also to find a new language in which the HEI can claim its role as locus of higher education.

Crossing this discussion with globalization, which is also commercial, and in the same line of thought, we can affirm that in the framework of a global economy, it is no longer possible to resort to HEIs to provide a model of community. In the same sense, the call to HEI as a model of community no longer answers the question about its social function. Alternatively, it is proposed that HEI be a place where one tries to think about the social



bond without resorting to a unifying idea, be it from the cultural perspective or that of the State. Readings (2003) argues that the future of post-historic HEI seems to be related to community thinking, which abandons expressive identity or transnational consensus as a means to achieve unity.

The alternative we have been presenting, besides being an option supported by different principles of the NGP, seems to establish the gradual abandonment of the principle of the link between HEI and the national identity that has dominated the HEI referential in the last three centuries, particularly in Europe, although it can be referenced differently in developing countries.

1.4. Criticism regarding managerialism and the New Public Management

As for its application in higher education, many questions remain open. However, Santiago *et al.* (2005), portraying the example of what happened in Portugal, maintain that until 2005 the interference of managerialism and the market in higher education was not entirely successful, with no changes as profound as the strength with which the managerialist ideology sought to introduce itself into higher education. This argument is supported by some evidence that continues to endure and to mark academic life. In fact, the collegial way of functioning has maintained some of its mechanisms; academic managers continue to value their professional roles more than management roles; basic research has continued to resist (with difficulty) entrepreneurship; the "vocational" ideology has not fully submerged into education and training; and most academics seem to continue to resist the new languages and cultures of management and economics (Santiago *et al.*, 2005).

However, the authors recognize that the inexistence of the link between higher education and the economy and the criticism of the collegiate functioning had an echo in the political measures of structuring higher education: the institutionalization of the evaluation and accreditation systems managed to materialize the economic and employability criteria; the financing of higher education has been restricted and rules changed, encouraging self-financing; inter-institutional competition is promoted in the belief that it is an instrument to achieve greater efficiency and effectiveness; the rhetoric of globalization and the knowledge economy/society has succeeded in stimulating the idea of the univocal relationship between knowledge and the competitiveness of nations (Santiago *et al.*, 2005).

The influence that the NGP exerts on the public sector, particularly on the higher education system, is likely to bring some advantages in response to expectations and social demand and even as a response to the various dimensions of the IES crisis. However, its analysis cannot be oriented to a unidirectional and deterministic vision. The contradictions of the NGP are, as we have seen, evident, as are the contradictions arising from the deification of the market, the notion of its infallibility and the mythical and ideal character of private management.

The current debate on IES highlights the contradiction between institutional autonomy and the pressure to submit it to business criteria (Aithal & Kumar, 2019). This



phenomenon seems to accentuate the institutional crisis of HEI and the consequent paradigmatic change, namely the removal of higher education from the Nation-State and the Welfare-State. In this way, humanist culture is marginalized in favor of market interests, promoting academic capitalism turned to a liberal learning regime. These factors, appealing to principles of efficiency, facilitate the mercantilization of higher education, the acceleration of the globalization movement and the emergence of managerialist models. It can therefore be concluded that the influence of market forces, combined with the lack of funding and the internationalization of higher education may have contributed to the identity crisis of the HEI. This reality seems to have led to a change in the forms of regulation of higher education by the state, but not necessarily to the end of its strategic control (Santiago & Carvalho, 2004).

In an increasingly globalized world, higher education systems are led to play a fundamental role in the production and dissemination of knowledge, contributing to the elevation of citizenship, culture, science, and innovation in the societies in which they are inserted.

In contrast, the processes of global diffusion have emerged models of recontextualization that seek to reflect the national or local realities of each country. In order to escape the single-minded order of globalization, higher education seeks an institutional logic of public service provision, in which the organizational structure facilitates the harmonious integration of teaching and research. It seeks to establish policies for higher education that enable the creation of *human capital*, *social capital*, and *cultural capital* capable of dealing critically with globalization. This positioning implies the redefinition of the mission and role of HEI in the face of new world trends and the challenges of the knowledge society.

Although the managerialist ideology has not been completely successful, keeping many questions open, it is recognized that the logic of market and management economic rationality has hegemonized the policy of reconfiguration of systems and HEIs (Deem *et al.*, 2007).

We can, therefore, conclude that the influence, at IES, of managerialism in general and NGP in particular, does not seem to gather consensus. While some arguments insist on defending the model because of the possibility it confers of stimulating the competitiveness and efficiency of HEIs, others criticize it for its excessive dependence on the market, for private management, and for the reduction of internal democracy, in addition to other factors mentioned above.

2. Empirical study: the management of higher education institutions in Mozambique

2.1. Methodological framework

The methodological option taken for our empirical study was a qualitative approach because we considered that it would better enable us to interpret and analyze the feelings and motivations of the actors involved in the phenomenon of the study. Thus, a



probabilistic and random sample was determined in which each member of the population studied had the same probability of being selected to integrate the said sample. In other words, the possibilities of choice were not predetermined and could fall on any of the actors. Since this was the main determinant of the sample's constitution, it was also stratified to include universities and colleges, public institutions and private institutions, and the geographical distribution of the same institutions. Thus, and taking into account the objectives of the study, the data analysis technique chosen, the size of the bibliographic review and also the resources and time allocated to the study, a sample of 9 HEIs representing 18.4% of the population consisting of 49 HEIs was determined (according to data from the Ministry of Science and Technology, Higher Education and Technical and Vocational Education of Mozambique).

Two scripts were initially chosen for the pilot interviews (one for HEI directors and teachers and one for students). From the analysis made in the pilot phase, it was concluded that the level of responses did not justify a differentiation, choosing to establish only one universal script for the interviews. Once the data collection was completed, the following analysis grid was created from which the discussion and analysis of the data took place:

1. Dimension - Characterization of HEI Management and Governance in Mozambique	
1.1. Category: IES Management and Governance Models	
Topics:	
1.1.1. Traditional Academic Bodies	Fundamentals of the Principles of Collegiality
1.1.2. System and <i>Managerialist</i> Processes	Identification of tools and factors associated with managerialism
1.1.3. Other Systems and Models	Characterization of the option taken
1.2. Category: Participation of Teachers, Students and CTA in Management and Governance Processes	
Topics:	
1.2.1. Modalities for Organizational and Management Framing	Checking the factors leading to integration
1.2.2. Absence of assumptions for integration in organizational and management processes	Identification of reasons leading to non-participation
1.3. Category: Organizational Structure Design for HEIs	
Topics:	
1.3.1. Best option for the organizational structure	Characterization of the most suitable model
1.3.2. Pedagogical and teaching structure	Identification of the most efficient model
2. Dimension - Pedagogical Implications for the Management of HEI in Mozambique	
2.1. Category: Course and Program Development Options	
Topics:	
2.1.1. Contribution to the Sustainability of the Institution	Relevant Courses and Programs
2.1.2. Appropriate levels of quality in the teaching and research process	Definition of appropriate standards and quality indicators.
2.2. Category - Higher Education Degrees in Mozambique	
Topics:	
2.2.1. Bachelors, Masters and Doctorate (LMD) degrees framework in the ES system.	Organization and management of HEIs in relation to the LMD system
2.2.2. Ideal model for the degree structure in the ES system	Adequacy of the degree system to the needs and interests of the public and levels of development



2.3. Category: The Teachers' contribution to the efficiency and effectiveness of management and pedagogical results	
Topics: Insufficient number of full-time teachers (Or Excessive number of part-time teachers)	Implications for management efficiency and effectiveness

3.Dimension – Financial Implications for HEI Management in Mozambique	
3.1. Category: Financing of HEIs	
Topics:	
3.1.1. Constraints of the State and other Entities in the Financing of HEIs	Innovative ways of financing HEIs
3.1.2. The role of family society and citizens in the financing of ES	Characterization of the modalities to be adopted by each of the segments.
3.2. Category: Legislation on the Financial Management of HEIs	
Topics:	
3.2.1. Fiscal Responsibilities of HEIs (regulation of financial management of HEIs)	Assessment of the tax burden established for HEIs (verification of a specific regulatory framework)
3.2.2. Teachers' Remuneration	Remuneration tables and teaching careers
3.2.3. Financial Results	Establishments of financial distribution principles and rules

Source: Own Elaboration

2.2. Characterization of HEI management

Regarding the characterization of HEI management models, we focus our discussion basically on two dimensions. One of them reflects the mastery of traditional academic structures supported by the principles and foundations of collegiality possibly aligned with corporate interests. The other includes a system consisting of a set of tools and management processes aimed at the efficiency and performance measurement of institutions and their professionals, based on managerial systems and processes.

The arguments of those interviewed in our study seem to clearly identify with the traditional and collegial model in HEIs with a particular emphasis on the democratic nature of the system whose outlines we will address below. However, not all interlocutors present the same point of view on the problem that we have been discussing.

Part of the assumptions underlying the interviewees' discourse is underpinned by private management practices arising from, on the one hand, the economy, globalization and privatization policies and, on the other hand, the separation of public financing from the provision of services (Santiago *et al.*, 2005; Zavale, 2018). This set of questions, which can be framed in the logic of the NGP, does not seem to be the only option of the interviewees mentioned above. In fact, some of the principles of the NGP stand out for their internal contradictions. One of the most illuminating examples is the paradox between the principle of decentralization and the strengthening of political and strategic power from the top, aiming at a strongly centralized authority that ensures the rationality of decisions and results (Williams, 2000; Meek, 2003).

In fact, the speech seems to express the desire to reconcile, in a certain sense, the "business HEI" supported by market culture with the idea of teaching and research as public goods. This intertwining of logics constitutes the fundamental problem of the new paradigms advocated for the management of HEIs, as well as their relationship with



society (Readings, 2003). Therefore, the actors express a set of hybrid positions that articulate traditional logic with managerial and market logic. In essence, what emerges from the discourse is a model flexible enough to allow the exploitation of market opportunities in favor of HEIs, capitalizing on the production of knowledge. This logic would also open space for the participation of companies and other sectors of society in the governance bodies of HEIs, and this participation would also be a window through which the performance and relevance of training actions in HEIs can be assessed.

The argument of the interviewees therefore seems to reflect influences from the managerialist model but highlighting the need to maintain the traditional principles and values of academic life. What seems to emerge from the position of the interviewees is a way of thinking that seeks to reflect a model that, although efficient, does not come close to a unified ideology of the IES (Barnnet, 2000).

The narratives of the various interviewees considered in this point indicate a guideline for the management of HEIs aligned with the traditional principles of academic life supported by collegiality and democracy. There is, therefore, a notorious resistance of higher education professionals to the logics influenced by utilitarian values and managerialism. However, there are still positions, albeit minority ones, in favour of a hybrid and flexible governance and management model in which the idea of teaching and research as a public good, articulated with greater efficiency and effectiveness of processes, characteristic of the managerialist system, is reconciled.

2.3. Participation of teachers, students and CTA in management and governance processes

This category aims to evaluate the modalities of participation, specifically of internal agents (teachers, students and technical and administrative staff) in the management of HEIs and what are the modalities followed for their organizational framework. Moreover, since the choices made by the actors, described in the previous point, have largely fallen upon the HEI's collegial and democratic management model, it will only make sense if there is adequate participation by its members. A process in which the legitimate interests of different sectors or different groups can influence decision making at different levels and at the same time feel like actors of their own growth and development (Morais & Graça, 2014).

It seems to us, however, that in the case of our study and because of what is mirrored by the actors interviewed, although there is, in some cases, a genuine willingness to participate, it does not become effective due to operational problems.

In addition to operational problems, there are also advocates for gaps in the process of organizational and management framework.

This positioning suggests a priori leadership and planning flaws in relation to the management model that is defended and apparently persecuted (Watson, 2012; Thornton *et al.*, 2020). It also means that there is a certain "managerial amateurism", giving rise to a process of decision-making based on emerging situations, revealing the



lack of programmed strategies and an adequate planning process (Meyer & Mangolim, 2006).

The analysis of the interviews also does not provide evidence on the effective participation of the different HEI sectors. It only reveals the desire of the actor so that each of the parties can, with their opinion, participate in the decision making process.

We can therefore conclude that there is, in general, a deficit of participation of the various constituent groups of the university community and other HEIs. This circumstance does not allow for an effective participation in the decision-making process and management of these same institutions beyond the shortcomings of a democratic nature that are registered (Luescher-Mamashela & Mugume, 2014; Zavale *et al.*, 2017). Despite this general situation, it can still be considered that in some cases there is a revealing participation of teachers due mainly to their professional preparation that leads to a certain ascendancy in relation to other groups of the academic community.

2.4. IES organizational structure models

What is intended to be discussed in this category concerns the models of organization of HEIs, focusing particularly on the pedagogical management structures that are more in line with the reality of HEIs in Mozambique according to the reading of the interviewed actors. Specifically, it is intended to verify whether the option is the continental European model that follows a professional logic, traditionally more used in Mozambique, whose core is the faculty, or whether, on the other hand, there are other options that may justify different choices, namely the English model organized in departments of a scientific nature.

Most of the actors interviewed had no doubts about their positioning, transmitting us a sustained response in a conservative structure, following the most common organizational model in HEIs in Mozambique. That is, the vertical model of professional character - colleges, departments, courses, admitting the stock of schools for specialized units, and centers for research units or services. In fact, the differentiation between schools and colleges is often only a semantic question, because as Costa states (2001: 153) "the continental European model is traditionally that of the organization in schools, namely designated by faculties".

In the discussion on the choices of the Organizational Structure of the HEIs, it was possible to see that most of the positions fell on the traditional model most used in Mozambique whose core is the faculty - the continental European model. It was possible, however, to find divergent positions. One that does not concretize its positioning but indicates that the structure must be conditioned to the type of IES (university, polytechnic, higher institute, etc.). Another, which is clearly contrary to most options, advocating a more horizontal and flexible model supported by scientific departments - the English model. In any of the circumstances, it was concluded that the choice of the structure itself is not sufficient to establish the impact to be produced in HEIs. It is necessary to take into account a set of elements, factors and determinants, including the organizational culture, for its influential power in the design of the structure and also for



the impacts and conditioning produced in the functioning of the organizations under study, in this case, the HEIs.

2.5. Framing of academic degrees in the Higher Education system in Mozambique

The structure and levels established for the different academic degrees in force in the higher education system in Mozambique has a certain influence on the management and organization of HEIs. In this way, it becomes important to discuss the model of organization of degrees in the higher education system in Mozambique, the various positions on the problem and their suitability to the needs and reality of the country. It is important to highlight that the Law of Higher Education in Mozambique - Law No. 27/2009 of 29 September 2009 establishes in its Article 22 (Structuring of Higher Education) that there are three cycles of training - 1st, 2nd and 3rd which correspond, respectively, to the degrees of Licentiate, Master and Doctor. This structure, which we abbreviatedly call LMD, seems to be in line with the aims of the Bologna European agreements on the matter. This subject has, however, provoked debate and divergent points of view in Mozambican public opinion. In the case of our study, we also found no consensual positions, which is, moreover, a testimony to the dynamics operating around the architecture of higher education degrees in Mozambique.

Among our interviewees, we obtained quite assertive statements in favor of the LMD system. On the whole, they can be considered the majority of the remaining positions.

The ideas formulated by the above-mentioned actors seem to follow the logic of the reforms in European countries. This is not surprising since many of the reforms of higher education systems in Africa (including Mozambique) tend to follow the models historically inherited from the colonizing countries. This case demonstrates the idea that reforms in universities and other HEIs have been in the sense of adhering to the "Bologna Process". (Sall & Ndajaye, 2007). The universal character of science, technology and knowledge in general are the reasons formulated to defend the alignment with "Bologna" (Kuphane, 2009). On the other hand, one can consider the acceptance of the LMD system as a need to achieve a certain harmonization (not to be confused with uniformity), a greater transparency of processes and also the construction of a quality image that allows HEI to have better conditions for international competition (Costa, 2001).

We consider that the possibility of reintroducing the baccalaureate, possibly in the form of specialized or vocational training, and also the reintroduction of the postgraduate degree, may constitute competitive advantages in the system and in the HEIs in Mozambique. On this last possibility are highlighted the MBA that, according to Costa (2001), constitute prestigious formations in several countries, usually with a duration of one year and mostly attended by professional managers who give up the dissertation, preferring the postgraduate diploma after the 1st year of studies. The proposals for change conveyed by the actors of our study synthesize the need to try to introduce in the models under discussion specificities according to national and local logics, opposing



the processes of global diffusion whose educational models tend to be standardizing (Schriewer, 1996).

2.6. The quality of HEIs and the internal and external evaluation processes

Within the scope of HEI activities, evaluation mechanisms, in addition to other purposes, are used to test quality levels through, normally, appropriate standards and indicators. In order to achieve the objectives of this process it is necessary to carry out a set of actions in the different sectors that make up the HEI structure, with particular emphasis on the supply of teaching programs and research activities. This set of achievements constitutes the object of evaluation both internally (self-evaluation) and externally through different entities. As far as internal evaluation is concerned, the fundamental concerns of HEIs seem to lie in convincing the public that, in often adverse circumstances, the education offered corresponds to the best possible quality. The main question that arises to achieve this objective is, in our opinion, how to ensure the adaptation of teaching to an environment of permanent change (Parvin, 2019).

It is in this context that the actors of our study have issued their pronouncements, with different perspectives, but all expressing a central concern with quality - the extent to which a reliable product or service does what must be done, what it is intended to do (Morais & Graça, 2014). These authors consider that the other component of our study - evaluation - although a multifaceted concept, can be seen as the systematic appreciation of a project, program or policy regarding its design, execution, and results. These two factors are fundamental vectors in the success and management of HEIs.

Some of the interviewees recognize both internal and external evaluation processes as important, valid and participatory mechanisms for the control and quality assurance of HEIs.

Two other interviewees present opposing positions. The analysis of their positions leads us to discuss the multidimensionality of vision and the lack of consensus on the concept of quality in education in general and in higher education in particular.

Given the above-mentioned differences, it is not surprising that our last interlocutor on the subject of quality and evaluation presents a completely singular and different positioning from the others.

In addition to the aspects of quality and evaluation already covered, this interviewee inclines to an external evaluation conducted by independent international agencies. Another factor, peculiar, focuses on the relationship between the quality of higher education and the deficient formation in the subsystems that feed it, that is, secondary education and technical-professional education.

There is an evident concern on the part of those involved in higher education to improve the educational processes and functioning of HEIs in the quest to raise quality standards, notwithstanding the various points of view on the concept. All also advocate the implementation of evaluation processes, both internal and external, in order to assess the quality of HEIs through the use of relevant mechanisms. In the external evaluation,



while most of the interviewees put the responsibility in national state agencies, some of the interlocutors advocate not only the use of international standards but also the intervention of international evaluation agencies that would bring more credibility to the system. Another of the highlights of the study refers to the expansion of higher education without questioning the quality, which is defended by some actors, and also the influence exerted by the constraints registered in secondary education that are reflected in the quality of higher education.

2.7. The insufficient number and qualifications of full-time teachers - implications for the functioning of HEIs

The vast majority of HEIs in Mozambique, especially private institutions, do not have a full time teaching staff with the qualifications and in sufficient number to ensure the teaching, research and academic management functions and others desirable for the normal operation of these institutions. From this perspective, the Mozambican State has established a regulatory framework (Article 7 of the Licensing and Operating Regulations for Higher Education Institutions - Decree No. 48/2010 of 11 November) that seeks to ensure, according to the degree of demand or the type of higher education, qualified teachers to pursue the objectives set by the respective HEIs. This table establishes the minimum number of full-time teachers (1/3 for Universities and Academies - Class A, of which half must be PhDs and 1/4 for the remaining HEIs - Classes B, C, D and E, of which half must have at least a Master's degree) and also, in the same table, it is established that ten years after the opening of any HEI, 30% of its teachers must have a PhD or Master's degree although the proportion between them is not established. Despite these regulatory measures, the study carried out with the various actors seems to confirm the above assertion about the existing difficulties in the composition and qualification of teachers in most of the Mozambican HEIs.

One of the interviewees refers to the negative effects caused by the insufficient number of full-time teachers. However, another of the interviewees argues that even if there are full-time teachers, they do not seem to fulfill their obligations in the training, research and management of HEIs.

Another of the interviewees seems to confirm that the main problem arises not only from the greater or lesser number of full-time teachers but, above all, from the creation of the environment and working conditions necessary for good performance and, also, from the scrupulous fulfillment of the teachers' responsibilities.

Other participants in our study confirm, on the one hand, the pernicious nature of the insufficient number of full-time professors and, on the other hand, the assumption of the nonachievement of the formative, research, and management objectives.

It is unanimous that the lack of a sufficient number of full-time teachers has repercussions on the functioning of HEIs in Mozambique, both in the pedagogical component and in the managerial dimension. In this way, HEIs will have to make a great effort in recruiting qualified teachers and, at the same time, in training them and others, in order to comply with the requirements of the current legislation regarding number and



qualifications. In addition to the scientific knowledge of each of the activity areas, teachers should be oriented towards pedagogical and didactic knowledge, so that their classes follow a methodology appropriate to the formation of students. Even if HEIs have enough qualified teachers, it is necessary to take into account a set of combined factors that ensure the efficiency and effectiveness of their work as well as good academic results. This set of influencing factors include: taking into account national public policies for the sector; establishing a correct institutional relationship; having a close relationship with students; understanding the dictates of the surrounding society and relating to it; to know and make positive use of your self, professional and personal, and also to have the notion of the influences resulting from the contemporary era in which we live, namely the references of globalization and internationalization, in addition to other dimensions.

2.8. Financial management of HEIs in Mozambique: financing modalities

One of the fundamental dimensions in the functioning of HEIs is their financial management (Chyrva *et al.*, 2020). In the meantime, different issues can be addressed, namely the constraints of the state in financing HEIs (we refer, to a large extent, to public ones), the innovative forms that can be implemented through different financing modalities, namely by families, society, citizens and the market, and also the reduction of tax burden through appropriate legislation. Taking into account the interrelationship between the different components of financial management that are the object of our analysis, we have chosen to approach them in a global way in this point.

One of the respondents, although basically agreeing with the self-financing line, suggests greater support from the state in collecting fees to finance higher education. Although it can be said that state funding continues to be, directly or indirectly, predominant in Mozambique (for public HEIs, although small tranches may indirectly finance private HEIs), it is important to emphasize the factors that contributed to the paradigm shift by reducing, tending to, the state's contribution.

In addition to the HEI's own efforts, let us see what the interviewees in this study tell us about the participation of families, the market, and citizens in higher education funding efforts. Obviously, in many cases there is an interpenetration between what society wants to accomplish and the purposes of the institutions themselves.

One of our interviewees advocates, in addition to other proposals, greater State participation in the business of education in general and in higher education in particular. Our interviewee's rationale for justifying greater state participation is supported by the welfare state model, which attributes education to a fundamental role in economic and social development, as well as in the consolidation of national identity (Cotovio, 2004). The implementation of this model in the current reality of the country seems to us extremely difficult. Although the contribution of the HEI to the national political identity in a coherent framework of the nation state is still pertinent, in our opinion the application of welfare state mechanisms in the current financial situation of the country does not seem realistic, especially considering the combined effect of the hidden debts with and of Covid-19. This aspiration seems to be possible through large own resources or through



generous help from international partners. Neither alternative seems viable in the current country context. Moreover, in recent decades, both developed and developing countries, there has been a trend towards a reduction in public financing of HEIs (Cerdeira, 2008), which is even worse when extraordinary factors reinforce the negative effects.

Our interlocutors generally advocate a state tax relief policy towards HEIs, although some of them set limits to the scope and proportion of reductions to be granted. This possibility is also mentioned by Reis and Reis (2008) who, in the framework of a policy of management of higher education in line with the market, advocate forms of financing that alleviate public spending and the tax burden. We believe that reducing the tax burden is beneficial in certain special circumstances, particularly in the context of investment, especially initial investment, taking advantage of the existing legislative framework. It does not seem feasible, in the current situation of the Mozambican economy, for the State to grant tax advantages on teachers' salaries or on the results of the financial years, as some actors advocate, namely due to the budgetary impacts of Covid-19.

Financial management is one of the main vectors of HEI management. Its importance comes from the influence it exerts on the activities of these institutions and from the fact that it encompasses different actors, namely the State, students, families, the market and society in general. The financing of HEIs is carried out in an environment of scarce resources and great financial difficulties of the Mozambican state, which has been experiencing great difficulties since 2015. Thus, even admitting the continuity of the state's prominent role in its social responsibility and the need to expand the system, the actors under study and the various authors consulted advocate a diversification of sources of funding that results in greater cost sharing. Thus, students are required to contribute by paying all or part of their tuition through their own resources, bank loans or access to public or private scholarships. The role of the market and of society in general are also relevant through student funding or the contracting of services to HEIs. Moreover, the latter segment seems to be an important source of income to be extended to other areas such as research and training activities of a specific nature. Although indirectly, reducing the tax burden in certain circumstances is a way to alleviate HEI expenditures, contributing to better financial results.

Conclusion

The apparent conservatism verified in the positioning of the main dimensions studied does not mean that there has not been any sharp criticism and bold proposals. Thus, the observation of the lack of effective participation of the academic community in the management of higher education institutions calls into question the choices made in the collegial and democratic model. The raising of quality standards, considered as fundamental in the current situation of higher education in Mozambique, should be monitored through self-evaluation and external evaluation, conducted by national agencies, according to the majority of opinions. However, there are those who propose international agencies for this purpose, in order to increase the credibility of the process. Another aspect that calls quality assurance into question is the insufficient existence of



full-time teachers. However, it is not enough just to recruit teachers to fill the legal guidelines. The need for scientific and pedagogical training is sustained, in addition to the knowledge and appropriation of the surrounding environment by the teachers. Regarding the structural issue, the Faculty remains the nuclear choice although a minority opinion defends the organization in scientific departments. As for the study cycles, without calling into question the fundamental of the LMD structure - Degree, Master's and Doctorate - some specific changes are presented in the 1st cycle - reintroduction of the baccalaureate for specialized training and in the 2nd cycle - reintroduction of the postgraduate diploma as a degree and the equalization between academic and professional masters. The issue of funding for higher education was the subject of an in-depth debate that concluded on the need for the State to continue to play an important role. Nevertheless, the current economic and financial situation characterized by the combined effect of hidden debts and Covid-19 requires the participation of students, families, the market and society in general, so that there is greater cost sharing, developing a new paradigm based on a diversification of sources of funding for higher education institutions.

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