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AFTER THE ARAB SPRING: THE PROBLEM OF FREEDOM OF RELIGION

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Summary

The 2011 "Arab Spring" arouses, in Western societies, expectations that often do not take into account the real context of the Islamic countries. As a matter of fact, the Western Secular tradition frequently obstructs the understanding of the strong religious feeling that pervades the social reality of the Islamic world, even if in a non-uniform way: the modernists, traditionalists and fundamentalists' school of thoughts have a different idea of the modern Islamic State. In order to clarify this diversity, the history of the relationships between State and Islam, the inter-relationship (in a degree that is unthinkable in Western culture) between State, religion and law and the consequent different perception of single individual behaviours have to be examined. This encounter-conflict with the Western political perspective became real in the Islamic States through the imposition of the Western law during the colonial period and – in the opposite direction – is taking place, today, in Europe through the increasing immigration of Islamic believers. The provision of *concordats* (a potential solution with other monotheistic religions) is not possible with the Islamic communities, because Islam does not take into consideration a hierarchically organized ecclesiastical structure and, therefore, the Western States cannot find a single and official interlocutor. This way, within each individual Western State, a frequently difficult coexistence between Western and Islamic States is growing, a coexistence that is leading to new forms of *legal pluralism*. On an international relations level, the economic difference between the Western States and those who took part in the "Arab Spring" make it difficult for these last countries to promptly build up a modern State. The potential models range from Iranian theocracy to Turkish Secularism, with innumerable intermediate solutions. Today, the tendency seems to go towards an Islamic State, as the Pakistani constitutional evolution shows: but any prediction is questionable, because the transformation process that started with the Arab Spring is just beginning. Finally, the Western constitution model struggles with the rigor of the Islamic religion that does not admit Muslim conversion to another religion. Whoever abandons Islam commits the crime of *apostasy* that the Coranic law punishes with death. The fundamental right of *freedom of religion* becomes, this way, an insurmountable obstacle for the introduction of a Western-style constitution in a State whose population is mainly Islamic.

Keywords:

Sharia; Coranic law; Secularism; Legal Pluralism; Freedom of Religion; Apostasy

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AFTER THE ARAB SPRING: THE PROBLEM OF FREEDOM OF RELIGION

Mario G. Losano

1. The “Arab Spring”: for when a summer of “liberal democracy”?

The analysis of the “Arab Spring”, at this stage, can only be a provisional assessment that is bound to change very soon. As a matter of fact, that promising spring is not announcing a fruitful fullness of summer yet. Besides the metaphor, the anti-dictatorial uprisings have not yet generated political structures that are able to follow those of the Western democracies. We should also add that this evolutionary approach seems inevitable to Western people but actually – within the Islamic framework – it is not necessarily like that. We should just think about the problems related to the inclusion of Islam in the recently reformed constitutions (such as in Morocco in 2011) or those that are work-in-progress (such as Egypt in 2012).

A problematic aspect of the political comparison is about comparing homogeneous terms, because in politics the boundaries are more unstable and the terms more undefined than in natural sciences. It is not scientifically acceptable, for example, to compare the theory of the Communist State with the reality of the democratic State (and vice versa, of course).

To avoid this risk, the title should be specified: I don't think that today – facing the Southern Mediterranean countries upset - we should be interested, within this framework, in comparing the Islamic theology with the liberal-democratic theory. The problem that has been discussed for some decades and that has become extremely current today is *if* (and if so, *to what degree*) the basic structures of the liberal-democratic State can be transferred into a State whose ruling class and population mostly profess the Islamic religion. In brief: could Egypt, Libya, Algeria, Tunisia and Morocco become, in a reasonable timeframe, States with similar structures to those of the democratic States? In other words, could they have free and periodic elections, a rule-of-law State, independent institutions and free parties?

This question is dually poisoned. Firstly, an ethnographic poison. It has, in fact, *an implicitly positive judgment of value of Westerners about the superiority of their own political order*. Why should a liberal democracy, which is working for the Western countries, be necessarily welcoming to Islamic people? Can this liberal democracy be successfully exported? In some cases, it can (India, Japan, South Korea, and Southern Central America: obviously, with several nuances and with resounding autocratic falls). In other cases, it seems like it couldn't: Iran and Afghanistan are unsolved problems. After many years of war and democratization attempts we can still listen to these kinds of statements: “The Taliban were leaving the hanged man's corpse dangling for four days. We will do that for a shorter amount of time: let's say, fifteen minutes [...] Public



stoning will also still exist but we will use smaller stones”¹. This statement was made by an Afghan Supreme Court judge in December 2001. Finally, Pakistan is grappling with an ambiguity that is not so compatible with the democratic models: we will come back to this State in §6.

Let’s talk about the second poison. By accepting the Western model it implies a *separation between State and religion, in other words, the Secularism* that – in several ways – defines the Western States. Like this we return to the definitional issue. Islam, like all religions, is repository of an absolute truth, being incompatible with the relativism of a Secular State. According to the Catholic theologian Hans Küng, monotheistic religions are normally inclined to separate State and religion. However, in practical terms, there are theocratic States “whose state institutions essentially coincide with those of religion”.

Theologically they are exceptions, but Islam is one of them: Küng writes that in it “it was impossible to separate the State and religion”. God’s sovereignty, in its broadest possible sense, was at stake. This is a phenomenon that we can equally find in Christianity, even if in exceptional cases, such as in the Geneva of the reformer Calvin, the Anabaptist reign of Münster in Germany and, above all, the Roman Ecclesiastical State founded in the VIII century and still existing as the Vatican”².

By addressing the relationship between State and religion in Islam, we must avoid committing two errors that are actually made, even deliberately, over these restless days. A mistake in a pessimistic sense: to deny, *a priori*, that a democratic State could coexist with Islam. A mistake in an optimistic sense: to confuse democratic hopes with actual possibilities of the development of popular movements during these days.

This short essay refrains from distinguishing between the great dichotomies (Sunnis and Shiites, Catholics and Protestants) and between the thousands of nuances essential to talk about a community of almost a billion- and-a- half believers that goes from Morocco to Indonesia. We will reflect through “paradigms”, according to the definition by Kuhn, for whom paradigms are a global constellation of convictions, values and way of acting, shared by members of a community.

2. State and religion in Islam: three schools of thought

The last century has been characterized by a deep evolution in the Islamic world in which we can distinguish today, three schools which frequently contrast with each other: the *modernists*, who are inclined to an occidentalisation of the Islamic world at least for social, economic and legal aspects; the *traditionalists*, who somehow correspond to the classic reformers, that is, to the Islam tolerant believers, open to Western culture and ready to renew – but not to repudiate – their own cultural tradition; and lastly, the *fundamentalists*, who profess the, also violent, denial of what comes from Western culture, the coming back of an integral belief of the past, the construction of a theocratic State and the rigorous and extreme use of the Coranic law.

It must be remembered, first, that the Quran has a more impregnable sacredness than, for example, the Gospels. The Quran is directly dictated by God to Muhammad,

¹ Text quoted by Elisa Giunchi, *Afghanistan. Storia e società nel cuore dell'Asia*, Carocci, Roma 2007, p. 15.
² Hans Küng, *El Islam. Historia, presente, futuro*, Trotta 2006, p. 650. The excerpts quoted in the present essay are from the Spanish and the German edition of the book by Küng.



whereas the Gospels are historical texts, each one with an author and a socio-linguistic context. We just need to think about the complaints that followed the (late) Quran translations (it was revealed in Arab and so in Arab it must be studied and recited) or the (late) printed edition (the Quran was written by hand and it should be perpetuated this way). For a synthesis of these issues I refer to my review of a recent book, journalistic but stimulating³.

The mistake of the Western vision consists in ignoring the turmoil's plurality and in identifying the current Islam as just the fundamentalists, due to the violent acts that characterize their claims of responsibility in view of the seizure of power and due to the social underdevelopment that defines their achievements during the exercise of power itself. Fundamentalists have more media visibility but they are a minority compared to the people of the States that we keep calling "Muslim": by doing that we imitate the maniac Al Qaeda behaviour that identifies all the Western States as "Christians". But, when we talk about States we should only refer to the government structures and not to religion.

Three visions of the modern State in the lands of Islam correspond to these three schools of thought.

The consolidation of the regimes inspired by Islamic fundamentalism, today commonly called «fundamentalists», has opened up a discussion, on an international level, about the status of women in Islam. This discussion is often vitiated by ethnocentric and political prejudices. Islam admits a certain degree of women's freedom. Within the framework of the family right she has quite limited capacity, but a broader one within the contractual framework. The issue of women in current Islam is that these possibilities exist in doctrine but are differently (and often restrictively) applied in practical terms. Modernists are in favour of progressively approaching the Western models (for example: in Lebanon); traditionalists are in favour of a cautious female autonomy (for example in Egypt: especially for professional aspects and in Iran); and finally fundamentalists, going even further than the restrictive interpretation of the Quran writings (female segregation, the prohibition of education and work: for example, in Afghanistan).

To avoid incorrect generalizations, we have to take into consideration that, either in theory or in practice, a *single* Islam doesn't exist, neither does a *single* Christianity.

3. The relationship between State and religion in the history of Islam

The relationship between State and religion is radically different in Islamic and Western tradition. Early Christianity had to face a strongly structured State entity as the Roman Empire, in order to fight, had then to incorporate similar structures. Just think of how the Roman law shaped the canon law. On the other hand, early Islam found itself in an opposite situation: Muhammad's preaching emerges as religious preaching within the framework of nomadic tribes and uncoordinated cities. The Islamic State embryo begins when Muhammad is summoned from Mecca to Medina to integrate the tribes into a community: the State emerges from religion. In brief, the Christian religion had to

³ Mario G. Losano, Review on: Carlo Panella, *Fuoco al Corano in nome di Allah. L'Inquisizione Islamica contro la stampa*, Rubettino, Soveria Mannelli 2011, 103 pp. "Sociologia del diritto", XXXIX, 2012, n. 2, pp. 184-187.



adjust to the pre-existing Roman State, while the Islamic State had to shape itself on the pre-existing Islamic religion⁴. From the earliest days until today centuries of modernization, colonization and decolonization have passed, but this different origin is still perceptible.

The main difference between the two religions is clear within the boundaries of the law. Christianity recognizes the rule of law and, in particular, on a national level: cannot help but try to introduce into national law matters which it considers essential to its own religious views. We just need to think about the famous saying “Render to Caesar the things that are Caesar’s” and the multitude of comments that have followed it through the centuries. However, nowadays it is difficult to specifically determine the boundary between State and religion, because science has shifted – and is still shifting – the boundaries of birth and death. We should mention, on one hand, the issue of therapeutic obstinacy and euthanasia and on the other, the issue of abortion and birth control: this one being one of the roots of the economic and social drama of the Islamic States. China had figured it out many years ago by launching the one-child policy, which became the source of many other social issues but unthinkable within an Islamic framework.

As a matter of fact, Islam also dictates the legal rules for social life and, therefore, the Islamic State has to follow these religious rules. The Christian citizen is bound by national law. The Muslim believer is – as such – liable to the Islamic law no matter which national State he is in.

Let’s take for example Salman Rushdie’s death sentence due to his *Satanic Verses*. An Iranian Ayatollah issued a *fatwa* that condemned to death an Indian-born British citizen who lives in the United Kingdom, where he committed the crime/sin of writing a book considered blasphemous. This sentence goes against all the Western’s legal principles (based on the *territorial* concept of the law) but is actually, a direct consequence of the Islamic legal concept (based on the *personal* status law). Rushdie, as Islamic, is liable to the Islamic law, no matter which place he is in: for the Western culture this is an aberrant situation, because it leads to conflict between two political orders; for Islam it is a regular situation, because the Islamic law is of divine origin, therefore, it is superior to any human laws.

On top of all of this, there is another issue, which we will come back to later: you can enter Islam, but you cannot exit. The only exit is by death, which is also the sentence that follows the crime of apostasy.

The two legal concepts – Western and Islamic, territorial and personal – are incompatible. The misunderstandings emerge from the fact that Europeans see the State, power and borders according to their national model and the Islamic people according to their universal model.

We go back then to the homogeneity issue of the terms of comparison where we started. Most part of misunderstandings begins due to comparing two non-homogeneous terms, that is, of political order (democracy) and religion (Islam). Islam is a revealed religion, based on the absolute truth. Democracy is a political order

⁴ See, more extensively, my *Cristianesimo e Islam, Stato e diritto. Apertura della Tavola Rotonda: Le identità culturali e religiose*, in: Vincenzo Ferrari (curated by), *Filosofia giuridica della guerra e della pace. Atti del XXV Congresso della Società Italiana di Filosofia del Diritto*, Milano – Courmayeur, 21-23 September 2006, Franco Angeli, Milano 2008, 203-206 pp.



founded on relativism: the multi-party system and the majority and minority rotation in power imply that the values of one and the other are interchangeable. It's the only way a parliamentary democracy could work.

Alternatively, these values should actually be compatible otherwise the democracy will commit suicide. We have seen it in the European dictatorships of the Twenties and Thirties that came to power using (and forcing) the parliamentary democracy tools.

Already in 1962, from the earliest years of the independence of Algeria, Ben Bella, the National Liberation Front (FLN) leader, had to resist the religious forces that wanted to create an Islamic state. These forces, as the Islamic Salvation Front, stood in the first multi-party elections in 1991 and won. Through a coup d'état, the military overthrew the pro-Islamic government and since 1992 FIS was outlawed. Secularism has been saved by sacrificing democracy.

Nowadays, one cannot exclude a similar chain of events in some of the States that are now fighting against their own dictatorial government. In short, no one can say whether the outcome of the current struggles will be democracy. These States have had very different histories (Tunisia, for example, as protectorate, Algeria, as a colony), but none of them have ever experienced a period of democracy. On top of the unknown aspects of a new political management, there is the risk of a response by the losing forces, eventually with the support of the Islamic fundamentalist groups.

This last risk has been prospected several times during the first three months of 2011. It helped the resigned dictators to ask for the help of the Western States that had supported them for decades and then they were forced to abandon them due to the people's rage; but that was also a Western populist alibi to take the distance from the ongoing revolutionary movements and, therefore, to cover up the inactivity of the European governments before the events.

The risk of a response shouldn't actually be underestimated. In a less violent context, Spain, on 23 February 1981 - five years after an exemplary transition – defeated a coup d'état attempt, which today can be considered a historical relic, though not all of its aspects have been clarified.

If we look at post-colonial history, the satisfactory results are few.

4. The coexistence of the Islamic law and the European law in Europe

One of the consequences of the heavy Islamic immigration within Europe is the coexistence of the Islamic law (personal, as already mentioned) and the positive local law (that is, national). Immigrants bring social traditions with them, but also religious organizations and therefore, their legality is often at odds with the legislation of the host nation and, in general, with human rights. On the legal field, two potential solutions seem to be particularly complex in regard to the Islamic faith: a) the lack of a recognized and single hierarchy makes the provision of *concordats*, as takes place with other religions, almost impossible; b) we can actually try an agreement between two different legal systems; in this case, the multiculturalism becomes a legal pluralism, that is, the coexistence of two legal systems. The two directions – concordat or legal pluralism – need some further insights.



a) Concordat and Islamism. Practical experience has shown, so far, that for a Western State it is difficult to accomplish a formal agreement with citizens of Islamic faith, since the Islamic faith does not take into account a single and official hierarchy as the only counterpart of the State. Consequently, the agreement made with an Islamic group is not recognized by others and the issue of a ruled coexistence remains unsolved.

An undoubted difficulty about regulating the relationship between Islam and the European democratic State is the non-hierarchic structure of Islam that, so far, did not allow provisioning a concordat equivalent to the existing ones, for example, between States and Protestant Churches.

The existence of a concordat does not exclude frictions and conflicts, especially in countries where the hierarchical-Church is strongly present, such as Italy and Spain. However, it guides the confrontation towards dialogue and not towards conflict, establishing forms and rules to achieve compromising solutions. Both Italy and Spain had provisioned a concordat with the Catholic Church, assimilating it into their own constitution. In both cases, the concordat does not exclude conflicts that cyclically become more intense or weaker according to the higher or lower contractual force of the Church before the State.

Let's take a look at some aspects of the Spanish situation. Legal issues arose with the inclusion of the concordat in the Secular constitution of the Second Republic. For the Secular State position, the speech of Manuel Azaña on 14 October 1931, when the concordat was discussed in front of the Cortes, is exemplary. While addressing the concordat towards non-sectarian solutions, here is his famous statement: "Spain has ceased to be Catholic". Azaña then stated that he was referring to the *creative* "Spanish Catholicism", meaning the religious fervour that originated "a novel and a Spanish painting, in which you can experience at firsthand how much they are filled with religious belief".

The same, *mutatis mutandis*, happened with the current Spanish concordat, assimilated in the 1978 constitution. This way, a non-confrontational concordat opens the door to both sides' pressures. Hence the advantages that the Church is able to take from the Secular State: for example, tax exemption, the unique teaching of the Catholic religion in State schools and the appointment of teachers of religious education.

Spain, in 2011, had to face two exemplary problems regarding the relationship between State and Church.

A Constitutional Court's sentence had recognized - after ten years! - that the dismissal by the bishop of a teacher of religious education was unfounded, because the reason for the dismissal was the fact that the woman in question "had a civil marriage with a divorced man". The Constitutional Court considered the dismissal as "a wound to her right of privacy". There are many other sentences and compensation acknowledgements to dismissed people on this topic⁵.

⁵ Events overview: *La Iglesia no puede prescindir de docentes por 'pecar' fuera de la clase*, "El País", 20 April 2011, p. 23. Comment: *Despido episcopal*, "El País", 20 April 2011, p. 22.



On the contrary, the High Court of Justice of Madrid prohibited in 2011 the so called "atheist procession", scheduled for Maundy Thursday at, more or less, the same time as the catholic processions. The sentence states that "the atheist procession" could represent "a punishment for the Catholic faith, which would be damaged": damage that, as it has been objected, is impossible to prove⁶.

Nowadays, since science stretches the boundaries of life and death, conflicts are much more frequent between the Secular and the Ecclesiastical point of view on problems that were unthinkable half a century ago. These conflicts often represent an invasion of the Church in the fields of the State, when, for example - in the cases of abortion, the morning-after pill, therapeutic obstinacy, etc. - the Church recommends conscientious objections to doctors and pharmacists who work in public health facilities and who are, therefore, State employees.

In conclusion, the contrasts between State and Church are physiological; what matters is that the concordats indicate a path of dialogue in order to achieve a peaceful solution. However, the Western State is not capable of univocally determining, within the Islamic religion, the counterpart with whom to negotiate in order to achieve a compromising solution.

Added to this difficulty, in Italy, there is the unwillingness (to use the mildest expression) of Lega Nord and its local administrators, who have turned the conflict with immigrants (and especially with Islam) into an identity flag for their own electoral base. By doing this they are trying to make us forget that, during the more than three years of the last Berlusconi Government, ending in November 2011, they have not achieved a single point in their electoral program.

b) Legal pluralism and Islamism. By accepting specific practices of a certain social group, but not planned or even in contrast with the national law, disparities among the citizens arise. These disparities are often incompatible with the norms of each individual constitution. In other words, there is the risk that, over time, the national order would be informally modified, introducing punctual sentences based on the acceptance of a specific social group's behaviours.

By wanting to establish a scale of punishable behaviours, some behaviours will fall into the laws in force. For example, arranged marriages, kidnapping of civilians and violence are crimes established by criminal code. In many cases, however, they are not perceived as a crime by at least one of the involved parties.

In other cases, it has been necessary to introduce specific criminal laws, since it was not possible to analogically interpret the criminal laws in force. For example, in the case of female genital mutilation, some laws are issued (like in Spain) that punish the crime even if it has not been committed in Spain.

When we go from these extreme cases to some more undefined situations, the application of these national laws can be difficult. Concerning arranged marriages, for example, some immigrant women consider a traditional fact and not a criminal offense, the practice of a family's prenuptial agreement on the betrothed, in other words, the minor age of one of the betrothed.

⁶ Events overview: *El TSJM atribuye a los convocantes una voluntad de "castigo a lo católico"*, "El País", 21 April 2011, p. 5. Comment: *Sentencia confesional*, "El País", 25 April 2011, p. 26.



In some cases, a Western judge will apply *ad hoc* measures in order not to punish behaviour without malice by both parties, who actually believe they have to act this way according to tradition or religious law. It's not unfounded the fear that, this way, disparities among citizens under the same national law emerge.

In order to avoid solutions based on the alternative use of the law⁷ – that in the *Common Law* would generate binding precedents – the United Kingdom officially recognized in 2007 the Muslim Arbitration Courts, with the approval of the former Archbishop of Canterbury, Rowan Williams. They are informal courts, without official deeds registries, without any control over the judges' election: as informal (not hierarchical) as the Islamic religion is. This Islamic law acknowledgement is not accepted by all, because it generates a different treatment of the citizens of the same State. The movement "One Law for All" has emerged in the United Kingdom against this legal pluralism and demands the Common Law application to all citizens⁸. In my opinion, a legal investigation into these courts, within the classic framework of the Common Law, would be particularly interesting.

In Canada, since 2004, there is an "Institute of Civil Justice" that judges according to the Sharia. Thanks to this, around a million Muslims in Canada can take advantages of less restrictive laws. However, it's not clear if Muslims should necessarily use this court. As a matter of fact, some prefer the Canadian law. The result is a disparity in the evaluation of the same behaviour.

The increasing number of Islamic people in Europe and their strength as a group who can exercise pressure generates several demands that deviate from the actual models in the host society. For example, in France there is a discussion on the refusal of female Muslim students in taking part not only in biology classes but also literature classes (due to the fact that many classics deal with love relationships); on the introduction of special menus; on the refusal, by Muslim believers, of medical staff of the opposite sex from the patient; on the financing of courses, radio and television programs in a non national language; on the obligation of the veil, on arranged marriages. The French right parties are wondering: will we have to rename De Gaulle's beloved village Colombey-les-Deux-Églises with the name Colombey-les-Deux-Mosquées?

In 2002, in Germany, a Constitutional Court sentence allowed Islamic slaughtering, made by cutting the sheep, oxen and goat's throat: but with the mandatory authorization of the Karlsruhe slaughterhouse. However, the number of customers decreased and, finally, there were no customers.

In conclusion – some fear – it is dangerous to consider that the "cultural context" allows a diversion of the interpretation, although flexible, of the law: this alternative use of the law would justify honour killings, arranged marriages, etc. At minimum, applied in even less severe cases, it will generate evaluation disparities of the same behaviour.

⁷ On this topic cf. the literature quoted in my *La legge e la zappa: origini e sviluppi del diritto alternativo in Europa e in Sudamerica*, "Materiali per una storia della cultura giuridica", vol. XXX, Il Mulino, Bologna 2000, pp. 109-151.

⁸ Visit the website: www.onelawforall.org.uk. This organization has also published an information booklet: *Sharia Law in Britain. A Threat to One Law for All & Equal Rights*, June 2010, 34 pp.



5. The Islamic States from the point of view of the empirical State

In its moderate or modernist version, Islam is compatible with institutions with some degree of democracy, even if in many cases we talk about “authoritarian democracy”⁹. On the other hand, in its fundamentalist version, Islam supports a theocracy that is incompatible with the democratic-liberal structures of the State. In between these two extremes there are a range of possibilities either focused on an evolution towards more accomplished forms of democracy, or on an involution towards more undeveloped forms of autocracy. This is for now the unanswered alternative before the events of the southern edge of the Mediterranean.

We have two examples, in two non-Arab States. *Iran*, heir of the Persian Empire, is the prototype of a confessional and theocratic State. Unfortunately, the George W. Bush policy (through the two senseless wars in Iraq and in Afghanistan) elevated it to a regional power: a status that without unexpected external aid would hardly have been achieved. On the other hand, *Turkey* – through Atatürk’s option for Secularism – has chosen the path towards occidentalization under the trusteeship of the army, in a limited democracy open to evolution as well as involution¹⁰. The election victory of the (moderate) Islamic party produced, in some Western conservatory environments, alarming reactions, as if the presence of a confessional party could represent a danger for democracy.

We are forgetting, this way, that the Western democracy is full of confessional parties: the Christian democracies of the States of the European Union did not create any worries. In addition, we can also find in Western cultures Catholic banks and Catholic insurance companies. Islamic banks, that is, those that follow the precepts of the Quran on aleatory business and interests, opened branch offices in Europe; and also in Italy, some traditional Italian banks have opened *Islamic banking* sectors due to the increasing number of Islamic clients.

If Secularism according to the Turkish model prevails, the European Union can open its doors despite the strong economic and social non-homogeneity. Again putting aside the generous desires and long-term prospects. In the next ten years Western democracies will have to deal with new governments – hopefully democratic ones – which won’t present a different situation from the current ones on economic, demographic and cultural levels. Let’s examine briefly, the data for the GDP per capita, for the youth rate and for literacy in the States of the Southern edge of the Mediterranean and in some States of the Middle East: Morocco, Algeria, Tunisia, Libya, Egypt, Jordan, Syria and Yemen.

⁹ This, apparently contradictory, form of government has been identified in the Bonapartist form of government in France and in the ‘Berlusconian’ form of government in Italy: Mauro Volpi, *La democrazia autoritaria. Forma di governo bonapartista e la V repubblica francese*, Il Mulino, Bologna 1979, 229 pp.; Antonio Gibelli, *Berlusconi passato alla storia. L’Italia nell’era della democrazia autoritaria*, Donzelli, Roma 2010, 121 pp.

¹⁰ In the Spanish press the “Turkish model” has been pointed out, many times, as the potential way out of the current uprisings, even if there are many objections, such as the following one: “Tal modelo, de existir, no lo sería nunca de democracia. En Turquía, lo que existe es un ejército que se ha arrogado un derecho de vigilancia sobre lo que votan los ciudadanos” (José María Ridaó, *Artistas no invitados*, “El País”, 25 February 2011, p. 27).



GDP per capita: is about 3-4.000 Euros per year, with the Yemen depression (1.700 Euros/year) and Libya's peak (12.000 Euros/year). Similarly, the per capita income is between 1.600 in Syria and almost 9.000 Euros in Libya¹¹.

The economic appealing for these EU-Mediterranean countries (for Northern Europe, the notorious PIGS) is made clear by the following data for the per capita annual income of Greece (22.160), Italy (27.250), France (32.600) and Spain (24.700). As a matter of fact, the low-income level explains why the increase of food price (bread in particular) has been one of the fuses of the uprisings: at the beginning they were called "bread riots", like in nineteenth century Europe. Only in a second phase did the Western countries understand that the insurgents wanted bread and freedom.

Youth rate: "youth" refers to young people aged from 14 to 29 and is about 30% of the total population¹². On the other hand, if we take into consideration the segment aged between 0 and 25, (who are the people that will enter the labour market in the coming years), the rate is about 50% (with a peak of 65,4 in Palestine)¹³. In Spain, young people aged between 14 and 29 represent the 17,2% of the population.

Literacy: it varies from 90% (Jordan) to 50% (Yemen) of the population¹⁴. In Spain it reaches 98%. Access to education gave young Arab people the possibility of knowing new daily life and political models, but did not offer them either a labour market with the means to accomplish those models or a political life in accordance with the new models.

Unemployment: By comparing the European Union data during the present crisis, the percentage of the unemployed in the population does not seem unsustainable, ranging from 14% in Tunisia to 8,7% in Egypt¹⁵. But the analysis of the quality of the employment and the data themselves should be further explored. 2010, expected 20% for Spain, 8,5% for Italy and almost 10% for the Euro zone.

Data cross-checking, even if merely indicative, explains why any prediction for the near future would be – in the first months of 2011 – not only uncertain but also potentially pessimistic.

Any form of government that follows, means that the Southern Mediterranean States will go through an uncertain phase. The low GDP and low-income do not allow investments capable of reinserting, in medium terms, the great amount of young people that are facing the labour market and not even the improvement of the quality of employment. The support of the Western countries will need time and the current hesitations and delays do not foreshow anything good. A Marshall plan for the Southern

¹¹ Per capita annual income in euros. Morocco, 2000; Algeria, 3255; Tunisia, 2550; Libya, 8970; Egypt, 1400; Jordan, 2500; Syria, 1600 ("La Vanguardia", 20 February 2011, p. 6; source: World Bank, 2008).

¹² Young people aged from 14 to 29 of the total population: Morocco, 28,1; Algeria, 31,4; Tunisia, 27,2; Libya, 27,9; Egypt, 28,6; Jordan, 29; Syria, 30,7; Yemen, 29,8 ("El País. Domingo", 6 February 2011, p. 2; source: World Bank). Besides the rates, the total values should also make us reflect: for example, in Egypt, young people are around 30% of a population of 80 million inhabitants.

¹³ Young people aged from 0 to 25 of the total population: Morocco: 47,7; Algeria 47,5; Tunisia, 42,1; Libya, 47,4; Egypt, 52,3; Syria, 55,3; Yemen, 65,4 ("La Vanguardia", 19 February 2011, p. 8; source: Google Maps, Courrier International; "El País", 21 February 2011, p. 6; source: World Bank and others).

¹⁴ Literacy rate of the total population: Morocco 52,3%; Algeria 69,9; Tunisia, 74,3; Libya, 82,6; Egypt, 71,4; Jordan, 89,9; Syria, 79,6; Yemen, 50,2 ("El País. Domingo", 6 February 2011, p. 2; source: World Bank).

¹⁵ Unemployment rate of the total population: Tunisia, 14,2; Algeria, 13,8; Jordan, 12,7, Syria, 10,3; Yemen, 11,5, Morocco, 9,6; Egypt, 8,7; Libya, missing data. The situation is not different from the oil-rich States, like Iran and Saudi Arabia, where the unemployment rate is slightly more than 10% ("El País", 21 February 2011, p. 6; source: World Bank and others).



Mediterranean would be useful, of course, but – applied to those societies – how much time will it need to take them not to the 20.000 per capita incomes of the EU PIGS but to the 7.000 of current Turkey? With the increasing economic crisis in Europe, no one is talking about these projects anymore.

Revolutions create expectations in regard to fast improvements that, most of the time, have been disappointing. Liberal democracy, with its social status, costs money and in the Southern Mediterranean there is a lack of money (or it is terribly distributed). Liberal democracy requires political experience and this is also missing in the Southern Mediterranean. The material difficulties that will follow the uprising can open the way to political adventures.

The problems come from the fundamentalists, but not only from the Islamic fundamentalists. Let's just mention the weight that the protestant fundamentalism had in the republican administrations of the United States¹⁶ and that, on a popular level, manifested itself through publicly burning the Quran, provoking sanguinary reactions against seven UN employees in Afghanistan¹⁷. An optimistic prediction points to the Turkish model: an authoritarian democracy that can be improved. A pessimistic model refers, on the other hand, to the involution towards an Islamic State, like in Iran.

Let's not forget that a very different vision, in contrast to the demonized Western vision of the Islamic fundamentalism, exists: the Adl Wal Ihssane (Justice and Spirituality) organization (illegal but tolerated in Morocco) representative, Nadia Yassine, compares this organization to the Latin-American liberation theology for putting out of misery the Moroccan *bidonvilles*¹⁸. If organizations like this one would become a party they would have relevant weight on the elections and they could lead the revolution towards a non-democratic but Islamic State, as happened in Iran.

Iran is today, an example of the Islamic theocracy. But the current situation has been shaped by Western interventions. The Prime Minister Mohammed Mossadeq undertook several democratic reforms, but in 1953 – due to the oil nationalization – was defeated by an Anglo-American¹⁹ coup d'état that allowed Reza Shah Pahlavi to return to power, until the Khomeini's revolution in 1979.

6. An example of an Islamic State: Pakistan.

Colonial heritage can bear different fruits. The British colony of India, after the independence in 1949, was divided into two States according to the religions prevalent in the area: the Indian population practices Buddhism and Hinduism, while Pakistan practices Islamism. Under the same colonial lineage, India is today one of the great world democracies, while Pakistan is a dictatorship that struggles between an interested loyalty to Western culture in the fight against Afghan terrorism and a

¹⁶ A standard text is Georg M. Marsden, *Fundamentalism and American Culture*, Oxford University Press, Oxford 1980, XVI-351 pp. (second edition). A curious combination emerges from the title by Fabio Zanello (curated by), *American Mullah: voci del fondamentalismo cristiano americano*, Coniglio, Roma 2009, 63 pp.

¹⁷ Western newspapers didn't spent too much time talking about the embarrassing Quran charge in a trial streamed on the internet: Antonio Caño, *Matanza por la quema de un Corán*, "El País", 2 April 2011, p. 3 r p. 4; "El País", 3 April 2011, p. 6 e p. 7; "El País", 9 April 2011, p. 12.

¹⁸ Interview to "The Guardian", cit. in "La Vanguardia", 20 February 2011, p. 6.

¹⁹ Stefano Beltrame, *Mossadeq. L'Iran, il petrolio, gli Stati Uniti e le radici della Rivoluzione islamica*, Rubbettino, Soveria Mannelli 2009, XIV-287 pp.



dangerous indulgency towards the extremist fringes of Islam²⁰. The analysis of which shape this State is gaining can be enlightening.

The modern Pakistan law has three stratifications: an original tribal one (and partially preserved), an Islamic one and a third based on Western Common Law. The Indo-Pakistani world has been among the first to develop a modern law that would take into consideration two civilizations: the Anglo-Islamic law. It was, however, a reform imported from the outside whereas there was an Indo-Islamic reformism with its own tradition set in the context of the pan-Islamic movement. The most serious contrasts took place between the Western law introduced by the colonizers and the Islamic law that resorted from the independence. Some norms of the Islamic law, in fact, are in contrast to Western values, such as legal certainty, human rights protection, equal rights for citizens (being, therefore, in contrast also to the treaties that confirms them, even if subscribed by Islamic States).

The autochthonous reformism found its path only when India and Pakistan got separated, in 1947, and when an Islamic State was founded in Pakistan. Thirty years after the independence, the influence of the Islamic «revivalism» was visible in the Pakistani legislation with the prohibition of alcoholic beverages, gambling, prostitution and nightclubs.

Differently from Iran, the foundation of an Islamic State in Pakistan did not have popular roots; however, Islam was favourably accepted by broad layers of the population; even if it has been imposed to justify the regime that did not have a formal legitimacy because it emerged from the coup d'état of July 1977 by Muhammad Zia ul-Haq. In 1977 an Islamisation process of the Pakistani penal code began, which represented a step backwards – at least from a chronological point of view – compared to the Anglo-Islamic law of the colonial and united India. This tendency was reinforced in 1979 with the promulgation of the *Hudood Ordinances*, so called due to the type of punishment they were inflicting: the *Zina*²¹ Ordinance is part of this group and is related to crimes against sexual morality, which is particularly important to the fundamentalists.

This ordinance refers to a series of crimes, among which it is better to reflect only on rape, adultery and fornication (*zina*) crimes that have almost identical punishments, also because the police tend, actually, to reduce rape to fornication: on the records the two crimes are kept separated. Rape happens when there is sexual intercourse between two non-legitimately married persons and against the will of one of the parties. Fornication and adultery are consensual sexual intercourse between two non-legitimately married persons. The legal case history is complex and it is necessary to reflect on some points of the ordinance: for a full examination there is an Italian investigation that shows the legal features about this topic²².

²⁰ One of the most recent and liable descriptions of this State is Elisa Giunchi's book, *Pakistan. Islam, potere e democratizzazione*, Carocci, Roma 2009, 220 pp.

²¹ Elisa Giunchi, *Radicalismo islamico e condizione femminile in Pakistan*, L'Harmattan Italia, Torino 1999, p. 107. This interesting book, which arose from a doctoral thesis at the Cambridge University, analyses several sentences of the Pakistani Islamic courts. Others can be found in the broader English text of the thesis of 1994, entitled *The enforcement of the ordinance by the Federal Shariat Court in the period 1980-1990, and its impact on women*, consultable at the Cambridge University Library.

²² *Offence of zina (enforcement of hudood) ordinance*, N° VII, 1979: aims «to bring in conformity with the Injunctions of Islam the law relating to the offence of *zina*» and, more precisely, «to modify the existing law relating to *zina* so as to bring it in conformity with the Injunctions of Islam as set out in the Holy



Punishments are based on classical Islamic rigor: if the offender is an individual in full possession of his/her rights (*muhsan*: adult, free, Muslim, not insane, who has had sexual intercourse only with his/her lawfully married partner; or, if not married, virgin), adultery is punished with stoning (which is not mentioned in the Quran) and fornication is punished with whipping - one hundred lashes. In the case of rape, if the offender is *muhsan*, the punishment is stoning; if not, the punishment is one hundred lashes or «any other punishment that the court would judge appropriate, including the death penalty». These are the maximum penalties, but there are a number of cases that provide the possibility of reducing them; in addition, the rule of evidence hinders the condemnation of the maximum penalties for these offenses. However, these brief explanations already provide an idea about the severity of these punishments and the discretionary power of their application.

In Pakistan, after the institution of the Islamic courts that, since 1978, works side-by-side with the pre-existing courts, a constitutional reform was introduced in 1985, the Islamic law as the State law. Pakistani judges can override the positive law and refer, through the constitution, to «another» law. A typical example of this gap of values can also be found in the sexual crimes ordinance, a framework in which deep-rooted contrasting values coexist.

A study on 156 sentences referring to that ordinance comes to the conclusion that «starting, above all, from the introduction of the art. 2-A in the Constitution, the judges of the Federal Shariat Court had explicitly referred to the Islamic law sources, ending up even suspending statutory law norms to apply the not-codified *Sharia*»²³. The issue of how the Islamic law recall would be either an end (that is, coming up to the purity of the origin in contrast to Western corruption) or a means (to affirm the existing political and socio-cultural *status quo*) is still open. However, it's a fact that previous legal norms, promulgated according to Western principles, are nowadays partially unapplied.

7. The difficult transition from postcolonial Islamic States to Western style democracies

The history of the relationship between Islam and Europe has been mainly a history of conflicts. Hans Küng points out five clashes between Islam and Christianity: "Christianity", it should be noted, and not "democracy", because the confrontation takes place not between a religion and a political system, but between the religions, that is, between homogeneous elements. The first clash between Islam and Christianity is between Islam and Byzantium; the second took place with the conquest of Spain; the third during the Crusades; the fourth with the Ottoman expansion towards Vienna; the fifth with the colonialism of the XIX and the XX centuries. We are interested in this last phase of this long tradition, because it created both social (unsuccessful development) and psychological premises (resentment) of the current tension.

The key date of this unequal encounter is 1798, the date of the Egyptian Campaign by Napoleon. The discontinuous consequences of modernization can be evaluated

Quran and Sunnah». The full text is in *Hudood Laws in Pakistan*. Foreword by Gul Muhammad Khan, Kausar Brothers, Lahore s.d., pp. 144.

²³ Elisa Giunchi, *Radicalismo islamico e condizione femminile in Pakistan*, L'Harmattan Italia, Torino 1999, p. 107.



comparing the evolution of Japan and Turkey, or India and Pakistan. In both typical cases, Islam seems to play a role of restraint in modernization.

In the final clashes of the XIX and XX centuries, the Islamic States – and the Ottoman Empire in particular - tried to adjust to Western culture on a technological and economic level, but with limited success. The common anti-Western (and anti-American) resentment that nowadays permeates the great Islamic masses (and, the former Third World, in general) started from here.

8. Democracy and apostasy: "Whoever changes his religion, kill him"

The three monotheistic religions are strict concerning the prohibition of abandoning religion. When, in the IV century, Christianity became a State religion, under Constantine, apostasy transformed itself from sin into a crime against national security. However, Saint Augustine rejected the death penalty for apostates. Eight centuries later this position became radical with Saint Thomas Aquinas, who admitted the death penalty for whoever abandoned Christian faith. The Inquisition court emerged from this concept.

Islam is equally as harsh. In the Quran apostates seem to be condemned to sever punishments only in the afterlife. Although a handed down saying in *Sunnah* states that the Prophet expressed the need to punish the apostate in this world: and to punish him by death.

Until today, Islamic States recognize the right to convert to Islam but not to abandon it. The death penalty for apostasy is justified by fundamentalists referring to the State: as it is based on religion, any attack against religion is an attack on the stability of the State.

This ambiguous behaviour of the Islamic States is clear in the underwriting of the Universal Declaration of Human Rights in 1948, whose art.18 sanctions "the freedom to change religion or belief". Already at that time, Afghanistan, Iraq, Pakistan, Saudi Arabia and Syria refused to sign it. The signatory States to the human rights treaties do not always truly apply them²⁴. On the 25 November 1981 the "U.N. Declaration on Religious Intolerance and Discrimination" was approved. A group of Islamic States obtained that in art.1 the "change of religion" would not be mentioned. In the same year, an "Islamic Declaration on Human Rights"²⁵ was approved.

In 1981 the "Islamic Council of Europe" presented a *General Islamic Declaration on Human Rights*²⁶. The German Arabist, Martin Forstner, professor at Mainz University, believes that the Islamic States are willing not only to accept this declaration but also to actually apply the human rights established by it. These rights, on the other hand, do not totally coincide with the catalogues contained in the democratic constitutions

²⁴ On inadmissible reservations and other application peculiarities cf. Deborah Russo, *L'efficacia dei trattati sui diritti umani*, Giuffrè, Milano 2012, XVI-322 pp.

²⁵ See also: Tecla Mazzaresse – Paola Parolari, *I diritti fondamentali. Le nuove sfide. Con un'appendice di carte regionali*, Giappichelli, Torino 2010, 302 pp. (with texts in Italian of the human rights declarations in different continents, pp. 155-302: in particular, *Dichiarazione del Cairo sui diritti umani nell'Islam*, pp. 253-259; *Arab Charter of Human Rights*, pp. 261-276); AA. VV., *Les droits de l'homme et l'Islam. Textes des organisations arabe et islamiques*, Université de Strasbourg 2010, Strasbourg 2010, 327 pp. (2^a ed.); Anne Duncker, *Menschenrechte im Islam: eine Analyse islamischer Erklärungen über die Menschenrechte*, WVB, Berlin 2006, 142 pp.

²⁶ The German version can be found on the website: www.dadalos.org/deutsch/Menschenrechte.



and, therefore, according to Forstner, it is illegal to relativize the freedom of religion. Based on the “deeper analysis of the Arab version of the text”, he states “that the human rights proclaimed in it do not completely coincide with UN human rights and that, actually, the most important ones, such as freedom of religion, are not even mentioned”²⁷. In other words, the Arab text defines human rights in a different way compared to the 1948 Declaration²⁸. The age-old question of the difficulty of translating into non-UE languages concepts and institutions that do not exist (or exist in a different form) in other cultures is a difficulty that is an addition to all the others so far encountered.

In the Islamic world there are also more open-minded points of view. The “Zentralrat der Muslime in Deutschland” (ZMD), for example, in the 20 February 2002 declaration on the relationships of Muslims with the State and the society States: “They [the Muslims] also accept the right to change religion, meaning, to have any other religion or even no religion”²⁹.

Undoubtedly, the difficulty of translating the Western concepts into Arab may have played an important role; but the incompatibility between the Islamic State and apostasy remains. So, how could a Western style democracy reconcile with Islam? The incompatibility, in regard to the essential aspect of freedom of religion (therefore, the change of religion) seems insurmountable today.

In conclusion, the key-question is: “Chaos would not be created in the concept of the law, if – by assuming an approach of cultural relativism – the contents of fundamental human rights would depend on the diverse ideas of values of different cultures?”³⁰. K ng (and Forstner, who expressively cites K ng) proposes to elaborate in different cultures “a set of values that would also contain freedom of belief and religion” and to try to make it acceptable by different cultures, in order to achieve “a common basis of basic ethical values”: this is K ng’s world ethic project called “Weltethos”³¹. Maybe in the future the “world ethic” that K ng is hoping for – in which he also includes “the absolute freedom of religion and belief”³² – will allow Islam and democracy to reconcile: but it is an extremely remote expectation to guide us through the solution of the current problems.

²⁷ Martin Forstner, *Das Menschenrecht der Religionsfreiheit und des Religionswechsels als Problem des islamischen Staates*, Verlag des Verbandes der wissenschaftlichen Geschichte  sterreichs, Wien 1991, pp. 105-186 (excerpt from “Kanon”, 10, 1991).

²⁸ The right to religious freedom “se ve al menos relativizado, si no neutralizado por completo, cuando, en una consideraci n m s detenida del texto  rabe, se constata que los derechos humanos en  l proclamados no se corresponden plenamente con los de la Naciones Unidas y que precisamente aquellos que plantean problema, como, por ejemplo, el derecho a cambiar de religi n, no son siquiera mencionados” (cit. in Hans K ng, *El Islam*, cit., p. 656).

²⁹ Cit. in Hans K ng, *Der Islam. Wesen und Geschichte*, Piper, M nchen 2007, note 18, p. 863.

³⁰ These considerations are contained in the paragraph *R ckfrage: Religionsfreiheit – auch zum Religionswechsel?* (pp. 700-702). The quote is at p. 702 by Hans K ng, *Der Islam. Wesen und Geschichte*, Piper, M nchen 2007, 891 pp.

³¹ Forstner refers to Hans K ng (Hg.), *Dokumentation zum Weltethos*, Piper, M nchen 2002, 304 pp.; bibliography pp. 267-304. Dissenter: Benjamin Pommer, *Menschenrechte als Basis eines Weltethos? Vorbehalte aus Afrika gegen ber dem Universalit tsanspruch der Menschenrechte*, Grin Verlag, 2010, 33 pp. (http://ebooks.ciando.com/book/index.cfm/bok_id/72814)

³² K ng, *El Islam*, cit., p. 656.

A CRITICAL REVIEW ON THE CONSENSUS AROUND THE “WESTPHALIAN SYSTEM”

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Summary

The Thirty Years' War, which devastated Europe between 1618 and 1648, was a complex conflict: it was a religious war; it involved the main powers of the time, dynasty rivalries and rebellions from princes against the Emperor of the Holy Roman-German Empire. There is a consensus in viewing the Peace of Westphalia, which ended the war, as a decisive moment in the history of international relations and the majority of authors considers it the starting point of the modern State-Nation system, sovereign states which have jurisdiction over a territory, which were usually secular and related to one another according to the principle of the balance of power. A critical review of this consensus leads to question each of the above mentioned topics and conclude that the common interpretation has retrospectively transposed political processes which took place only later. In fact, it is likely that, in the 17th century, the pre-modern princely State is still dominant, which will then lead to the modern State-Nation system, a consequence of the emergence of industrial society and nationalism. One may even consider that the Peace of Westphalia delayed the constitution of national States, as far as Germany is concerned. Therefore, to use the terms “Westphalian state” and “Westphalian system” seems rather unadvisable.

Keywords:

Peace of Westphalia; sovereignty; territory; Westphalian system; State-Nation

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A CRITICAL REVIEW ON THE CONSENSUS AROUND THE "WESTPHALIAN SYSTEM"

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Those who go through specialized bibliography in International Relations will soon become familiar with a generalized opinion: that the Treaties of Westphalia in 1648 were the origin of the modern State-Nation system, sovereign states with territorial boundaries. The term "Westphalian State" became common and a consensus was created around this supposed feature within the genetic code of the interstate setting which lasted until today. Herein could we find all the elements of an enshrined equation: nationality + state political organization + sovereignty + territory. Westphalia was the moment of transition from nebulous medieval Christianity to modern power states, thus the term "Westphalian state".

In specialized literature we easily find emphatic statements such as: "In 1648, the peacemakers of Westphalia did not realize they had just created a new world order"², or: "The Peace of Westphalia has achieved the status of founding moment of today's sovereign state political system"³, or yet: "The Peace of Westphalia, for better or worse, marks the end of an epoch and the opening of another. It represents the majestic portal which leads from the old into the new world"⁴.

In a less simplified way, some authors intelligently describe the complexity of the "Westphalia" phenomenon and its plethora of meanings. An example of this is the following page by the great American legal expert, Richard Falk:

"«Westphalia» is simultaneously used to identify an event, an idea, a process, and a normative score sheet. As event, Westphalia refers to the peace settlement negotiated at the end of the Thirty Years War (1618–1648), which has also served as establishing the structural frame for world order that has endured, with modifications from time to time,

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² Arnaud Blin, 1648, *La Paix de Westphalie ou la naissance de l'Europe politique moderne*, Bruxelles: Éditions Complexe, 2006, p.166.

³ João Marques de Almeida. "A paz de Westfália, a história do sistema de Estados modernos e a teoria das relações internacionais", *Política Internacional*, vol. 2, n.º 18 Outono-Inverno (1998), 45-78, p. 45.

⁴ Leo Gross. "The Peace of Westphalia, 1648-1948", *The American Journal of International Law*, Vol. 42, No. 1 (Jan., 1948), pp. 20-41, p.28. According to some, the paper by Leo Gross is greatly responsible for this thesis.



until the present. As idea, Westphalia refers to the state-centric character of world order premised on full participatory membership being accorded exclusively to territorially-based sovereign states. As process, Westphalia refers to the changing character of the state and statecraft as it has evolved during more than 350 years since the treaties were negotiated, with crucial developments as both colonialism and decolonization, the advent of weaponry of mass destruction, the establishment of international institutions, the rise of global market forces, and the emergence of global civil society. As normative score sheet, Westphalia refers to the strengths and weaknesses, as conditioned by historical circumstances, of such a sovereignty based system, shielding oppressive states from accountability and exposing weak and economically disadvantaged states to intervention and severe forms of material deprivation”⁵.

No matter how respectable and well-founded these points of view may be, the truth is that they are included in a wide consensus among scholars in International Relations. We believe, however, that such a consensus⁶ is, at least, debatable, and we may even say that Westphalia is perhaps “one of the most misrepresented events by scholars of ‘international’”⁷. Thus, the advantage of a critical review. We state that the Treaties of Westphalia should not be considered the origin of the modern State or the State-Nation and, consequently, the term “Westphalian state” should no longer be used. To support that, we reiterate: Westphalia did not create the concept of sovereignty; Westphalia was not the origin of national State with territorial borders; it is probably abusive to claim that the Treaties of 1648 founded the European system of State-Nations. The analysis of these issues will force us to briefly describe the Thirty Years’ War and the Treaties that ended it, as well as its consequences for Europe.

The Thirty Years’ War

The Thirty Years’ War, which devastated central Europe between 1618 and 1648 (the majority of the German population was killed), was a large and complex conflict. It was simultaneously a religious war, a confrontation among the powers of the time, a clash between dynastic interests and a rebellion of German princes against the Holy Roman Emperor (a kind of civil war within the German territory). These dimensions of the war overlapped and cross-connected, sometimes in a rather contradictory way. A brief overview of this complexity will surely help to understand the scope of the peace of Westphalia and how it affected the international system.

⁵ Richard Falk (2002). “Revisiting Westphalia, Discovering Post-Westphalia”, *The Journal of Ethics* 6: 311-352, p. 312. See also José Manuel Pureza (1998). “Eternalizing Westphalia? International Law in a Period of Turbulence”, *Nação e Defesa*, Outono 1998 – nº 87 – 2ª série, pp. 31-48.

⁶ The consensus is so wide that it is rather superfluous to provide examples. In some cases, the phrase “Keynesian-Westphalian frame” (plus control of national economy by the State), as is the case of Nancy Frasier (2009). *Scales of Justice*, New York: Columbia University Press.

⁷ Brazilian scholar Lucas Freire, professor at the University of Exeter, in the UK, was the first to use this expression at a conference in Belo Horizonte, Brazil, in 2008, in a paper on the impact of Westphalia in new political order, “O Impacto de Westphalia na Montagem de uma Nova Ordem na Política Mundial”, available. in http://exeter.academia.edu/lucasfreire/Papers/196168/O_Impacto_de_Westphalia_na_Montagem_de_uma_Nova_Ordem_na_Politica_Mundial, retrieved on 11.12.2011 (quote authorized by the author).



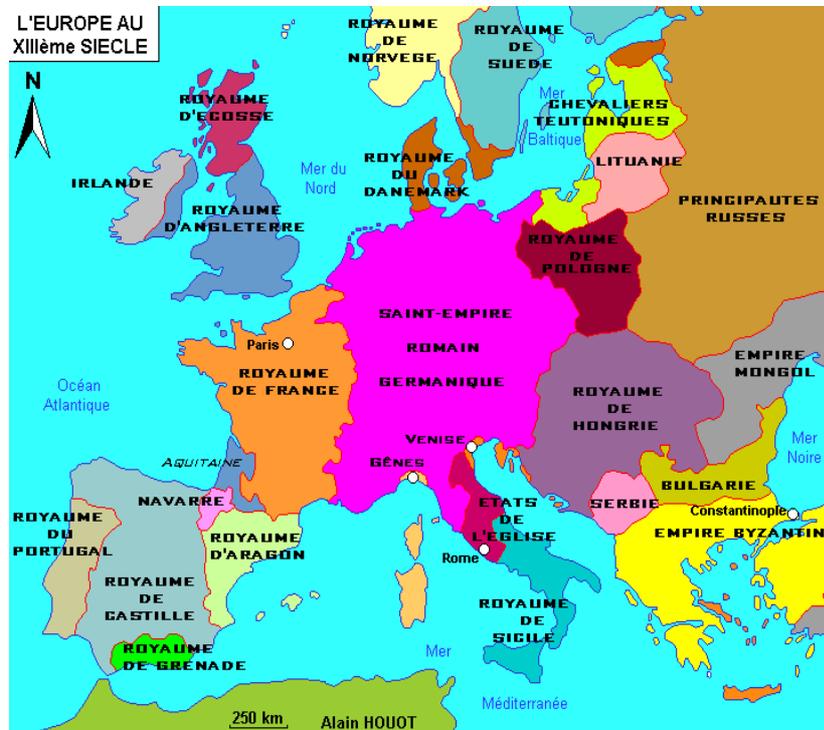
First and foremost, it was a religious war. Let us briefly go over its major events and their consequences. In 1517, Luther publishes his 95 Theses on the door of the Wittenberg Cathedral, an action which represents the beginning of Protestant Reform. The new anti-catholic confession spreads rapidly through wide areas of northern and central Europe and is adopted by many German princes, by the kingdom of Sweden and in Scandinavia in general. Soon, Calvin proposes a doctrine closer to that of Luther and Calvinism spreads from Geneva to the north of France (the Huguenots) and the United Provinces of Flanders. The religious conflict became rather violent as authorities either reacted in a very strict (see the Diet of Worms in 1521 which condemns Luther) or in a tolerant way (see the Edict of Nantes by French king Henry IV which ended the Huguenot massacre, in 1598). Meanwhile, the Protestant princes had united in the so-called Liga of Esmalcalda against Charles V, Emperor of the Holy Empire. In 1555, in Augsburg, the two parties signed a Treaty, the famous Peace of Augsburg, which gave religious freedom to Lutherans (the agreement did not refer to Calvinists). From this moment onwards, as well as in the Treaties we will later analyze, Lutherans are usually referred to as the Augsburg Confession. The Peace of Augsburg, however, did not prevent the reigniting of religious conflicts, as evidenced in the episode known as "Prague Defenestration" (a symbolic moment representing the start of the protestant rebellion in 1618), made more serious due to the war for Sweden, which supported the Lutheran princes, as well as the intervention by France and the involvement of England⁸ at a later stage.

The latter reference allows us to move on in our analysis: the Thirty Years' War was not merely a religious war; it was also a conflict between the powers of the time. Sweden's role in the conflict is partly explained by its claim to being a European power, in an attempt to weaken the German empire and expand its influence to the whole of Scandinavia, the Baltic and to northern Europe. The United Provinces of Flanders, where Calvinism was predominant and which had become free from Spanish domination, also participated in the war, as did Bohemia and later Denmark. The powerful French participation, together with Sweden, the Swiss cantons and some Italian States, is explained by French desire to defy the hegemony of the Holy Roman Empire and of Spain and become the first European power. Cardinal Richelieu, prime-minister to Louis XIII, personified that ambition and, in the name of *Raison d'état*, did not hesitate to fight against its Catholic friends, a fact which evidences that the interests of the State far outranked religious solidarity. Their objective was indeed achieved and France became much more powerful, to the point of being the most important nation of the time, also due to its great internal development fostered by Colbert's mercantile policy during the reign of Louis XIV. To summarize, the Thirty Years' War represented a confrontation among the main powers of the 17th century, one of the innumerable convulsions and confrontations among these powers in the transition from the 16th to the 17th centuries. Examples of this are the Turkish siege to Vienna in 1529, the war against the Ottoman Empire, which lasted decades, the war of Spain in Flanders (between 1560 and 1648, the so-called Eighty Years' War), and the war of France against Spain (which was only over in 1659 with the Treaty of the Pyrenees).

⁸ In this short summary there is no room for details on the conflict's development or a description of the several post-war periods: the Palatine-Bohemian period (1618-1625), the Danish period (1625-1630), the Swedish period (1630-1635), and the French period (1635-16648).



Map 1 – The Holy Roman Empire in the 18th century ⁹



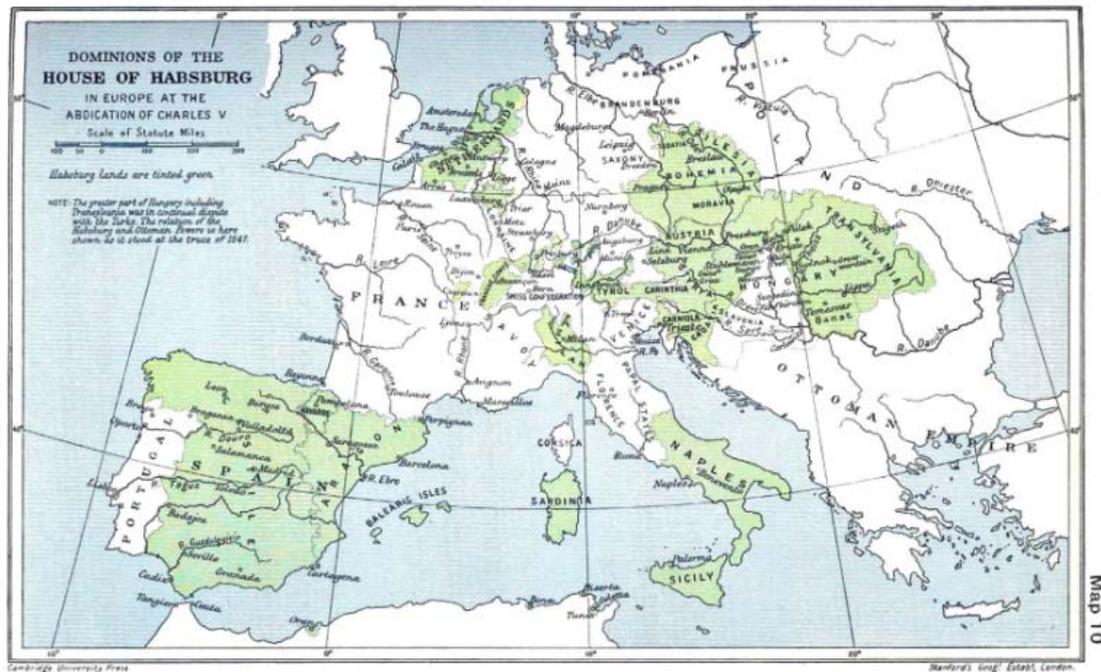
In this confrontation, dynastic rivalries had a significant relevance. The interests of the European reigning families were traditionally managed through a wedding policy, which represented alliances but ultimately could lead to confrontation. In the 18th century, the powerful Bourbon dynasty, which ruled France since the 16th century with Henry IV, began a serious confrontation against the Habsburgs, the Austrian Family¹⁰. The latter, who would rule the Austrian-Hungarian Empire, was at the head of the Holy Roman Empire from the 12th century to 1806. The Empire's most powerful time was under Charles V, who was both the King of Spain and the Holy Roman Emperor. After his death, the Empire is left to his brother, Ferdinand I, and Spain to his son, Philip II.

⁹ Source: <http://lartdesmets.e-monsite.com/pages/atlas-histoire-medievale-cartes/l-europe-au-xiii-siecle.html>, retrieved on 28.2.2012.

¹⁰ Writing about the Habsburgs, Koenigsberger declared: "Already in the 15th century, the Habsburg Emperor, Frederick I, adopted the motto AEIOU, *Austria est imperare orbi universo* (*Alles Erdreich ist Österreich untertan*: the entire world in under Austrian rule)" - H.G. Koenigsberger "Marte y Venus: Guerra y relaciones internacionales de la Casa de Austria" *Revista Pedralbes*, 19 (1999), 27-52, p. 45.



Map 2 – The Habsburg territory ¹¹



When the Thirty Years' War breaks out in 1618, the German princes rebel against the before mentioned emperor. The Holy Roman Emperor was an odd political organization which maintained the dream of the classical Roman Empire, a dream the empire of Charles Magne, king of the Francs, had already attempted to recover in medieval Christianity (in the 12th century). This new replica, under the name "Holy", had constantly changed borders but basically occupied Germany, its centre being Vienna, and encompassed a wide area of central Europe, from Brandenburg (in today's Germany) to Lombardy (in the north of Italy) and from Burgundy (in today's France) to Bohemia (now the Czech Republic). The princes who ruled this wide area were submitted to two powers: to the Pope, the spiritual power, and to the Emperor, the secular power, the latter elected by a group of important figures. Historically, the Christian kings gradually became independent from Pope Authority and the Peace of Westphalia is a symbolic moment of emancipation by the German princes in regards to the Emperor. The erosion of imperial power became inevitable and the emperor's role gradually became symbolic until Napoleon Bonaparte forced its dissolution.

The Peace of Westphalia

This brief overview of the main facts within the Thirty Years' War and the several types of conflicts at play allow us to proceed to analyzing the Treaties of Westphalia based on several sources: the Treaties¹² themselves, for logical reasons, as well as other

¹¹ Source: <http://www.bookdrum.com/books/dracula/9780141439846/bookmarks-26-50.html>, retrieved on 28.2.2012.

¹² The original Treaty, in Latin, as well as the several old translations of the Treaties, is available in Die Westfälischen Friedensverträge vom 24. Oktober 1648. Texte und Übersetzungen (Acta Pacis Westphalicae. Supplementa electronica, 1): <http://www.pax-westphalica.de/>, retrieved on 24/2/2012. The references made are based on the numbering of these documents. Full-text of the Treaties is also available in other websites such as The Avalon Project at Yale Law School:



documents, some ancient and other contemporary. The oldest sources are *Histoire abrégée des traités de paix, Les puissances de l'Europe depuis la Paix de Westphalie*, by Christophe-Guillaume de Koch, an Alsatian historian whose four volumes were first published in Basel in 1796 and 1797, and then reedited in Paris in 1837¹³, and the fourth volume of *Tableau des révolutions du système politique en Europe depuis la fin du quinzième siècle* by M.F. Ancillon¹⁴. Among the more modern works, mention should be made to a special volume of the journal *Pedralbes, Revista d'Història Moderna*, from the University of Barcelona¹⁵, published right after 1998, the 350th anniversary of the Treaties of Westphalia¹⁶.

As it is widely known, the Peace of Westphalia¹⁷ was established through two treaties signed at the same time, on 24 October 1648, one in Münster (120 paragraphs long) and the other in Osnabrück (divided into 17 chapters). In both, one of the signatures is that of the Emperor of the Holy Roman Empire. Yet, his opponents refused to meet and preferred to sign the Treaties separately: the kingdom of France (catholic) signed in Münster and the kingdom of Sweden (Reformed or Protestant)¹⁸ in Osnabrück.

The Treaties – mediated by the Republic of Venice – ended the war and, as a consequence, the religious conflict¹⁹. They ordered the end of hostilities to the military authorities, decreed a general amnesty of previous infractions and upheavals, regulated the restitution and redistribution of material goods in compliance with the new division of power as well as solemnly proclaimed a "Christian, universal and eternal peace"²⁰. Religious freedom was preserved from then on and no one could be persecuted because of their faith. Each prince could freely opt either for the Christian faith or for the "Augsburg Confession" (i.e. Lutheranism) or for Calvinism and – most importantly – that would become the option of the land's inhabitants, in accordance with the principle *cuius regio, eius religio*²¹. The political power would, then, determine the predominant

http://avalon.law.yale.edu/17th_century/westphal.asp; and in French (Digithèque de matériaux juridiques et politiques): <http://mjp.univ-perp.fr/traites/1648westphalie.htm>; <http://mjp.univ-perp.fr/traites/1648osnabruck.htm>.

¹³ Tome premier, Bruxelles: Meline, Cans et Compagnie. This 1837 edition was revised and completed by F. Schoell, ambassador of Prussia in France who, in his long preface, justifies the changes he introduced. Available in http://www.google.pt/books?id=kOKtAAAAMAAJ&printsec=frontcover&hl=pt-PT&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false, retrieved on 23.4.2011.

¹⁴ Paris, Imprimerie de la Harpe, 1806, available in http://books.google.pt/books?id=rWEPAAAAQAAJ&pg=PP7&dq=ancillon+tableau+tome+quatrième&hl=pt-PT&ei=FidZT6jHCs6t8QPFmZOD&sa=X&oi=book_result&ct=book-thumbnail&resnum=2&ved=0CDOQ6wEwAQ#v=onepage&q&f=false, retrieved on 6.6.2011.

¹⁵ Available in <http://www.raco.cat/index.php/Pedralbes/issue/view/8335/showToc>, retrieved on 27.5.2011.

¹⁶ Those readers who understand German may find further information in "Wesfälische Geschichte" in http://www.lwl.org/westfaelische-geschichte/portal/Internet/input_felder/langDatensatzEbene4.php?urlID=461&url_tabelle=tab_websegmente#bd1, retrieved on 17.2.2012.

¹⁷ For a brief summary in Portuguese, see Hermínio Esteves and Nancy Gomes "O Congresso de Vestefália", *JANUS* 2008, p. 50-51.

¹⁸ Due to the exceptionally long negotiation period, the main actors died before seeing the product of their effort, their successors signed the Treaties: Ferdinand II and Ferdinand III for the Empire; Louis XIII and Louis XIV for France; Gustav Adolf and Queen Christina for Sweden.

¹⁹ Even though peace was precarious. In 1685, Louis XIV of France revoked the Edict of Nantes in which Henry IV guaranteed tolerance towards Protestants in 1598. Not only did religious persecutions continued but, in the next century, important conflicts broke out, from succession wars in Europe to those of colonization in other continents.

²⁰ Statement included in the first articles of both Treaties.

²¹ This expression had already been used in previous situations and is not taken up literally in the Treaties of Westphalia. Often it is mistranslated as "in a specific region, a specific religion", this way emphasizing territory. However, its true meaning is "Whose realm, his religion".



confession within its jurisdiction. Yet, its subjects, in case they disagreed with the religious option, could immigrate to areas in which their confession was predominant²².

Having regulated the religious issue thus, the Treaties of Westphalia also include innumerable provisions on territory, imposed by the rebalancing of powers due to the long conflict. The usual power game is at play: at the time, one of the natural consequences of war was a geographical expansion of territory by the winner and territorial loss by the losing party. Therefore, the Emperor and the Austrian family gave France a few territories: bishoprics (Metz, Toul, Verdun...), free cities, boroughs, castles, mines and pastures, and areas such as Alsace. On the other hand, the Queen of Sweden was given territories such as a part of Pomerania, the city and the port of Wismar, the archbishopric of Bremen, the city of Wilshofen and so on, all of which belonged to the Holy Empire before the war. In these geopolitical rearrangements, it is also noteworthy to mention the independence of two territories: the United Provinces of Flanders (Holland), already free from Spanish rule, and the Swiss Confederation, represented by the city of Basel on behalf of the other cantons²³.

As we have seen, this power correlation was closely connected with the rivalries among the predominant dynasties. The Peace of Westphalia obviously represented a victory of the Bourbons over the Habsburgs. The first, who occupied the throne of France, in alliance with Sweden, opposed to the latter's attempt to rule Europe and make the borders of Christianity coincide with their own Empire. A geopolitical change thus took place, in which the Scandinavian and western countries won (Sweden, England, Holland, France, Switzerland) over the central-southern axis, Vienna-Madrid.

This was not the only area in which the role of the Habsburg Emperor was weakened. In fact, not only did the Holy Roman Empire lose territory and power in the confrontation with its opponents but its role became much less relevant due to the relative emancipation of the princes in relation to the Emperor. Westphalia thus represents an important breaking point from medieval Christianity and its duality, in which the local powers were submitted to the Pope, the spiritual power, and the Emperor, the secular power²⁴.

According to most scholars, the historical relevance of the Peace of Westphalia lies exactly in this transition: the end of the old European (medieval) order and the emergence of a new (modern) order, no longer based on a nebulous of a supposed universal Christian kingdom – the Christian Republic –, but in the existence of the sovereign State-Nations, with territorial borders, i.e., "Westphalian States". This thesis, however, must undergo thorough critical analysis.

²² Imperial cities could include two religions – see art. V, 11, of the Treaty of Osnabrück. This Treaty describes in detail the guaranties of relocation for those who do not agree with the prince's religion: all "State subjects whose religion is not that of the Lord are entitled to change residency" (art. V, 12). They have a period of no relocate for no less than five years.

²³ On this matter, see the reservations towards the "independency" of both Holland and the Swiss Confederation stated by Andreas Osiander in "Sovereignty, International Relations, and the Westphalian Myth", *International Organization* 55, 2, Spring 2001, 251-287, p. 267.

²⁴ See Jacques Le Goff (1983). *A civilização do Ocidente Medieval*, volume II, Lisboa: Editorial Estampa, transl. by Manuel Ruas, p.19- : "Christianity is dual. It has two heads: the Pope and the emperor. But medieval history is rather composed of misunderstandings and wars than of understandings"; and later: "The duality in medieval Christianity is less the duality of the Pope and the emperor than that of the Pope and the king (king-emperor), or, as the historical formula states, the duality of the priesthood and the Empire, of spiritual and secular powers, of the priest and the warrior".



A critical review

The Treaties of Münster and Osnabrück were undoubtedly extremely important moments in European history, for all the already mentioned reasons. The Congress of Westphalia was a long three-year negotiation and represented a kind of pan-European conference, perhaps the first in the continent. It brought peace, though precarious, on the religious issue, it practically abolished the power of the Holy Roman Emperor to supervise the princes, weakened both the Austrian and the Spanish branches of the Habsburg dynasty, made France and Sweden stronger and allowed for wider autonomy of would-be Holland and Switzerland.

However, we do not believe that the geopolitical alterations in Europe allow for the expression "Westphalian system" (meaning the state-centered system which would dominate international life) nor that these alterations represented the emergence of the sovereign State-Nation, with territorial jurisdiction, often compared to the "modern State"²⁵. Let us analyze this issue step by step.

The idea of State-Nation

Many historians declare this was the time the State-Nation in Europe was becoming consolidated. Paul Kennedy, an authority on this matter, affirms:

"Between the late fifteenth and the late seventeenth centuries, most European countries witnessed a centralization of political and military authority, usually under the monarch (but in some places under the local prince or a mercantile oligarchy) accompanied by increased powers and methods of state taxation, and carried out by a much more elaborate bureaucratic machinery (...) There were various causes for this evolution of the European nation-state. Economic change had already undermined much of the old feudal order (...). The Reformation, in dividing Christendom (...) extended secularism on a national basis. The decline of Latin and the growing use of vernacular language by politicians, lawyers, bureaucrats, and poets accentuated this secular trend. (...) it was no wonder that many philosophers and other writers of the time held the nation-state to be the natural and best form of civil society, (...). But it was the war, and the consequences of the war, that provided a much more urgent and continuous pressure toward 'nation building' than these philosophical considerations and slowly evolving social tendencies"²⁶.

²⁵ We cannot ignore the innumerable debates and controversies on the idea of State "modernity". On this matter, see the proceedings of a conference cycle held at Universidade Autónoma de Lisboa in the academic year of 1996-97, when, on this matter, important texts were written, namely by Jean-Philippe Genet, "La Genèse de l'État Moderne" and by António M. Hespanha, "O Estado Moderno na recente historiografia portuguesa", in *A génese do Estado Moderno no Portugal Tardo-Medieval (séculos XIII-XV)*, Lisboa: EDIUAL (1999).

²⁶ Kennedy (1989), pp. 89-90.



Kennedy, when he mentions "philosophers and writers" is referring to Machiavelli, probably the first to use – still in the early sixteenth century – the term "State"²⁷ in its modern meaning, or to Grotius, who, in 1625 – in the middle of the Thirty Years' War – publishes his masterpiece *The Rights to War and Peace*, in which he describes States as legal persons and establishes one of the legal basis of international law (*ius gentium*)²⁸. Later, in 1651, already after the Peace of Westphalia, the English philosopher Thomas Hobbes develops a complex theory on State in his famous work, *Leviathan*²⁹.

Yet, did the Treaties of Münster e Osnabrück found the State-Nation or the Nation-State (to use Paul Kennedy's term)? Certainly not. If, at that time, the European societies were moving towards power centralization, the truth is that the State-Nation appears, in some cases, much before Westphalia and, in others, much after Westphalia. In some of these processes, the Nation precedes the State, in terms of a community with its own identity, which is organized politically as a State. In others, however, the process is reversed and the State precedes the Nation³⁰. The Treaties did not found the secular State either³¹ and we must not forget that being secular is one of the features of the modern State. The Treaties may have undermined the sacredness of political power, yet, their most immediate effect was not the secularization of institutions but exactly the opposite, namely the link between belonging to a confession and to a political community, based on the referred principle of *cuius regio, eius religio*.

In fact, observing Europe's political map in this period allows for interesting conclusions. To the west and the north, we can see several kingdoms, some reasonably established in terms of identity and territorial borders, as is the case of Scotland, England, France, the United Provinces, Portugal and Spain, Denmark and Sweden. To the East, besides the Polish-Lithuanian kingdom, we find mostly empires, in particular the Russian, the Turkish-Ottoman and later the Austrian-Hungarian. On the other hand, in the wide area of Central Europe, in the German and Italian areas, namely in the Holy Roman Empire, there is huge fragmentation of policies. This fragmentation is due to the already mentioned autonomy of the princes in regards to the emperor as well as due to the traditional fragmentation of the Italian peninsula. Therefore, the Peace of Westphalia, rather than lead to the generalization of the State-Nation in Europe, led to the pulverization of political centers, to hundreds of principalities. Observing the two maps allows us to describe the evolution of Europe between 1600 and 1660, and

²⁷ In the first line of his work, *O Príncipe*, Lisboa: Publicações Europa-América (1972), transl. Fernanda Pinto Rodrigues.

²⁸ I used the French edition (1999), *Le droit de la guerre et de la paix*, Paris : Presses Universitaires de France, transl. P. Pradier-Fodéré. On page 7, he states: "this area of law which regulates the relations among peoples or chiefs of State, whose rules are either based on their own nature, or established by divine law or by custom or by tactical convention have been analyzed by few authors (...) though this is an important work for humankind".

²⁹ Published in Portuguese by Imprensa Nacional Casa da Moeda, transl. João Paulo Monteiro and Maria Beatriz Nizza da Silva, Lisboa (1995).

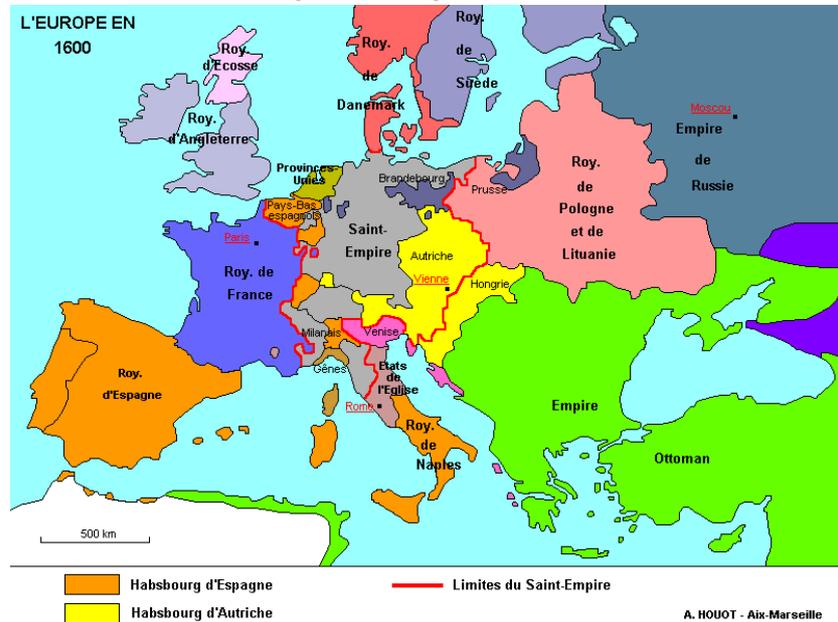
³⁰ This is undoubtedly the case of Portugal: "Portugal was not founded (...) based on ethnicity but on political and administrative status, i.e., contrary to what was generally accepted during the nationalist period, Portugal started as a State type of political formation and slowly became a Nation. (...) The Portuguese state annexed a series of separate territories which had little in common in terms of culture and living conditions. Portugal's unity resulted from continuity in political power which ruled the territories in a firm and very centralized manner" – José Mattoso (1998). *A Identidade Nacional*, Lisboa: Gradiva, p. 67.

³¹ However, Raymond Aron's opinion should be taken into account: "The neutrality or secularism of State in Europe was a result of the Wars of Religion" – *Paix et guerre entre les nations*, Paris: Calman-Lévy (1984), p.374. A similar opinion is that expressed in: "the Renaissance, the decline of the Roman Church, the development of humanistic ideas paved the way to national secularization": Jacques Huntzinger (1991). *Introdução às Relações Internacionais*, Lisboa: PE Edições, transl. Carlos Aboim de Brito, p. 87.

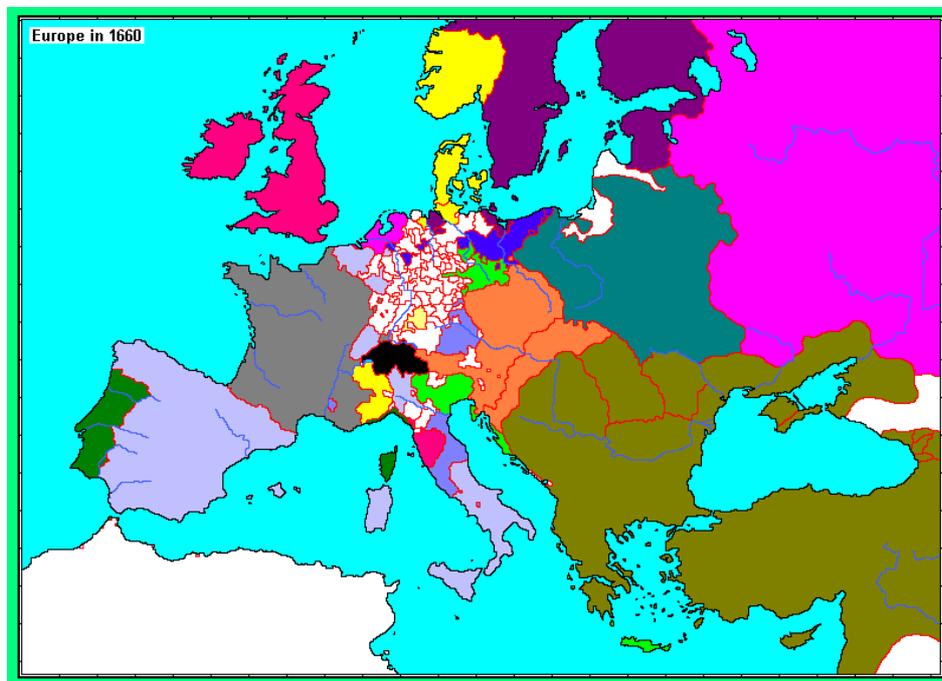


realize that the Thirty Years' War and the Treaties of Westphalia did not lead to the generalization of the State-Nations and rather delayed that process.

Map 3 – Europe in 1600³²



Map 4 – Europe in 1660³³



In fact, the relative independence of the princes towards the supervision of the emperor led to political fragmentation and delayed by two centuries the emergence of

³² Source: http://perso.numericable.fr/alhouot/alain.houot/Hist/ancien_R/ancien7.html, retrieved on 28.2.2012.

³³ Source: <http://www.zum.de/whkmla/region/xeuropa1718.html>, retrieved on 28.2.2012.



the German State³⁴. Actually, we have to wait until the mid 19th century for the unification of two great European countries, Italy, in 1860-70, and Germany, in 187³⁵. At that time, as we will see, the State-Nation system is already predominant in European geopolitics.

What Westphalia establishes is not so much the State-Nation but the 'princely State', as Jacques Huntzinger describes:

*"(...) the State becomes the princely State. The state cities could be either just cities or empires, having gradually conquered and annexed territories (...). The princely States, however, belong to a single owner, the prince, whose power reins over a defined and well-limited territory. Princely authority is so encompassing that everyone feels it as a central power. (...) The princely State extends to the whole of Europe along the sixteenth and seventeenth centuries. In the eighteenth century, a new development takes place and the princely State is replaced by the State-Nation"*³⁶.

This development from the princely State to the modern State-Nation is closely linked with the issue of sovereignty. The sovereign State, therefore, is not a consequence of the Peace of Westphalia either.

The concept of sovereignty and territorial jurisdiction

Frequently, books on International Relations refer the Treaties of Münster and Osnabrück as the supposed origin of the sovereign State is rather difficult to

³⁴ German historiography tends to emphasize this fact, unlike French historiography, which tends to omit it. The study of that historiography allows us to conclude that: "From the early nineteenth century, the confrontational perspective of peace was exacerbated in all those who tried to explain the delay in forming the State-nation, which would only be formed fully after 1871. The Catholic-inspired paradigm saw the war as a constitutional conflict which opposed the Imperial States to the Emperor, thus delaying the development of the imperial State of 'great Germany'. The Protestant-inspired perspective viewed the war as a Catholic counter-Reformation action and a confrontation between territorial States which delayed the foundation of a nation under Prussian ruling – 'little Germany'" – Claire Gantet, "Le 'tournant westphalien'", *Critique Internationale*, 2000, n.º 9, 52-58, p. 54, also available in http://www.persee.fr/web/revues/home/prescript/article/criti_12907839_2000_num_9_1_1621, retrieved on 6.3.2012. A similar opinion is expressed next: "German fragmentation pulverized the power of the Viennesian Habsburgs and made it possible for the dynasty of the Hohenzollern, from Prussia and Brandenburg, after receiving the territories to the north of the Holy Empire, to initiate a policy of rivalry towards the Austrians. One of the highlights of the Hohenzollern strategy was the implementation of the German Border Union (Zollverein) by Prussia in the nineteenth century" – Marcilio Toscano Franca Filho, "Historia y razón del paradigma westfaliano", *Revista de Estudios Políticos*, 131, Madrid, enero/marzo 2006, 87-111, p. 99.

³⁵ "The German nationalists argued that the peace treaty prevented the establishment of a German union and led Germany to two centuries of impotence, to the benefit of France." – J.H. Elliott, "Europa después de la Paz de Westfalia", *Revista Pedralbes*, 19 (1999), 131-146, p. 132. In the same journal, see the opinions of Heinz Duchhardt who supports this point of view: "the Peace of Westphalia played an absolutely crucial role, marked the beginning of a disastrous time of external control over the German Empire by its most powerful neighbors and represented a victory of particularism and regionalism over a centralized policy" - Heinz Duchhardt, "La paz de Westfalia como *lieu de mémoire* en Alemania y Europa", *Revista Pedralbes*, 19 (1999), 147-155, p.149. According to this author, and in opposition to the version of nineteenth century French historians, the Spanish considered Westphalia "a low period in their history" and the Swedish "where generations, accounting for their success, tend to consider the peace of Westphalia as a turning point towards its decadence" (p. 155).

³⁶ *O. Cit.*, p. 87.



comprehend. The explanation may lie in the fact that, as we have seen, many policies in central Europe gained relative independence towards the imperial supervision of the House of Austria. The proliferation of independent principalities³⁷ led to the diffusion of powers and awarded them some of the prerogatives of sovereignty, since they were partially free from medieval supreme powers, those of the pope and of the emperor.

Those prerogatives are described in the Treaties of Münster and Osnabrück:

"They shall enjoy without contradiction, the Right of Suffrage in all Deliberations touching the Affairs of the Empire; but above all, when the Business in hand shall be the making or interpreting of Laws, the declaring of Wars, imposing of Taxes, levying or quartering of Soldiers, erecting new Fortifications in the Territory of the States, or reinforcing the old Garrisons; as also when a Peace of Alliance is to be concluded, and treated about, or the like, none of these, or the like things shall be acted for the future, without the Suffrage and Consent of the Free Assembly of all the States of the Empire: Above all, it shall be free perpetually to each of the States of the Empire, to make Alliances with Strangers for their Preservation and Safety; provided, nevertheless, such Alliances be not against the Emperor, and the Empire, nor against the Public Peace, and this Treaty, and without prejudice to the Oath by which everyone is bound to the Emperor and the Empire"³⁸.

To legislate, collect taxes, levy soldiers and make war are all powers of a sovereign. Finally, the right to build alliances is another very symbolic prerogative of the princes' sovereignty. These are the arguments which have supported many authors' theses on the Peace of Westphalia being the origin of the sovereign State.

However, this is probably a rash and badly-founded conclusion. The concept and the practice of sovereignty existed before Westphalia³⁹. The expression *rex in regno suo est imperator* had been in use since the late Middle Ages in Europe:

"Since the early 12th century, English and Spanish as well as French canonists, deny that their kings are subjects of the emperor and subject to imperial laws. (...) In 1208, a canonist declared that «every king

³⁷ Though formally they still "shall render Obedience, and be faithful to his Imperial Majesty" (§ 22 Treaty of Münster = art. IV, 14 Treaty of Osnabrück).

³⁸ § 63 of the Treaty of Münster = Art. VIII,2 of the Treaty of Osnabrück: *"Gaudeant sine contradictione iure suffragii in omnibus deliberationibus super negociis Imperii, praesertim ubi leges ferendae vel interpretandae, bellum decernendum, tributa indicenda, delectus aut hospitaciones militum instituendae, nova munimenta intra statuum ditiones exstruenda nomine publico veterave firmanda praesidiis nec non ubi pax aut foedera faciendae aliave eiusmodi negotia peragenda fuerint. (...) Cumprimis vero ius faciendi inter se et cum exteris foedera pro sua cuiusque conservacione ac securitate singulis statibus perpetuo liberum esto, ita tamen, ne eiusmodi foedera sint contra Imperatorem et Imperium pacemque eius publicam vel hanc imprimis transactionem fiantque salvo per omnia iuramento, quo quisque Imperatori et Imperio obstrictus est"*.

³⁹ See the thorough study by Dieter Wyduckel, "La Soberanía en la Historia de la Dogmática Alemana", transl. from German into Spanish, available in <http://www.unioviado.es/constitucional/fundamentos/primer/pdf/wyducke.pdf>, retrieved on 2.1.2012: "The origins of sovereignty as a relevant legal concept may be: in legal Roman law, in canon law and in monarchical and State law" (p.2).



enjoys the same powers as the Empire's emperor within his kingdom»⁴⁰.

Jean Bodin's influence on the theoretical concept of sovereignty is widely known, namely in his work *Les six livres de la République*⁴¹, published in 1576, seventy years before the congress of Westphalia. Machiavelli's thesis on the prince's sovereignty also dates from the 16th century:

"When Machiavelli published The Prince in 1527, he was the first to give an overview of international society (...). He begins by pointing out that principalities do not recognize a law or power above theirs, thus declaring the uselessness of the cultural heritage of the medieval Christian Republic"⁴².

Besides, the model of sovereignty in force at the time was that of royal or princely absolutism⁴³, very far from "modern State", in which sovereignty is no longer detained by the monarch but by the Nation as a legal person who delegates the right of government in its representatives (we will later discuss this idea).

We may argue that the fact that Westphalia acknowledges princes' right to establish alliances in order to ensure security is a feature of the modern sovereign State, associated to the right to make war, a kind of supreme power or a demonstration of sovereignty. That is true. Yet, we cannot ignore the evidence that neither the Thirty Years' War, nor the Treaties of Münster and Osnabrück, represented any innovation in this matter because the tradition to build alliances is rather old, from the classical and famous alliance system among City-States in ancient Greece either for or against Athens and Sparta in the Peloponnese War⁴⁴. The more so if you consider that the German princes, long before Westphalia, already conducted autonomous external policies and signed alliances⁴⁵.

Moreover, it is debatable that the Treaties only established the sovereignty of princes. Klaus Malettke, German historian from the University of Marburg, explains very thoroughly in what this new prerogative of Imperial States consists, as well as their restrictions in terms of authority. He begins by quoting E. Böckenförde:

⁴⁰ Jacques Le Goff, *o.cit.* p. 21.

⁴¹ The fac-simile of the original edition is available in <http://www.e-rara.ch/doi/10.3931/e-rara-6726>, retrieved on 2.3.2012. For an easier reading, see http://classiques.uqac.ca/classiques/bodin_jean/six_livres_republique/six_livres_republique.html, retrieved on 2.3.2012.

⁴² Adriano Moreira (1997). *Teoria das Relações Internacionais*, 2.^a edição, Coimbra: Almedina p. 256.

⁴³ On the nature and evolution of absolutism see <http://www.wikiberal.org/wiki/Absolutisme>, retrieved on 2.3.2012.

⁴⁴ See Thucydides (1987). *História da Guerra do Peloponeso*, Brasília: Editora da Universidade de Brasília, transl. by Mário da Gama Kury.

⁴⁵ See, for example, the words of Stéphane Beaulac in "The Westphalian Legal Orthodoxy – Myth or Reality?", *Journal of the History of International Law*, 2: 148-177, 2000, p. 168: "Moreover, it appears that these Treaty articles merely recognized a practice which had already been in existence for almost half a century. Indeed, the powerful German Princes were conducting their own foreign policy long before Westphalia. Palatinate and Brandenburg, for instance, struck alliances with the United Provinces of the Netherlands in 1604 and 1605 respectively".



“«When the right to establish alliances is added to territorial superiority, that not only results in a supplementary royal right but in a real external power. (...) They are reinforcing and consolidating each other and become a governmental power in the true sense of the word». (...) However, the Imperial States do not become sovereign States. In the peace negotiations, the Emperor blatantly refused to accept the sovereignty of the Imperial States because sovereignty was incompatible with the existence of an Emperor at the head of the Empire”⁴⁶.

Claire Gantet, a French historian from the Sorbonne, complements this idea based on several German authors and reinterprets the technical terms:

“Recent studies have shown that, on the one hand, the word chosen for ‘sovereignty’ by the national historiography corresponded, in the Treaties, to superioritas/Landeshoheit, which designated a ‘specific government quality’ in a territory without affecting in any way the loyalty towards the Empire or the Emperor; and, on the other hand, the clause which awarded the Empire the possibility to establish alliances did not lead to the dismembering of Germany: the restriction to this right – the alliances should not be against the Emperor or the Empire – was rather far-reaching”⁴⁷.

Based on all this, the thesis that Westphalia is at the root of the sovereign State seems to be rather unfounded⁴⁸.

The previous quote by Malettke broaches an important aspect, considering that another common concept is that the Peace of Westphalia is at the root of the ‘territorialized State’. The author refers to “territorial superiority”, *jus territoriale*⁴⁹, but adds the following restrictions

“They are not incorporated as they do not introduce a novelty in the Empire. However, by officially stipulating ‘the territorial power of the

⁴⁶ Klaus Malettke, « Les traités de paix de Westphalie et l'organisation politique du Saint Empire romain germanique », *Dix-septième siècle*, 2001/1 n° 210, p. 113-144. DOI : 10.3917/dss.011.0113, p. 129, also available in <http://www.cairn.info/revue-dix-septieme-siecle-2001-1-page-113.htm>, retrieved on 6.3.2012. Quote by Ernst W. Böckenförde, «Der Westfälische Frieden. Das Bündnisrecht der Reichsstände», *Der Staat*, n° 8, 1969, 449-478, p. 473.

⁴⁷ *O.cit.* p. 55-56. On this matter, see also: “The German fragmentation pulverized the power of the Vienna Habsburgs and allowed the dynasty of the Hohenzollern, founded in Prussia and in Brandenburg, upon receiving territories at the north of the Holy Empire, to implement its rivalry policy against the ‘Austrians’”, in Marcilio Toscano Franca Filho, “Historia y Razón del Paradigma Westfaliano”, *Revista de Estudios Políticos*, n.º 131, Madrid, enero-marzo (2006), pp. 87-111, p.99.

⁴⁸ To better understand the issue of sovereignty, see T.J. Biersteker and C. Weber (1996) *State sovereignty as social construct*, Cambridge: University Press. On p. 2 it is said that: “... sovereignty remains an ambiguous concept. Attention to sovereignty tends to raise more questions than answers about international relations.”

⁴⁹ See Art. VIII, Treaty Osnabrück.



Imperial States' they definitely prevented the chances of the Empire becoming a monarchic system"⁵⁰.

It is our contention that there has frequently been misunderstanding in considering that the Treaties of Münster and Osnabrück were a turning point in the territorialization of policies. There was, as we have seen, a territorial demarcation of religious faith defined by the princes, but Westphalia did not "invent" territory as a political reference space, nor did it create a control boundary. An author who has been studying this theme, Bertrand Badie, emphatically affirms that "the belle epoch of territoriality probably reached its peak at the signing of the Treaty of Westphalia"⁵¹. Before, though, his claims were more cautious:

"Nobody would dare state that, in the mid seventeenth century, the Peace of Westphalia founded a new territorial order which was not subsequently contested or reverted. That would be a naïve statement, as imperial and state-national logic were intertwined and colonial adventures often made these relations even more complex. However, for almost three hundred years, the Westphalian concept of territory was clearly predominant and, perhaps, federative of an emerging international order"⁵².

Actually, the meaning of the supposed "Westphalian concept of territory" is never completely clear. We know that Europe's geopolitical design changed and that the territorial share limiting the prince's faith was carefully planned and we also know that subjects were awarded the right to immigrate to a territory in which the community shared their religious beliefs. Yet, none of these facts proves that the peace in 1648 led to the birth of a new State whose sovereignty extends to a certain territory⁵³.

The idea of "new order" and "Westphalian system"

Let us resume the idea of general consensus by international relations specialists as far as the Peace of Westphalia being at the root of national, sovereign, secular, territorialized State, i.e., the modern State. If that is so, this event would have founded a new international order. We have questioned the grounds for these opinions, and shown that, in the mid 17th century, we are still far from the modern State. Though

⁵⁰ Malettke, *op.cit*, pp.128-129.

⁵¹ B. Badie (1995). *La fin des territoires*, Paris: Fayard, p. 45.

⁵² *Ib.* p.13.

⁵³ See Benno Teschke's important paper, "Theorizing the Westphalian System of States: International Relations from Absolutism to Capitalism", *European Journal of International Relations* 2002 Vol. 8(1): 5-48, his thoughts on this matter: "I suggest that proprietary kingship imposed a rather different territorial logic upon the spatial configuration of early modern geopolitics. First, territoriality remained a function of private dynastic practices of territorial accumulation and circulation, frustrating a generic identity or fixity between state and territory. Second, given the imperfect nature of absolutist sovereignty and the survival of feudal and patrimonial practices, territoriality remained non-exclusive and administratively non-uniform. Third, the diversity of early modern sovereign actors — hereditary and elective monarchies, merchant republics, confederations, aristocratic republics, constitutional monarchy, cities, states of estates — precludes any functional similarity, not to speak of equality, of contemporary actors. Consequently, fourth, the chronology of the formation of the modern system of states, based on exclusive territoriality operated by a depersonalized state, falls into the 19th century. p. 22.



the progress from medieval society is remarkable, only later, as we will see, the State-Nation spreads through Europe. A reference to nationalism would be anachronistic. Sovereignty is not a creation of Westphalia either. The State is a principality. The regime is absolutist. The prince has dynastic hereditary legitimacy (and a patrimonial control over the subjects and the land), completely different from the future legitimacy of the modern State-Nation. Very unlike secularized State, there is confessionalization of political belonging linked to religious belonging, though the protestant Reformation undermines the already fragile authority of the Pope⁵⁴ and religious faith paves the way to future secularity.

Despite all this evidence, many authors reiterate the novelty brought about by the so-called "Westphalian system", a system which would be so consistent that it lasted until recently⁵⁵. The features of this supposedly homogeneous "system" are easy to list: state-centered, formed – as we have reiterated – by sovereign national States, all equal, protected by the principles of non-interference, with centralized administrations and secularized institutions; the relations between these State actors would abide to the principle of the balance of power and would be ruled by international law; finally, the system would be Eurocentric, leaving out whole continents subject to colonization.

These topics have been critically analyzed and we have just reviewed the dubious basis of many of these assumptions. Considering it would be impossible to explore all aspects of this possible "system", we shall focus on two of its distinctive features: being state-centered and homogenous, and the principle of the balance of power.

First of all, we must briefly discuss the idea of international "system". Neo-realist schools of thought favor the systemic analysis of international relations, and scholars frequently refer to a system as a result of the order established after the Peace of Westphalia. Yet, if indeed there was a "Westphalian system", it would have been one of many systems. A comparison with other historical formulas would have been rather interesting, for instance with the system in Philadelphia, USA⁵⁶, especially so as some

⁵⁴ Evidence of this is the reaction of Pope Innocent X to the Treaties of Westphalia, made public in Rome on 20 November 1648: the agréments represented an "extremely serious offence to Catholic religion, to divine devotion, to the Holy See and to other lesser churches and to Holy Orders", therefore being "void, null, unfair and should be so considered by all". Full text available in Italian in http://it.wikipedia.org/wiki/Pace_di_Vestfalia, retrieved on 20.3.2012.

⁵⁵ Or even until today. See, for example, statements such as: "The appearance, in the end of the 20th century, of a global international system which, for the first time in history, has replaced the Eurocentric system in force since the Treaty of Westphalia in 1648 until the 20thc (...)" – J.E. Dougherty, R.L. Pfaltzgraff, Jr. (2003). *Relações Internacionais – As teorias em confronto*, Lisboa: Gradiva, transl. M.F. Ferreira, M.S. Ferro, M.J. Ferreira, p. 141. A previously mentioned author also declares: "This break establishes the core of the new legal-political thought, in which central government, hard borders, exclusive internal sovereignty and formal interstate diplomacy dominate. Thus, the Teaties of Westphalia represent the clearest transition point in international history towards the rule of territorial sovereignty and secularism as the foundations of a true multipolar system of States with temporal concerns. The use of the word "system" already conveys the apparent unity of many individualized diversity" – Marcílio T.F. Filho, *o.c.*, p. 102.

⁵⁶ For a comparative analysis of the Philadelphia system, see Daniel Deudney "Binding sovereigns: authorities, structures and geopolitics in Philadelphian Systems", in T.J. Biersteker and C. Weber, *o.c.*, pp. 190-239. Noteworthy is the statement: "Because the modern European system has expanded globally over the last half millennium, students of international politics have focused on the Westphalian system of sovereign states as a paradigm so much that it seems inevitable and universal. (...)Although in the Westphalian system of authority and power has been hegemonic in modern world politics, it has not been universal. At the periphery and in the gaps of the Westphalian system, there have existed different political orders. Most notable of these are the Hanseatic League, the Swiss Confederation, the Holy Roman Empire, the Iroquois Confederation, the Concert of Europe, and the early United States. (...) Of the polities not fitting the Westphalian model, the Philadelphian system in the United States of America



authors – in our opinion, wrongly – attribute a confederal character to post-Westphalian order⁵⁷.

A state-centered system?

It is our contention that the European order after Westphalia is not a homogenous state-centered system. The situation in Europe from the mid 19th century onwards is mixed – some national States are state-centered, reminiscences of the Holy Empire which kept many of its structures, and hundreds of other policies with different degrees of autonomy. The pulverization of geographical and political space in Europe is made evident by the diversity in the names of these policies: Lordships, Imperial Cities, Counties, Baronies, Principalities, Duchies, Landgraviates, Imperial Valleys, Kingdoms, Free cities, Archduchies, Abbacies, Bishoprics, Archbishoprics, Margraviates, Bailiwicks and Provostries⁵⁸.

Klaus Malettke, the already mentioned German historian, describes the German territory at the time as follows:

*"The whole Empire included, in the 17th century, over a thousand more or less autonomous polities. On the one hand, this group encompassed about three hundred States or similar structures whose lords – secular and non-secular elected lords, princes, imperial counts and abbots, magistrates of the imperial free cities – all had territorial jurisdiction over their territories under the direct dependency of the Empire, i.e., they had the right of representation in the Empire Diet. On the other, it included the Imperial cavalry, which had no representation or right to vote in the Empire Diet, but had jurisdiction over their small, even micro-, territories, special lordships, in a total of more than a thousand"*⁵⁹.

The author adds, quoting R. Vierhaus, "Therefore, we may conclude that 'all the Imperial States becoming legally equal would be a fiction in political terms'"⁶⁰. Moreover, as the study by Malettke demonstrates, the institutions of the Holy Empire continued after Westphalia: though the imperial army had only defensive functions, the Diet still held legislative power and influenced the Empire management, the Aulic Council, in Vienna, was an imperial court and, above all, the Imperial Chamber of Justice, which was less subordinate to the Emperor but still a court of the Empire and thus ensuring cohesion and stability⁶¹. Besides this, "a more thorough exam of Emperor's governmental powers shows a division. The sovereign rights were the

between the establishment of the Union (1791-89) and the Civil War (1861-65) is of particular interest" pp.190-191.

⁵⁷ Bertrand Badie, for example, *op.cit.* p. p. 42, states that: "This sovereignty includes the right to federate (*jus foederationis*)", apparently mixing the right of alliance with the possibility of a State federation.

⁵⁸ The only source in which a list of the States of the Roman Empire is http://en.wikipedia.org/wiki/List_of_states_in_the_Holy_Roman_Empire, retrieved on 11/3/2012. The list of 533 States which were ever under direct authority of the Emperor is available here.

⁵⁹ *O.cit.* p. 116.

⁶⁰ *Ib.* p. 117.

⁶¹ *Ib.* pp. 120 ss.



Emperor's, either *together* with the Imperial States or *alone*⁶². These opinions are corroborated by two specialists, the Canadian Stéphane Beaulac, in an already mentioned paper from the *Journal of the History of International Law*, 2000⁶³, and the German Andreas Osiander, who, in 2001, published a paper in *International Organisation*⁶⁴. Both of these papers refer to the "Westphalian myth" and deconstruct the consensus in specialized literature.

To sum up, after the Treaties of Münster and Osnabrück, there were several polities in Europe, some separated, others overlapping, some were States, other parts of the Empire, some small, even micro-territories, which leads us to conclude there is no reason to describe this as a homogenous and state-centered system.

Balance of power?

The treaties of 1648 are also attributed the balance of power, which, according to some, is one of the pillars of the Peace of Westphalia⁶⁵, as "the balance of power had, already during the negotiations, been understood as the rule to the procedural 'setting up' of alliances"⁶⁶.

We do not believe this is a debatable point of view, since all sources agree on this matter. According to Ancillon, "this peace was an experiment in terms of a less imperfect counter-power system than previous ones"⁶⁷. Geoffrey Parker recalls curious details in the positions of Adler Salvius and Jean Oxenstierna, Swedish plenipotentiaries in Osnabrück:

"As Count Salvius reported in exasperation to his principals from the Congress late in 1646: 'People are beginning to see the power of Sweden as dangerous to the "balance of power" (Gleichgewicht). Their first rule of politics is that the security of all depends on the equilibrium of the individuals. When one begins to become powerful ... the others place themselves, through unions or alliances, into the opposite balance in order to maintain the equipoise.' But the idea was scarcely new. As early as 1632 the Papal Curia had advised its diplomats abroad that 'the interest of Roman church' was better served by a balance of power than by the victory of any individual state. And this was a principle that Sweden herself had invoked in former days often enough: in 1633

⁶² *Ib.* p. 124. Author's italics. At the end of the paper, on p. 144, the historian concludes, referring to several authors, that: "The Empire kept its hierarchical structure and did not become a confederation of States. (...) Only in 1803-1806 did the German princes complete their revolution, their territorial jurisdiction became State sovereignty. (...) In opposition to the 19th century perception that the Treaties of Westphalia consolidated the Holy Empire". On the constitution of the Empire, see also Koch, *o. cit.*, p. 89. Do not forget that, before Westphalia "The German constitution, like most constitutions in Europe, were the result of circumstance, momentary needs, interests and passions. Most issues were regulated by custom and not by written laws" – Ancillon, *o.cit.*, pp. 259-260.

⁶³ S. Beaulac, *o.cit.*

⁶⁴ Andreas Osiander, "Sovereignty, International Relations, and the Westphalian Myth" in *International Organization* 55, 2, Spring 2001, 251–287.

⁶⁵ The term is Arnaud Blin's in "La paix de Westphalie : le nouvel ordre mondial", *Revista Historia* (2006) em <http://www.historia.fr/mensuel/720/la-paix-de-westphalie-le-nouvel-ordre-mondial-01-12-2006-59850>, retrieved on 2.1.2012.

⁶⁶ L. Freire, *o. cit.*, p. 20. Noteworthy is this author's idea of the "setting up" of the international system.

⁶⁷ *O.cit.*, p. 257.



Chancellor Oxenstierna claimed to a foreign dignitary that the chief for Sweden intervention in Germany was 'to preserve the aequilibrium in all Europe'⁶⁸.

We may, once again, question the originality of the Treaties of Westphalia, considering that preventing excess of hegemony of a power through alliances among its rivals is a rather ancient practice. There are innumerable examples of situations in which, in the absence of an "order" ensured by an imperial system and before there was a collective security system, the balance of power was a means to maintain a balance in the relationship among powers. In the 18th century, the famous Scottish philosopher David Hume wrote an interesting essay on the balance of power included in *Essays, Moral, Political, and Literary*, in which he listed several examples of this principle being used since ancient times⁶⁹.

We may even question the direct link between the Peace of Westphalia and the principle of balance of power. A reference by Randall Lesaffer, professor of History of Law in Holland and Belgium, quotes the thought of German specialist, Heinz Duchardt for whom "the European balance of power does not derive from the treaties of Westphalia but only emerged in Europe at the end of the 17th century when the boost of France forced the other European states to join forces against Louis XIV (1643-1715)"⁷⁰. Admittedly, the principle of balance of power is present in the logic of the Thirty Years' War and in the European territorial reorganization which followed. However, that does not imply that there was in fact a "Westphalian system", and that the referred principle was one of its original elements.

⁶⁸ Geoffrey Parker (1988). *The Thirty Years' War*. New York: Routledge & Kegan Paul Inc. p. 184.

⁶⁹ Text available in <http://www.econlib.org/library/LFBooks/Hume/hmMPL30.html#Part%20II.%20Essay%20VII.%20OF%20THE%20BALANCE%20OF%20POWER>, retrieved on 8.3.2012.

⁷⁰ Due to its relevance, we transcribe the whole passage: "Since the 18th century, the common opinion in historiography was that the two treaties of Westphalia of 24 October 1648 between the Empire and France, on the one hand, and between the Empire and Sweden, on the other, constituted the basis for modern international law in Europe. The Westphalian system was, according to popular opinion, founded on the principles of absolute sovereignty and legal equality of States – especially in religious terms – as well as on the theory of balance of power in Europe. Consequently, all the essential elements of 17th and 18th century *ius publicum europaeum* would already exist. The treaties of Westphalia would therefore be the heralds of State freedom and sovereignty.

More recently, some historians have questioned popular opinion and reached opposing conclusions. Firstly, Heinz Duchardt, 17th and 18th century international relations German specialist, declared in 1989 that the European balance of power does not derive from the treaties of Westphalia but only emerged in Europe at the end of the 17th century, when France's economic boost forced the other western European States to join forces against Louis XIV (1643-1715). Secondly, from a legal point of view, the treaties of Westphalia in 1648, when compared to preceding peace treaties, were not very original and, more importantly, the principles of sovereignty, of religious equality and balance of power among princes and States were not included in the treaties as principles of international law but as basic constitutional principles of the Holy Empire. This legal analysis leads to the conclusion that the treaties of Westphalia are viewed retrospectively as constitutional elements of the system and of international law in Europe rather than a system of rules of the Empire which were transposed to the whole of Europe. Thus, the Westphalian system as an international system based on the referred three principles was created after the treaties of Westphalia". - Randall Lesaffer, "Paix et guerre dans les grands traités du dix-huitième Siècle », *Journal of the History of International Law* Volume 7, Number 1, 2005 , pp. 25-42 (18), available in <http://www.ingentaconnect.com/content/mnp/jhil/2005/00000007/00000001/art00002>, Retrieved on 2.1.2012. The reference is H. Duchardt's, "Westfälischer Friede und internationale Beziehungen im Ancien Régime".



Conclusion

We have called it a misunderstanding to the anachronism in the belief that the Treaties of Westphalia in 1648 gave origin to the modern State-Nation system; some sort of retroactive interpretation of a process which took place after the 17th century, considering that, to quote Huntzinger again, only "the 18th century puts in motion a new evolution, from the princely state to the State-Nation", the more so because "the American and French revolutions are a crucial step in the creation of the State-Nation"⁷¹.

There is a debate on the origin of the international system of national State and the truth is that some authors consider that its origin is further back⁷², while others place it in the Congress of Vienna in 1815.

We prefer the second thesis, according to which the State-Nation, in the modern sense of the term, is the result of a confluence of elements: on the one hand, the end of the *ancien régime* at the hands of the French revolution; on the other, the emergence of industrial capitalism. The first element emphasizes the political and institutional dimension of the process; the second, its social and economic dimension. Andreas Osiander, who has a similar opinion, declares that "the most significant transition occurred with the French Revolution and the onset of industrialization, not with the Peace of Westphalia"⁷³, widely supported by the reasoning of Benno Teschke, who contradicts the "realistic conventional" perspective on Westphalia and proposes a reinterpretation and to "completely opposite conclusions":

"I argue that the Westphalian system was characterized by distinctly non-modern relations between dynastic and other pre-modern political communities that were rooted in pre-capitalist social property relations. The logic of inter-dynastic relations structured early modern European politics until the regionally highly uneven 19th-century transition to international modernity"⁷⁴.

If the European scenario in the mid 17th century was dominated by policies based on pre-modern structure, then to place the origin of modern international system at that time does not seem defensible. There are princely, dynastic and absolutist States, as well as micro-structures from the Holy Empire and hundreds of more or less autonomous micro-territories. Only in the 18th and 19th centuries will national States be consolidated including, as referred before, the unified Italian and German States. Only

⁷¹ *O. cit.*, pp. 87-88.

⁷² An example is: Fábio Pestana Ramos, "O sistema Westfaliano e as relações internacionais na Europa", *Para entender a história...* ISSN 2179-4111. Ano 1, Volume Ago., Série 27/08, 2010, p.01-09, available in <http://fabiopestanaramos.blogspot.com/2010/08/0-sistema-westfaliano-e-as-relacoes.html>, retrieved on 9.3.2012: "Giovanni Arrighi, the American author famous for the 'long 29th century', goes further back to demonstrate that the origin of modern international relations lie in the 13th century; interstate systems were being formed at that time, based on Genovese hegemony of East -West trade and the financing of Portuguese seafaring expeditions, later replaced by Dutch hegemony, ensured by its control of trading posts, strategic in terms of trade flow."

⁷³ *O. cit.*, p. 281.

⁷⁴ *O. cit.*, p. 6.



then will there be a European system of State-Nations as the result of a social construction which has taken decades or even centuries.

We cannot develop that interesting theme here but, in 2009, we made a presentation at a conference from the *Internationale Gesellschaft Hegel-Marx für dialektisches Denken* (Lisbon, 28-30 May), in which we defended that the origin of the modern State-Nation lies in the confluence of nationalism and the emergence of industrial society. In that presentation, we stated that "the structure of industrial production may have led to the redimensioning of the territories over which there was political control." Why? Perhaps because, in the period of mercantile capitalism, the centrality of city-states prevailed but "the extremely small scale of the City-State can no longer ensure the control over the new economic space shaped by industrialization". Thus, unlike in the previous "world economy, the most adequate political organization for industrial capitalism was the State-Nation, when the home market, controlled by political power, was the framework for accumulation of capital". In fact, "the economic space in industrial society is linked to a home market of a significant size and one which is based on regulation provided by the State".

On the other hand, the transition towards the modern State-Nation imposed the resolution of a crucial issue – the legitimacy of power – considering that the traditional source of legitimacy (dynasty, heredity, heritage and sacredness) was abandoned. Thus, the importance of culture as a means to ensure the legitimacy of power. Sovereignty is no longer in the monarch but in the people, in the community and, therefore, the State "is supported by the feeling of nationalism, which is the source of legitimacy for the power of the new bourgeoisie"⁷⁵.

As a result, we may conclude that the modern State-Nation system is only truly founded in the transition societies went through when they broke away from the *ancien régime*, namely France (with echoes on the other side of the Atlantic, in the United States of America), and the countries where industrial production was increasingly dominant, a process which takes place in the 18th and 19th centuries.

This type of approach is necessarily critical of the consensus around the peace of Westphalia as the founding moment of modern international order. We are, therefore, inclined to share Lucas Freire's conclusion: "Though it is clear that Westphalia was not completely irrelevant, we cannot say that the series of events were the starting point of the modern political world"⁷⁶.

For all the reasons mentioned, we believe the expressions "Westphalian State" or "Westphalian system" should be avoided.

⁷⁵ Luis Moita, "Espaços económicos e configurações políticas", D. Losurdo, J. Barata-Moura, S. Azzarà (ed.s), *Universalism, National Question and Conflicts Concerning Hegemony*, Napoli: La Città del Sole, (2009) 315-322, p. 317-318. My thoughts on the problem of nationalism are based on Gellner, E. (1993), *Nações e nacionalismo*, Lisboa: Gradiva, to whom "Nationalism is, in effect, deeply rooted in the distinctive structural requirements of industrial society" (p. 60).

⁷⁶ *O. cit.*, p. 22.



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VISIONS OF THE EMPIRE RELIGION, ONTOLOGY AND THE 'INTERNATIONAL' IN EARLY MODERNITY

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Summary

This paper analyzes the relation between basic religious motifs of theoretical thought, general ontology and their specific use in 'international' political theory at the onset of the Modern Era. The analysis is based on Herman Dooyeweerd's reformational philosophy in identifying the basic assumptions on the origin of life, coherence and diversity of reality in several trends of thought. The Greek and Roman classical legacy, in combination with ancient Christian concepts, is emphasized, namely in terms of motifs such as Nature and Grace, guidelines of scholastic worldview, thus influencing its perspective of Christianity, of the Holy Roman Empire and of the Papacy. Reformed Protestantism adopted a more radically Biblical set of assumptions which culminated in an ontologically plural perspective of social authority and political community, as well as of the empire. Christian humanism, and some Protestant thinkers, was also heavily influenced by the motifs of Nature and Grace, but now with a strict separation between both 'logics'. The theorization of an 'internal logic' for each of these spheres gave origin to a reinterpretation of Nature in classical Humanism, according to a 'mechanistic' perspective of reality with its ideal of control. Another religious motif of this secularized form of humanism was the concept of Liberty and of personality. This geometrical theoretical mode influenced ideas on the social contract and its international analogy, leading theoreticians to fiery debates on the classification of the Empire.

Keywords:

Religion; Ontology; Modern Era; Political Theory Internationalist

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VISIONS OF THE EMPIRE RELIGION, ONTOLOGY AND THE 'INTERNATIONAL' IN EARLY MODERNITY

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I. Introduction

"Hurry, use reason in your favor while you can, / before all of Europe, the Golden Land, disappears in smoke!" This poem, written by Andreas Scultetus during the Thirty Years' War, expresses the general disquiet of that time and the search for an end to the conflict (quoted by Osiander, 1994). This desire was eventually fulfilled through the negotiations of the Congress of Westphalia. Justifiably, historians resist the over-importance given to the effects of the Peace of Westphalia as founders of the basic structures of contemporary international politics (Freire, 2008a; 2008b). The relevance awarded to this event as a turning point is typical of the fields of International Relations and Law. However, even within those fields, the anachronistic, imprecise and 'journalistic' nature of such narratives has been questioned (Krasner, 1995/96; Osiander, 2001; Teschke, 2003; Franca Filho, 2007). As research on European world politics at the onset of the so-called Modern Era is now redirected, new issues are being raised. If, until recently, the theme drew attention for the wrong reasons, now, instead of completely closing the case from a negative perspective, recent scholarship has inaugurated new research avenues. One of the (re)emerging points, vaguely referred to in Scultetus' poem, is the "use of reason" in political theory on 'international' territory planning.

Political and historical processes involving the gradual transition from the Medieval to the modern world posed several challenges to 'thinkers' at the time, including how the Holy Roman Empire should be conceptualized (Boucher, 1998: 225; Wilson, 2006). During that fascinating period, the transition of ideas, institutions and practices concerning the Holy Roman Empire and European politics – incredibly adaptable and in constant alteration – coincided with significant cultural changes, including the Protestant Reformation, the Renaissance and the recovery of Scholasticism by Roman Catholic lawyers. Each of these movements had a huge impact on the prevalent worldview and scholarship. The fact that both historical and ideational changes occurred rapidly and simultaneously enabled a wide range of theories to be used in the interpretation of natural and social phenomena, such as, for example, schemes to redefine political order in Europe. Unlike our current milieu of intellectual fragmentation (Rushdoony, 1961), thinkers at that time were relatively clear as to the basis of their theories, making it easier to identify the relationship between presuppositions and their application to specific phenomena. It is not by chance that those authors are now acknowledged as great philosophers of the past.

At the onset of Modernity, therefore, one can notice great interest in theorizing political order and conceptualizing the Holy Roman Empire, as well as a close link between political theory and ultimate principles of systematic thought. This leads us to consider the following question: Is there, more broadly, a direct relationship between the basic



and general presuppositions in a theory and their application to our understanding of order in world politics? If so, how could we identify different Early Modern trends of thought in terms of such relation between the assumptions and their implications in those different 'visions of the Empire'? My contention is that there is indeed a relation between the 'roots' and the 'branches' of 'internationalist' political thought in the transition to the Modern Era. However, the classification of those 'visions of the Empire' or, even broadly, views of general political order in relation to the differing types of basic assumptions depends on two things. First, we need to step back in a 'macroscopic' historical and comparative exercise. Then, we must concretely analyze tacit concepts guiding theoretical thought in each of those different trends. Combining a long-term narrative and an examination of those 'roots' of theoretical thought provides an account of the cultural heritage received at the onset of the Modern Era and how that legacy was framed and opposed by alternative sets of assumptions.

It is also my contention that the tacit dimension shaping theory is inherently religious and pre-theoretical. It is theoretically mediated by the formulation of ontological models enabling us to identify it in each case. In other words: the roots of each internationalist 'trend of thought' emerge from religious commitments directing, at a more 'superficial' level, theoretical concepts. This operates in the mediation of a general formulation on the basic nature of reality. Though the link between religion and core political principles has been studied by Carl Schmitt (2006: 35) and recently by some of his followers (e.g. Kubáľková 2000), the claims advanced here pursue an original perspective in line with a distinct and less well-known tradition. I situate my approach in the line of the 'Reformational' school of philosophy, or the 'Philosophy of the Cosmomic Idea', first elaborated by Herman Dooyeweerd (1894-1977). Influenced by the Augustinian notion of religion guiding theoretical understanding, Dooyeweerd (1953-58 I; 1979) outlined the history of Western philosophy around 'ground-motives', i.e., the set of 'transcendental ideas' on the Origin of being, coherence and diversity of reality. Ground-motives shape both theorizing and its cultural context. The relation between tacit (and broad) assumptions and particular theorization in academic fields is a popular theme among remarkable historians and philosophers of science such as Collingwood (1945), Polanyi (1946), Burt (1954), and Kuhn (1996). The Reformational approach, in turn, has contributed to that debate in the field of history of natural science (Hooykaas, 1972; Pearcey and Thaxton, 1994) and specialized fields of study, like Physics and Mathematics (Stafleu, 1987; Strauss, 1996). The use of this notion in the interpretation of natural science (allegedly more 'neutral' and 'objective') has already obtained many positive results. It is potentially even more relevant if applied to discourses that would allow for more 'subjectivity', such as the cases in hand.

Yet, before putting the reformational argument into use in my study of the Early Modern 'visions' of the international and the Holy Roman Empire, let me briefly describe its framework connecting religion, ontology and theory. A core principle in the development of Reformational philosophy is the rejection of the humanistic portrayal of reason as autonomous and ultimately foundational to any theory. One of the arguments presented against the alleged neutrality of theoretical reasoning is the existence of several conflicting modern perspectives and philosophical schools, each enabling their own research programs in the special sciences, but all under the foundational claims to autonomous reasoning. Considering that these schools are mutually exclusive, I suspect pure reason cannot be the ultimate foundation of every single one of them! In



other words: these humanistic trends assume a *dogmatic* perspective on the foundations of theoretical thought (Dooyeweerd, 1948: 16-18). Seen from a negative angle, this means that there is a pre-theoretical dimension to the basis of theoretical reasoning, *refuting* the dogma of autonomous reason. From a positive point of view, the point *illustrates* the alternative perspective on the foundations of theoretical thought found in Reformational philosophy – the claim that theoretical thought finds its deeper roots in tacit assumptions (Dooyeweerd, 1947). In sum, the dogma of autonomous reason is not only self-destructive for not being demonstrable based on autonomous reason itself (which is made manifest by the existence of diverse philosophical schools sharing the same claim), it is yet *another* example of how certain pre-commitments shape theoretical arguments in philosophy or a specialized discipline.

Pointing out the inner tension in the modernist dogma of the autonomy of reason, Reformational philosophy introduces in its place the notion of dependency of theoretical thought on religious pre-theoretical assumptions. By 'religious' it is meant not an organized institution with rituals, traditions, explicit devotion and dogmatic formulation. It is true that several religions empirically exemplify such phenomena but this is not a generalizable statement. What defines the core of religion is the idea of a certain connection (*religare*) with an idea of Origin, whether personal or not (Clouser, 1991: 9-36). Several scholars admit the dependency that theory in a specific scientific discipline has in terms of a deeper philosophical basis (e.g. Bhaskar, 1978). Reformational philosophy, in turn, takes this logic of tracking the roots of theoretical thought a step further, stating that *even* such philosophical basis depends on a deeper layer of presuppositions. Therefore, the statement that all theory (whether general or specific) necessarily depends on a basic *religious* dimension replaces the modernist framework that assesses theoretical thought only in terms of its logical aspect.

Which generic formula would allow for the precise identification of those assumptions of Origin and what would be its wider content? As noted before, tracking the theoretical discursive layers to their philosophical basis does not resolve the issue of diversity within a specific academic field, considering the plethora of possibilities even at that level. The multiple theoretical 'isms' are not confined to specialized fields. They are also present in their philosophical basis. In general terms, all philosophical schools aim to deal with reality based on broad theoretical questions (e.g. 'what is real?') What happens, though, is that each of these schools theoretically *abstracts* from reality in a different way. Thus, mapping the manner in which abstraction occurs for each approach is key to understanding theoretical diversity. It is precisely here that the presuppositions of Origin should be seen as relevant in our analysis of theoretical thought. A core feature of abstraction is that it concerns both analysis and synthesis. Analysis consists in separation and conceptual classification; synthesis, on the other hand, proposes a formula for coherence. The process of abstraction, therefore, necessarily depends on accounting for both diversity and coherence of abstracted reality. Its starting point is always directed by presuppositions on the Origin of existence, diversity and the unity of things. These religious assumptions are, so to speak, "transcendental ideas", for they are inevitable in philosophy, constituting that which "sets the conditions for theoretical thought" in the process of abstraction (Zuidervaart 2004:70). To sum up, specialized theoretical thought (in an academic field) depends on general theoretical thought (philosophy), which is, in turn, guided by a set of transcendental ideas that enable the process of abstraction.



A way of identifying how these sets of transcendental pre-theoretical ideas of Origin (or religious ground-motives) influence theoretical thought is to assess how they are theoretically evidenced through ontology, i.e., a model of the basic components of reality. This would be a coherent attempt to grasp the ground-motive and its *cosmonomic idea*.¹ Using this formula, my study analyzes the relevant ground-motives of western culture and thought in the historical formation of 'internationalist' political theory and the conceptual 'visions' of the Holy Roman Empire at the onset of the Modern Era. This task is merely an initial step towards more detailed research on the influence of basic religious motives in world politics. Though Dooyeweerd himself applied his philosophy to many specialized academic disciplines, James W. Skillen (1979; 1981) was the first and, up until now, possibly the only one to analyze a number of theories in International Relations in light of Reformational philosophy.

The next section will deal with the classical legacy inherited by Medieval thinkers. Since the ground-motives of Medieval and late scholasticism involve a fusion between Classical philosophy and Christianity, we should begin by expounding some basic tenets of scholastic thought. After a brief summary of Roman Catholic theories of political order, I turn to some of the Protestant alternatives. Surprisingly, a considerable fraction of Protestantism was greatly influenced by scholasticism while the reformed (Calvinist) line attempted to rescue the radically Biblical character of the Christian ground-motive. The Reformation was not the only differentiating factor of theoretical thought in terms of scholasticism Early Modernity. The emergence of humanism (initially Christian but, later, rather secularized) also provided a systematic alternative to the remaining 'visions' of international and imperial order.

II. The Classical Legacy: Form, Matter and Politics

The cosmonomic idea orienting Classic Western culture and thought derives from the antithesis between Form and Matter, both motives claiming absolute roles. While both have equal relevance in understanding of Classical (ancient) 'internationalist' thought, notice that each of them acquired prominence in different historical contexts. The earlier period, in which Matter was the independent Origin "out of which emerge all beings of individual form" in a framework of "blind necessity" (Dooyeweerd, 1948: 62) of fate by means of a "a formless, cyclical stream of life" (Dooyeweerd, 1979: 16). A brief description of the worldview oriented by this ground-motive is in order:

It is from this shapeless stream of ever-flowing organic life that the generations of perishable beings originate periodically, whose existence, limited by a corporeal form, is subjected to the horrible fate of death [...]. This existence in a limiting form was considered an injustice since it is obliged to sustain itself at the cost of other beings so that the life of one is the death of another. Therefore all fixation of life in an individual figure is avenged by the merciless fate of death in the order of time. (Dooyeweerd, 1960: 39)

¹ As noted before, Reformational philosophy is also called Philosophy of the Cosmonomic Idea – this idea is the principle ruling and ordering the cosmos according to a given system of thought.



The general picture here is that of a constant “process of birth and decline of all that exists in a corporeal form”. This is the summarized cosmomic idea in the Matter motive.

Eventually, the opposite ‘pole’ of this ancient ground-motive emerged in reaction to the absolutization of Matter. As indicated by Nietzsche (1995) and others (see debate in Bos, 1986; Runia, 1989; Kok, 1998), the motive of Form arose in culture and in theoretical thought as a rival concept of the ultimate Origin of things (Dooyeweerd, 1948: 65-66). This alternative motive, illustrated in Greek religion as “form, measure and harmony” and in the literature that portrayed the gods of the Olympus as “personal form of a perfect and splendid beauty” (Dooyeweerd, 1960: 40) culminated in the “Platonic idea as the imperishable metaphysical form of true being”. The antithetical clash between Matter and Form raised the important issue of how to reconcile these two sides of the ancient transcendental idea. The uncomfortable antithesis between both concepts of Origin became a key feature of the Greek worldview, including its theoretical thought, as it “determined” the “conception of the nature (*physis*) of things” (Dooyeweerd, 1979: 21). As Collingwood (1945: 29-92) states, all Greek theoretical thought varied in accordance with the content attributed to the idea of nature, whether it was “a purely invisible form” (Dooyeweerd, 1979: 21) or “a flowing stream of life”, but, in general “a combination of both”.

Greek political thought was also influenced by that worldview. Shifts in emphasis within the form/matter ground-motive would change the implications of the concept of nature (*physis*), which, in turn, altered the notions of what was ‘natural’ and ‘arbitrary’. These two things were, according to Keene (2005: 32), fundamental in classical narratives on public life. An example is the older ‘materialistic’ idea of the Origin of customs and laws, attributed to chaotic relations of power, as is visible in Herodotus, Thucydides and Protagoras, in accordance with the view of nature as a ‘stream’ led by chance. In Plato, however, we come across an important change. The notion of immaterial ideal forms is contrasted with the apparently random diversity of political life, which is a sign of imperfection. But what is uniform in political life relates to the unblemished ideal forms (Keene, 2005: 33-35). From Plato onwards, there is considerable cultural and theoretical emphasis on the motive of Form, politically evidenced in the institution of city-state (*polis*). As Parkinson (1977: 9) states, it is not surprising that “political thought in classical Greece turned round the general idea of city-state”. Plato, facing the empirical reality of diversity of laws and governments which share the same organizing principle of city-state, nevertheless attempted to defend its coherence in terms of “the universal, changeless form of true political order that would serve as the paradigmatic norm for all particular and changing city-states” (Skillen, 1979: 13).

The distinction between natural and arbitrary based on the Form motive is especially noteworthy in the case of platonic ‘internationalist’ thought. The natural, because “unchanging and non-material, which can be known only by the intellect” (Keene, 2005: 36), is better learned by those who know how to place the non-rational aspects of life at the service of the theoretical contemplation. However, not everyone has that ability. There is, therefore, a distinction between those prone to theoretical thought and those who are not. Justice, being an unchanging Form, does not necessarily correspond to variable customs and laws. Anyone can create and abide by customs and laws but that does not necessarily lead to justice which, being ideal, can only be approached in a similar ideal community – the city-state. And the city-state should be under the



guidance of philosophers. After all, they are the kind of people more prone to contemplation and, thus, who possess more affinity with Forms in general and justice in particular. Plato's (1999) well-known argument, besides *internally* discriminating between groups of Greeks (the philosophers and the others), also serves as a basis for *external* differentiation. It is true that, despite the tension between those prone and those not prone to theory, Plato also emphasized the internal coherence of the Greek community in terms of their *natural* use of the institution of the city-state. This concept of coherence in a political community depended necessarily on the idealist cosmology derived from the Form motive. However, that very motive is also portrayed as the Origin of *diversity* in political communities, as it was not easy to find institutions similar to the *polis* outside Greece. This was considered one of the indicators of qualitative difference between 'inside' (the more 'rational' people) and 'outside' (the 'barbarians') – a distinction transcending mere linguistic identity. It was not because of their language but because of their institutions, antagonizing the city-state, that the 'barbarians' (or those 'outside') were called 'natural enemies' of the Greeks in the ancient world.

A similar tendency may be found in Aristotle. Like Plato, Aristotle places the oldest materialistic motive in opposition to an idea of nature as Form. This is clear in the link between nature and purpose (*telos*), which guides the development of all things in their intrinsic tendencies. Despite the similarity with Plato's approach, Aristotle has an alternative view on the means to be used to obtain knowledge on Forms.

Unlike Plato, who thought that knowledge of the Forms could not be achieved through the senses at all, Aristotle's mode of enquiry begins with empirical observation of the way things are in the world, from which the forms shared by certain species of things are to be deduced by examining their tendencies to develop into qualitatively different kinds of entity. (Keene 2005: 39)

Following this 'way of inquiry', Aristotelian philosophy becomes dependent on a hierarchical order between the whole and its parts. This, in turn, functions as another pillar for political theory, as Aristotle (1999: 3) evidences: "As in other departments of science, so *in politics* the compound should always be resolved into the simple elements or least parts of the whole". Besides this hierarchical ontology, the *teleological* assumption leading Aristotle's theoretical thought is "equally prominent in his ethics and politics", according to Lloyd (1970: 121-122), "for his ideas of the good life, and of the good state, are based on his conception of Man's proper ends or function". The Aristotelian thesis on diversity in coherence within societal associations provides a concrete indication:

Every state is a community of some kind, and every community is established with a view to some good; for mankind always act in order to obtain that which they think is good. But, if all communities aim at some good, the state or political community, which is the highest of all, and which embraces all the rest, aims at good in a greater degree than any other, and at the highest good. (Aristotle, 1999: 3)



In Aristotle, this purpose of the State has two allies: reason (*nous*), which differentiates humans from other animals; and contemplation (*theoria*), which, apart from being the purpose of human life emerging from this differentiation, is also reference for political life within the city-state. Considering that only in the city-state (the most encompassing political community) life is directed towards 'the greatest of all goods', it is in this institution that the purpose of contemplation may be obtained.

The implications for 'internationalist' analysis of relations *between* diverse political communities are even more remarkable in Aristotle than in Plato. This is due, to a large extent, to the initial drive of the basic idea of Form in reaction to the principle of Matter, as well as to the presuppositions of a teleological ontology based on hierarchical arrangement of the whole and the parts. For Dooyeweerd (1979: 22), internally, the city-state was viewed as a "totalitarian" or integral arrangement: "man became truly whole only as an active, free citizen. All of life had to serve this citizenship, for it alone granted a divine and rational cultural form to human existence". Externally, that vision reinforced the long-held suspicion that those 'inside' the city-state were more 'human' than those 'outside' it:

The city-state was the bearer of the Greek culture religion and hence the Greek culture ideal. A Greek was truly human only as a free citizen of the polis. The polis gave form to human existence; outside of this formative influence human life remained mired in the savagery of the matter principle. All non-Greeks were barbarians. They were not fully human since they lacked the imprint of Greek cultural formation. (Dooyeweerd, 1979: 21-22)

Aristotle himself advances this binary prejudice, 'naturalizing' the tension between those 'inside' and those 'outside'. From natural enemies of the Greek, barbarians become, thus, natural *slaves*, since equality was impossible between those who attain the purpose of human life and those who reject the means to distinguish themselves from other animals (see Ossewaarde, 2008: 204-207).

The tension between Form and Matter, which was a basic element driving Classical Greek theoretical thought, also deeply affected the contrasting ideals of imperialism and cosmopolitanism in the period of Roman domination in the West. Even before that, during Alexander's Macedonian prominence over the Greek, the materialistic transcendental concept was very convenient to external political hierarchy. Dooyeweerd (1979: 23) states that "the fatalistic conception of the cycle of life meeting out death to everything that existed in individual form was eminently suited to a deification of the monarch as the lord over life and death" (see also Foucault, 1978: 135-136). Besides leading to the institutionalization of Emperor worship as deity, the Matter ground-motive also served the purpose of the ideal of imperialism. "Carried forward by a deified ruler, the *imperium* became surrounded with a kind of magical halo. Like fighting the inexorable fate of death, resisting the *imperium* was useless". The decline of Macedonia was not the decline of the political influence of materialism; therefore, Roman domination found fertile ground in the same principle, taken even further by the eclectic tolerance of rulers aware of its convenience. The paradox is that Roman domination represented an inversion of the Aristotelian formula where those 'inside'



dominate those 'outside'. Understandably, such irony was only possible due to the later prominence of the materialistic pole of the Classic transcendental ideas, opposed to Form, which Aristotle valued so much.

Gradually, a new way of thinking emerged on the relation between 'inside' and 'outside'. In fact, that distinction was rather blurred due to the influence of stoic cosmopolitanism in the Roman period. Led by the ancient irreconcilable dialectics between Form and Matter and its influence in providing an understanding of nature, stoic thought aimed at 'unity' with that natural order. The diversity of political communities, including the diversity of city-states, was seen as an inadequate instrument in this pursuit of fundamental 'unity' with nature, having failed to sufficiently promote even a truly virtuous political life. As an alternative, the stoics expressed their preference for a world city (*cosmopolis*), theoretically explaining the political coherence revolving around its Origin in 'the law of nature' (or natural law), common to any human being (Keene, 2005: 52-56). The stoic formulation on world order and its coherence despite the diversity in customs and cultures was so influential that it became part of the official Roman ideology. However, in that partially failed attempt of accommodating both imperialist and cosmopolitan ideals to the institutional context of the 'law of the peoples', the Romans preserved a concept of 'outside', thus contradicting the stoic intention (Korff, 1924: 252-255). The 'law of peoples' was partly based on the 'law of nature' but they did not fully overlap. Rome located in natural law a transcendental idea of Origin of the right of the peoples. Yet, the concept of imperial *citizenship*, with all its rights of exclusiveness, perpetuated the differentiation between 'inside' and 'outside' in classical 'internationalist' thought (Keene, 2005: 59-61).

III. Nature and Grace: The Scholastic Theory of Christendom

Hybridization of Roman imperialistic mentality was not restricted to the stoicism of Cicero and others. Eventually, the predominant culture, already in decline, introduced elements of Christianity, which had been able to resist initial persecution and then expanded until it literally reached "Caesar's household" (see Philippians, IV.22). The first centuries of the Christian Church were remarkable in terms of the increasing doctrinal standardization and the condemnation of any mixture with the surrounding culture, which was deemed harmful (Clark, 1988: 1-22; 1989: 13-19). However, the rise of Christianity as a political force after the initial persecution led to great coexistence between Christians and non-Christians. Some have even argued that, from an intellectual point of view, this tolerance was crucial for the cultural survival of Christianity (e.g. Jaeger, 1963). After some time, the strict intellectual asceticism was replaced by an impulse towards hybridization until Christianity became the official religion of the late Roman Empire. There are negative and positive opinions on this shift in attitude in terms of the opposition between 'Jerusalem' and 'Athens', but the distinction remains the synthetic transcendental ideas in later Christianity (which pervaded institutions and political views in pre-modern Western Christendom) and the original way, rooted in the basic Biblical religious motif (Hebden Taylor, 1966: 142-151).

In terms of the religious pillar of Christian culture shaped by transcendental ideas within the Biblical ground-motive, we may speak of original Christianity as led by a radical understanding of the framework creation/fall/redemption. God, and He alone,



should be seen as the Origin of cosmic order. Therefore, there is a distinction between the Absolute Creator and relative creation, including its laws of 'nature', since they were established as part of the creation-order (Vollenhoven, 1933: 22). Within creation, a difference is made in terms of human beings, created in God's image, and described as 'stewards' or 'managers' of the rest of creation so as to place it at the service of the Creator and one's neighbor. This concept of a clear boundary between creatures and Creator is stressed even further by the fall of human beings in their sin and transgression (Stoker, 1935). The sin committed by creation's 'stewards' changed creation from its initial obedient and harmonious relation with the Creator and drove the human heart into deep resistance to God's lordship over all things. Though his common providence allows, even to non-Christians, the unfolding of creation's potentials to serve them with some tolerable quality of life, it is in the redemption offered in Jesus Christ that its full restoration begins, starting with the return to personal and collective repentance and new inclination to serve the Creator (Bavinck, 1894: 43ff). As theoretical thought is included in the process, the Biblical motive acknowledges a radical *antithesis* in theory and other cultural manifestations. On the one hand, there is the Christian view, (re)directed to God-as-transcendental-Origin of existence, coherence and diversity. On the other hand, we find a system of apostasy against that Origin and that embraces rival notions of Origin. The Biblical transcendental ideas on creation/fall/redemption forbid any competing principle as the deep religious basis of theoretical thought. It is in those terms that we may understand its radical opposition to early attempts of pagan synthesis (Dooyeweerd, 1953-58: I, 506-67). That does not necessarily imply the rejection of all possible dialogue with other cultures, but simply the refusal to approve their hybridization with Christianity in terms of basic religious ideas, or ground-motives.

The possibilities of a Biblical philosophy and, by implication, of specialized theory in other areas (including 'international' politics) were soon stifled by the emergence of synthetic inclinations in those operating within the Christian ground-motive (Skillen, 1981: 58ff). St. Augustine's work already evidences that synthesis between the ancient transcendental ideas on form/matter and the Biblical framework of creation/fall/redemption. Augustine is relevant here because both his detailed 'internationalist' thought and its synthetic basis were inherited by scholastic theories of the Holy Roman Empire and of the institutionalized Church. He is generally referred to as one of the Christian pioneers in 'internationalist' thought but his theory is partly derived from a dual neo-platonic ontology which, in turn, emerged in an attempt to harmonize the pagan philosophy he admired with Biblical transcendental ideas (Dooyeweerd, 1997: 10-12). It is true that, otherwise, in his theological works and personal life, Augustine tried in every way to defend orthodoxy against synthetic moves. An example of this is his refutation of the Pelagian heresy, including his doctrine of 'election' as a theoretical reflection of the motive of redemption in Jesus Christ in its most radical form (Augustine, 1953). However, it is also undeniable that Augustinian philosophy and its derivation to 'international' politics were led not only by the Christian ground-motive, but also by those Classic transcendental ideas. Perhaps this element of Augustinian thought is not so surprising as it seems due to the predominant intellectual perspective of the 'Church Fathers' of his time, already influenced by pagan "cultural production" to a great extent (Hebden Taylor, 1966: 149). In that context, the radical antithesis between Christian and non-Christian



intellectuality had given way to openness. In the case of political thought, as Van Reenen shows (1995: 660-661), such openness was even more pronounced.

The only antithesis between Christianity and other worldviews visible in Augustine's (2003) political thought is based on Roman-stoic and platonic concepts. The antithesis to which I refer is the opposition between the 'City of God' and the 'City of Men'. The basis for this tension and its implications for political life are both portrayed in an obvious dependency on a hybrid set of transcendental ideas. Consider, for instance, the delimitation of the 'City of God' as something outside the present world based on its relation with the soul of the Christian, which, together with the dualistic assumption of an anthropological distinction between body and soul, is evidence of a neo-platonic view of Form as Origin. Another example, perhaps the most important one for later 'internationalist' thought, is the way Augustine urges fellow Christians to coexist, for the time being, with the other inhabitants of the 'City of Men' based on the Roman concept of natural law. The Carlyle brothers (1962; quoted in Keene, 2005: 76) ensure that the argument in favor of Christian obedience to earthly authority is "practically Cicero's [stoic] definition". Kenny (2004-07: II, 4) sums up the attempted synthesis by that Christian philosopher, by noting that the "*the City of God* sets Jesus, the crucified King of the Jews, at the apex of the idealized city-state of pagan philosophy." It is clear that in Augustine there is a development in the notion of natural law as a link between the pagan transcendental idea of Form and the Christian ground-motive.

Natural law is a good indicator of the synthetic character of scholasticism after Augustine in terms of 'internationalist' thought. "The idea of natural law", says Keene (2005: 82), "played an important role in medieval Christian thought, but it was always to a certain extent an imported concept, grafted on to Christian moral and spiritual beliefs". What crystallized the introduction of natural law into scholastic theoretical thought was the final development of a dualistic ontology of transcendental ideas of Origin based on the new hybrid ground-motive of nature/grace.

Roman Catholicism conceived of nature in the Greek sense; nature was a cosmos composed of formless, changing matter and of a form that determined the immutable essence of things. Human nature also was viewed as a composition of form and matter; man's "matter" was the mortal, material body (subject to the stream of becoming and decay), and his "form" was the imperishable, immortal, rational soul, which was characterized by the activity of thought. For Roman Catholicism a supranatural sphere of grace, which was centred in the institutional church, stood above this sphere of nature. Nature formed the independent basis and prelude to grace (Dooyeweerd, 1979: 144).

The absorption of a Classical concept of 'nature' (in terms of Form and Matter) was widely influenced by the writings of Aristotle, rediscovered in the Middle Ages. A step ahead of Augustine towards a positive approach to pagan philosophy, St. Thomas Aquinas mitigated Augustine's radical rejection of the Pelagian view of the implications of the human fall into sin (Thompson, 1994: 59). In his belief that, in spite of sin, we are all naturally able to reach God through better use of reason, Aquinas found in this mitigated version of the doctrine of the fall an entrance door for the pagan notion of



natural law. Since God is perfect reason and His law is eternal, and considering that the fall had only a limited effect on reason, it is possible for humans to infer something from that eternal law by contemplating natural law (Knutsen, 1997: 31-32). In his own words: "natural law is simply rational creatures' sharing in the eternal law" (Aquinas, 2002: 18). This realm of Nature, including universal human reason, was relatively independent within the dualistic ground-motive of scholasticism. Christians and non-Christians, in this vein, could share similar understandings of natural law. However, in a typically scholastic fashion, it was also established that, ultimately, the Church had a privileged position as interpreter of natural law. The Bible reveals eternal law and the Church is the most appropriate interpreter of the sacred text (Coulton 1940:167-180). In Aquinas, then, Grace surpasses Nature.

The centrality of natural law in scholastic thought dictated a whole era of 'internationalist' theoretical thought set forth in 'legal or jurisprudential' vocabulary (Keene, 2005: 99). In fact, the link between the synthetic ideas on nature/grace in scholasticism and the theorization of the Holy Empire and its limitations in terms of the Church's jurisdiction (a link drawn via natural-law 'cosmopolitanism') is rather salient. An additional ontological element influencing scholastic 'internationalist' thought was the Aristotelian teleological concept of the primacy of the whole over its parts (Thompson, 1994: 60). Medieval political thought postulated as starting point "two Orders of organized life, the spiritual and the temporal" (Gierke, 1958: 10), corresponding, respectively, to Grace and Nature. On the latter realm, medieval thought reflected the Aristotelian metaphor of a political body, a portrayal supposedly applicable to all associations. Considering that both the Empire and the Church claimed absolute (or 'cosmopolitan') authority, the solution to this conflict was to link the representative of the religious body, the Pope, to the universal jurisdiction on spiritual affairs (Grace), and the political body represented by the Emperor to the universal jurisdiction on temporal affairs (Nature). Gierke (1958: 10-11) explains how this defined the search for 'purpose' by each of these bodies:

In century after century an unchangeable decree of Divine Law seems to have commanded that, corresponding to the doubleness of man's nature and destiny, there must be two separate Orders, one of which should fulfil man's temporal and worldly destiny, while the other should make preparation here on earth for the eternal hereafter. And each of these Orders necessarily appears as an externally separated Realm, dominated by its own particular Law (...) and governed by a single Government.

Scholastic ontology or metaphysics, when applied to political issues, displays its synthetic basis, divided between Classic transcendental ideas and a modified Christian concept of cosmic redemption via submission to the Church's jurisdiction.

Based on the ontology defined by the synthetic and potentially 'cosmopolitan' features in its ground-motive, the medieval image of the Holy Roman Empire 'overemphasized' its political coherence and unity, considerably ignoring the existence of many practices, corporations and authorities based on feudal customs and not on legal concepts inherited from the Classical world (Ruggie, 1998: 145-151; 178-192). The precedence



of the whole over the parts, derived from that cosmological delineation, allowed one to portray those intertwined associations and authorities as mere fractions subsumed to the 'whole' of the great political community. In time, however, it was necessary to conceptually link that 'whole' to the idea of 'Christendom', inclusive of both the Holy Roman Empire and the Church. This was pursued in terms of a greater unity, "universal society to the extent that it possessed a common religion, law, and culture, and, amongst the educated classes, a common language" (Armstrong, 1993: 22). Besides providing, in terms of the nature/grace motive, a solution for the conceptual issue of coherence in the political community, the notion of Christendom also dealt with stoic cosmopolitanism whilst keeping, in a scholastic fashion, the hierarchy between Grace and Nature:

At the heart of the notion of Christendom was the idea—with roots in Roman natural law theories as well as in Christianity—that mankind was inherently unified since all men were ultimately under the same divine ruler. In so far as man could achieve unity, therefore, he was working towards the earthly goal which he had been set by God. As the Pope was God's representative on earth, he could claim universal dominion over lesser, temporal rulers (Armstrong, 1993: 21)².

A final facet of convenience in the concept of Christendom worth mentioning is its ability to serve as a reference point, despite the behavior of emerging modern States, which tried their hand at policies displaying an independent character from the Empire (Perkins, 2004: 21).

The unifying potential of scholastic ontology on issues of political community was also instrumentally shaped by the difference between what was 'inside' and 'outside' of Christendom. The notion of coherence in world order from the point of view of external differences, clearly visible in the case of the Crusades and later in the conquest of the New World, also problematized this concept of unity. In the latter case, the greatest challenge was, perhaps, trying to justify the expansion of Christendom via conquest. This had to be pursued in a double strategy of legitimating conquest whilst avoiding the context of the post-Reformation wars of religion to jeopardize the claims. After all, a justification for deposing native political order in the New World based on religious principles would sound dangerously similar to the Protestant theories of resistance against 'tyrannical' Catholic rulers (Inayatullah and Blaney, 2004: 47ff). Fortunately for the Church schoolmen, the Holy Roman Empire and Spain, the most powerful State involved in the conquest of the New World converged under the authority of Charles V. This contingency reduced the institutional obstacle to conceptual unity (Keene, 2005: 120-121). Early Modern Roman Catholic legal theorists addressed with scholastic rigor the issue of whether it was legitimate to rule over natives in the New World. Those in favor of enslaving them made their case emphasizing a more purely 'Aristotelian' point of view, while Jesuits such as Vitoria and Las Casas defended a mitigated view of the difference between Christendom and those 'outsiders'. Here, unity with reference to 'outside' was reinforced in terms of 'human community' linked by the law of nature

² In particular, the authority of the Pope in theory and practice was always linked to Grace, though some formulations favoured a more political role for the Papacy.



(Wight, 1991: 69-73). The scholastic response to the thesis of the Aristotelian party once again placed Grace over Nature, reiterating the Church's ultimate duty: the natives were not like irrational animals, as the Aristotelians thought. On the contrary, the unity of all human beings mediated by natural law was reinforced, but the difference in relation to those 'outside' was attributed to the need they had to mature in the use of that right. For instance, they practiced cannibalism, contrary to the role of humans in the hierarchy of the natural world (Inayatullah and Blaney, 2004: 58-65). The Christian duty towards them, through missionary activity involved in the conquest, would be to 'teach' or 'catechize' the natives in the New World, making Grace lead Nature once more, in order to perfect their life under the law of nature.

IV. The Protestant Phase: Continuity and Rupture Towards Plurality

The union, under Charles V, between Spain and the Holy Roman Empire, eventually came to an end in the division of the imperial dynasty into a Spanish and an Austrian branch. This strengthened European States, increasing the uneasiness in the theoretical search for unity in Christendom formerly represented by the Empire (McCulloch, 2004: 277). In this and many other academic issues of the time, the synthesis of the nature/grace ground-motive was severely weakened, and upheld more by the institutional authority of the Church than intellectual reasoning. Within the Church itself, nominalists had already proposed a breach in that synthesis, as they considered the Aristotelian element a blemish for the Christian dogma and its applications (Quigley, 1979: 344-348; Kenny, 2004-07 II: 201-213)³. However, it was the Reformation and the Renaissance that more vehemently questioned the institutional factor responsible for keeping the flame of scholastic synthesis. Besides this external questioning, the reorientation of the thought-community in its ground-motive (in either Protestant or humanistic directions) also broke away from scholastic synthesis. Nevertheless, the elements of that ground-motive became (separately) references for Early Modern Christian humanism, including Protestant theoretical thought directly connected to Luther and the initial stage of the Reformation.

During this first stage, the academic community emphasized the reformulation of dogma and the church-polity, amongst other pressing issues. Despite great activism in the dissemination of Protestant political and religious pamphlets, those early notions were still based on Nature and Grace as a transcendental idea, though it considered them opposites rather than synthesized under the authority of the Roman Church (Dooyeweerd, 1979: 139-141). The result was the emergence of a new way of politically applying this ground-motive, but now its two core elements were separated as they were in late medieval nominalism. In other words, early Protestant political thought surprisingly emulated certain facets of Roman-Catholic thought, even to its religious root, despite their theological differences. Dealing with each of these basic elements (Nature and Grace) separately, the theoretical manifestation of Protestantism in politics deepened the tension between 'world' and 'the Church' without necessarily attempting to equal the Christian institutionalized community to the latter. A similar strategy was adopted in the Christian humanism of Melancthon, Agricola and Erasmus, yet the motive of 'Nature' was heavily influenced by the Renaissance ideal of

³ See the next section for more on nominalism.



returning to history, literature and Classical philosophy. The religious sphere, on the other hand, was viewed more introspectively (Dooyeweerd, 1979: 142-143).

Luther's political opinions are an example of how Nature and Grace were still references for early Protestant theoretical thought, with significant increase in the tension between the two poles, treated as antithetical (Dooyeweerd, 1997: 132-133). In his writings to condemn the peasant rebellions which broke out in the Holy Roman Empire (rebellions started supposedly in the name of the Reformation), Luther develops, as a basis for his argument, an opposition between two realms corresponding to Nature and Grace – respectively, Law and Gospel (Luther, 2002: 206-207). Following Augustinian thought, the Law applies to the fallen world, corrupted by original sin, and serves as condemnation to sinners. Divine saving grace transfers the Christian from the kingdom of the Law to the kingdom of the Gospel, freeing one from the Law. From this point, one starts to live according to the 'new commandment' of loving God and neighbor. The Law exists because of sin. In the world of grace, sin is a thing of the past. The Law, however, continues to serve as reference but restricted to the fallen world. By implication, civil magistrates and political order belong to this world, have their own internal logic and serve the purpose of limiting human sin and protecting the Christian community from the effects of sin. This is not to say that Christians do not sin, but they are no longer under condemnation and the 'internal logic' of the realm of the Law (Luther, 2002: 208-209). Thus, politics is not a Christian prerogative by necessity and Christians should obey the authorities. Moreover, the possibility of a markedly Christian political theory is denied because it belongs to the realm of the Law. The only possible thing in this regard is a Christian ethics of the 'new commandment' of love (see Brunner, 2003).

Early Protestant theoretical thought, similar in many respects to Luther's formulation, displays considerable continuity with the transcendental ideas of Nature and Grace. Some commentators even allude to a 'Protestant scholasticism'. Sudduth (2009: part I), for example, emphasizes the surprising Protestant emulation in academic arguments in defense of the Christian faith, showing how several authors initially depended on the Thomist-Aristotelian legacy and employed 'natural theology' as basis for their apologetics. In the area of politics, Grabill (2006) indicates a trace of synthesis in the Protestant use of Classical notions of natural law. Luther himself declared he was a "member of the Ockham school" (a late medieval Roman Catholic nominalist) and on occasion we are reminded of the fact (Kropatscheck, 1900; Dooyeweerd, 1997: 132). It is not surprising, then, that Lutheran thinkers, especially later in the 17th century (e.g. Thomasius), reacted to the horrors of European religious conflicts (including the Thirty Years' War) and made their case for the *synthetic* reunification of the Church and the Holy Roman Empire. Of course, these normative claims were advanced in a way that was rather critical of the Papacy, emphasized practical purposes and aimed at the pursuit of a 'general peace' – all that assuming some autonomy for the sphere of the Law. A humanistic perspective on 'Nature' influenced those thinkers, but the fact is that, in political thought, the ground-motive of early Protestantism maintained its duality of Nature and Grace. It is therefore difficult to find evidence of a return to the old Christian radical ground-motive of creation/fall/redemption in Protestant political thought, despite parallel theological efforts to move in that direction due to the Protestant emphasis on the Biblical text instead of intellectual tradition as the key basis for dogmatic theology.



It was Calvin, together with other authors from the 'Reformed' wing of Protestants, who began to recover those radical Biblical transcendental ideas as the guideline for a new worldview. This would imply a new ontology meant to direct several areas of theoretical research. In the Reformed worldview and theoretical thought, the Christian dualism of scholasticism and earlier Protestantism are replaced by ontological *pluralism*. In Calvin's *Institutes*, sparks of a plural view of reality arise from his theoretical and dogmatic recovery of the radical aspect of the Biblical ground-motive. In this well-known treatise, 'creation' is portrayed in terms of God's independence from anything outside Himself (Calvino, 1999 I: 17-18), though He actively preserves the order of creation (Calvino 1999 I:47), having established a diversity of laws that constrain and enable creation, but not himself. The 'fall' represents the deep shift of direction of the human heart, away from any search for the glory of God. Like Augustine, Calvin sees the powerful depth of the effects of sin, which can only be reverted by God's power. Salvation can only come through faith, but human corruption is such that faith must be granted as a manifestation of His special grace to the elect. Due to their original sin, human beings cannot naturally believe. Their rebellion is only overcome by God Himself, who decides who will be saved. Calvin further develops the theme of 'redemption' when he explains that, following the radical shift experienced by Christians through faith, each aspect of life should also be placed at the service of God (Calvino, 1999 II: 183-188). Politics, thus, is an integral part of Christian life and should be understood, as everything else, according to God's biblical revelation, bearing in mind how the structures of creation are connected. Despite laying the foundations for later Reformed social thought, Calvin dedicated little space to politics in his work. The passage that deals with it, however, is quite intense. It affirms a plurality of social spheres and theorizes the rights and duties of citizens and magistrates, including the right to orderly resistance in case of abuse of power (Calvino, 1999 II: 186; 1167-1194).

Many Reformed thinkers pursued, since early days, a political theory derived from the new ontological basis of what Witte (2007) considers to be the true "Reformation of rights". Such effort had sundry implications for Western society. However, it was the profoundly innovative work of Johannes Althusius that took this Early Modern development to its culmination point. He employed the new principles in his interpretation of the Holy Roman Empire and its place in society. In his main work, *Politica*, the pluralist ontology influenced by the Biblical transcendental ideas of creation/fall/redemption is translated into a remarkable, insightful and carefully orchestrated system of political thought (Carney, 1995: xiv). The author uses the Biblical ground-motive as leverage for his argument. The vision of the Holy Roman Empire in *Politica* emerges as a consequence of the general formulation, an illustration of key items such as the 'universal community' and its historical and legal foundation. The Empire plays a secondary role in Althusius' thought, but we should note the relevance of the wider argument for the discussion of that political institution, and for issues like the limits to governmental power and the right to resist tyranny. The following key themes of *Politica* reflect the Christian pluralist ontology presupposed by the author: the definition of politics as 'symbiosis', the divine origin of plurality within society and, finally, the denial that there is an absolute authority on earth⁴.

⁴ This last item involves Althusius' opposition to the theory of sovereignty advocated by Jean Bodin and his contemporaries.



The first theme discussed by Althusius (1995: 17) is the definition of politics. In his definition, the idea of plurality of association and the normative-redemptive character of political practice are obvious. Both concepts are influential in Althusius' thought and are included in his initial words: "Politics is the art of associating (*consosciandi*) men for the purpose of establishing, cultivating and conserving social life among them". The nature of this bond between people is explained using the metaphor of 'symbiosis'. At a primary level, political association concerns survival, given that it is impossible to live in complete. At a more complex level, the practice of political association is also linked with redeeming features of social life, such as cooperation and love for one's neighbor (Althusius, 1995: 23). Either way, symbiosis leads to different associations with the purpose of "communicating necessary and useful things (...) to the general good and welfare". From a normative perspective, it is clear that Althusius does not define politics as something that simply happens. It is true that politics most exist for survival but, viewed as an "art", it goes beyond mere survival and has the potential to provide a certain quality in social life. Politics is not just any type of interaction. It is not the same thing as merely living as a group. It requires a specific arrangement of society so that things, services and rights necessary to an integral life are properly "communicated" (Althusius, 1995: 19-24). In this concept of symbiosis, it becomes evident that associations therefore have a crucial importance in political life. Politics, as such, is a normative-redemptive concept because it requires a disposition to "communicate" these factors adequately.

The heart of the matter, then, is to obtain a social arrangement that allows for politics following these conditions for symbiosis. In this second important theme, Althusius explains how the notion of a divine Origin of societal plurality is connected to symbiosis. There are many types of needs in life, a fact that results from the way God created human beings under a plurality of laws in nature. Besides living together in groups because of those necessities, people create different *types* of association. The latter, in turn, meet the different types of necessity in life by 'communicating' those things, services and rights necessary to the development of an integral life. In general, people join associations by means of consent. Each of these groups has an inner set of rules, authority and roles to function (Althusius, 1995: 20-22). This argument is made evident and applied in different types of associations (family, guilds, churches and public associations like cities). Althusius (1995: 143) distinguishes three main types of associations: natural (e.g. family), civil (e.g. professional associations) and public (e.g. provinces). These groups are different in terms of role and internal structure. Each association has a "calling" given by God, a potential that should be actively unfolded. To summarize: God created human beings who need to live in community. Different associations must meet different types of needs, derived from the order of divine creation. When the associations meet such needs effectively, the resulting social framework may be called 'symbiotic' and the relations, 'political'. This means that the development of the art of politics requires us to acknowledge the structure of God's creation and that society be arranged with reference to those structures so as to fulfill the 'redemptive' calling of societal plurality.

The third relevant theme concerns the limits of political authority. Just as the structures of divine creation and the need to live socially in a certain way (adjusting it to these structures in order to obtain 'symbiosis') are elements influenced by the Biblical motif of creation/fall/redemption, Althusius makes his religious assumptions also very salient



here. A plural structure of creation, always relative to the Creator and always limited in itself, is intertwined in all its aspects. Each association used to unfold these aspects in human life has, within the limits of its inner 'logic', a structure of authority that is *only* responsible for the area of 'specialization' of that association. Ideally, an association's authority will never go beyond its sphere. In that case, we would see a multiple exercise of authorities in social life, each instance restricted to its own 'calling' and perhaps actualized in some sort of 'covenant'. In his analysis of public associations (electoral colleges, courts, town halls, etc.) Althusius (1995: 39-40) makes it clear that each is restricted to providing public justice through the power of the sword. Within this public side of social life, many associations gradually emerge layer by layer in a 'bottom-up' fashion. Cities, then, are part of provinces, which, if covenanted, will form the "universal public association" (Althusius, 1995: 66). On the other hand, this universal community is not the 'whole' formed by families, guilds and churches. Unlike scholasticism and Aristotelianism, Althusius' societal pluralism only establishes a whole-part relation when the inner 'logic' of associations on both sides is the same (Ossewaarde, 2007: 113ff). In this example, public authority (the universal public association) differs from religious (churches) or professional authority (guilds). They are wholes in themselves. However, a city may be called a part of a province, for sharing its public character but differing in scope. There is, by implication, no ultimate authority over things except God Himself. All other sorts of 'authority' are relative to 'sphere' and 'level'.

Besides providing a theoretical narrative explaining the emergence of States through the intertwining of public associations, Althusius furthers his theory of universal public association and the limitations of its authority structures, using the case of the Holy Roman Empire to illustrate the concept. He attributes sovereignty to that association, because in its territory there is no other public authority equal or higher than the Empire (Althusius, 1995: 69). Considering the inner arrangement of each layer of public associations, the image arising from the intertwining of all associations is rather different from the humanistic concept of 'social contract'. The latter presupposes a complete separation between individuals and the State. The universal association, in turn, is created considering inferior structures of public authority and without negatively affecting the other *types* of association. Sovereignty belongs to the "people", *i.e.*, "not (...) to individual members but to all members joined together" (1995: 70). Althusius is sometimes regarded as a Rousseau-like defender of popular sovereignty, but he is very clear when he says the 'people' or 'members' for him are "not (...) individual men, families or collegia, as in a private or a particular public association. Instead, members are many cities, provinces, and regions agreeing among themselves, on a single body constituted by mutual union and communication" (Althusius, 1995: 67). The concept of 'people', therefore, corresponds to those public associations that unite to form the State. Two limits are imposed on state authority, then: the restriction of providing public justice alone, and the sovereignty of the 'people', represented in the body of magistrates immediately under the level of the universal association.

The 'vision' that Althusius has of the Empire as a universal public association is, thus, very similar to the situation in the United Provinces. In his professional experience as a lower magistrate in the city of Emden (between Germany and the Netherlands), Althusius had to vindicate his city, more than once, against the excesses of provincial authorities. The third edition of his work (1614) is dedicated to the leaders of his own



province's resistance during the long period of the Dutch Revolt against Spanish domination, which officially ended in the same year when the Treaties of Westphalia were signed (Carney, 1995: xi-xii). Public resistance was a familiar situation for the author. It is clear that his concept of universal public association has a 'redemptive' character, just like his definition of politics. Human institutions must conform to divine calling and the structure of creation. Keeping sovereignty with the body of magistrates is a means to ensure that, in case of abuse of authority, there will be pre-established possibilities of resistance through the public power of the lower magistrates (Althusius, 1995: 196-197). Althusius' argument, as explained by Grabill (2006: 122-123), was deemed potentially dangerous, both by those defending a concentration of imperial power and those advocating absolutism at the local level. The theory of resistance that legitimized the Dutch Revolt could possibly be applied to the Empire or even its smaller provinces. Due to these implications, after Althusius' death his theory was for centuries completely ostracized.

V. Humanism: Science, Personality and Politics

As we have seen previously, there are many similarities between early humanism (mainly in its more religious strand) and the late medieval anti-scholastic movement. In fact, Hardt and Negri (2000: 72) notice a sharp separation between Nature and Grace in nominalism, which broke once for all the scholastic synthesis in its dualistic religious ground-motive: the production of knowledge, as a result, "shifted from the transcendent plane to the immanent". The realm of Grace was not completely eliminated from life as a whole, at least in early humanism, but 'privatized'. From late medieval anti-scholasticism and Christian humanism an introspective idea of religiosity emerges. The temporal realm, in turn, is conceptually separated from the religious, acquiring a certain 'logic' of its own, based on the Renaissance ideal of free personality (Boucher, 1998: 118). Both factors have clear influence in nominalistic political theory and its 'vision of the Empire'.

In Dante Alighieri, for example, for humanity as a whole (Christians and non-Christians alike) there should be one universal government providing freedom to citizens and their intellectual fulfillment, the greatest of all goods within the temporal political scope (Dante, 1863; Ullmann, 1975: 278). Marsilius of Padua goes further and denies the Church the right to be involved in secular life and issues of government. Thus he avoided a transcendental feature in his view of the Origin of government by placing it under the consent of governed citizens (Ullmann, 1975: 283; Marsilius, 2005). According to Nederman (2003: 130), this forerunner of humanism already recognizes the "temporal advantage as a fundamental and entirely legitimate goal of human conduct", presenting "the purpose of all living creatures", also in politics, in terms of "self-preservation". The whole theoretical framework is then applied to the case of the Holy Roman Empire, portrayed as the result of the consent and will of the group of citizens (Marsiglio, 1993). In late Christian humanism, both introspective religiosity and the treatment of Nature are definitely seen in light of the ideal of free personality through emphasis on education. We see this clearly operating in the 'internationalist' thought of Erasmus of Rotterdam and other famous 'irenists', such as John Amos Comenius. These examples suggest that Christian humanism, with its focus on a



temporal internal logic, sought for the ultimate principles of politics (including its 'vision of the Empire') within the immanent realm of Nature.

With time, the religious ground-motive of humanistic thought crystallized around Nature (now autonomous) and human Freedom "absolutely independent of every 'supernatural power'" (Dooyeweerd, 1979: 152). The autonomous person would, sooner or later, "take his fate into his own hands". Hardt and Negri (2000: 70-71) describe the comprehensive nature of that "affirmation of the powers of *this* world" as a "revolution":

humans declared themselves masters of their own lives, producers of cities and history, and inventors of heavens. They inherited a dualistic consciousness, a hierarchical vision of society, and a metaphysical idea of science; but they handed down to future generations an experimental idea of science, a constituent conception of history and cities, and they posed being as an immanent terrain of knowledge and action.

The main consequence of this "secularizing process that denied divine and transcendent authority over worldly affairs", according to them, is that "human knowledge became a doing, a practice of transforming nature" (Hardt and Negri, 2000: 72), i.e., the ideal of free human personality served as an impulse to the ideal of control over nature, both being key elements of the Freedom motive.

This is the Freedom pole in the transcendental ideas of humanism. The Nature motive, in turn, is completely different from the view presupposed in previous theoretical strands. After the break from scholastic synthesis, it was also altered by the 'mechanistic' worldview and the great advances in physics and calculus at the onset of the Modern Era (Shapin, 1996: 12-64). The mathematical approach to nature led to a metatheoretical normative criterion for the production of knowledge in specialized disciplines. In order to serve the ideal of control fostered by the Freedom motive, the human mind should make an effort to discover all the mechanisms or 'laws' of reality (Hooykaas, 1972: 13-19). The use of this guideline in politics took some time. During the earlier development of the Nature/Freedom motive we can find a 'historicist' focus in early classical humanists like Francesco Guicciardini or Niccolò Machiavelli as far as social life is concerned (Tuck, 1993: 171). Despite this, Femia (2003: 150) comments Machiavelli's work stating that

"There is [...] no trace of Aristotelian or Christian theology, nor reference to any ideal order [...], to any culminating fulfilment towards which creation moves. There is no discernible assumption of the existence of divine law; the only natural laws Machiavelli mentions are laws of physical necessity".

While initially the contingent character of society was emphasized in the favoring of historical knowledge, the secularization of thought and the mechanistic view of nature



ensured, starting with the first humanists, an openness that would later apply a 'mathematical' view to politics.

Just like all its dualistic predecessors, classical humanism also displays a deep tension between its two core poles. Freedom, investigated under the guidance of the new scientific ideal of control, resorts to the mechanistic view of Nature. The more control we have over the world, the freer we are (Shapin, 1996: 119-135)⁵. However, the inflation of this ideal of control so as to understand society in terms of modern mathematical criteria ultimately means the explanation of all mechanisms of reality, thus denying any autonomy – a denial of the Freedom motive! (Kalsbeek, 1975: 137-141). This tension between theoretical determinism based on a 'mechanistic' view of Nature and the Freedom motive moved soon to the center of the history of humanistic thought. René Descartes, for example, denied the ultimate subjection of the 'ego' to the mechanical world, linking rationality and morality to that 'ego' in an indissoluble duality of Origin. The whole Cartesian system, including the separation between subject and object, derives from that double transcendental idea. Thomas Hobbes, on the other hand, aimed to abide by the theoretical implications of his own 'mechanistic' ontology, reducing all cosmic diversity to his postulated Origin – the physical laws of the universe (see Dooyeweerd, 1979: 153-154). Hobbesian 'internationalist' thought is based on the same principle, theorizing the State a 'body' clashing with other political 'bodies' and subject to the mechanical laws of motion (see Skillen, 2003: 322-324).

Humanistic political theory based on the Nature/Freedom antithesis took into account the need to extend the ideal of control to the State, given the political and religious convulsions of that period. Jean Bodin's theory of centralized and indivisible sovereignty, presented as a solution for the struggle among internal factions, was widely accepted (Eulau, 1941: 646). Hobbes presented a similar proposal but added the 'mechanistic' view of society, which was already a powerful tool on at least three accounts. First, humanistic secularization or 'immanentization' of politics presented a viable alternative to the internal struggle in Europe between Roman Catholicism and Protestantism(s), changing the idea of Origin into something that the 'neutral' and universal use of reason could apprehend. Even though Early Modern theorists keep 'God' in their vocabulary, the idea of natural law is highly neutralized by the new scientific way of reasoning. Hugo Grotius, for example, is perfectly able to state that the basis for natural law is human reason, nevertheless consistent with divine character (mind the concession), but even if God did not exist, natural law would still be valid (Grotius 2005:89). Dengerink (1978: 16) comments this passage saying that, for Grotius, "natural law, in the last analysis, is a product of human reason". G. W. Leibniz will go much further and reduce everything, including God, to essences that are co-eternal with Him and which He cannot resist. "It is important to recall", says Riley (1988: 6), "that, for Leibniz, God operates within limits". One of these limitations is justice, defined in terms of geometric harmony between love for one's neighbor and the use of wisdom. Such is the idea of Origin, in the Leibnizian system, of the State whose end is to allow the "empire of reason" (Leibniz, quoted in Riley, 1988: 23). In Leibniz and Grotius, autonomous reason acquires a central place. These cases illustrate the first type of influence of the new 'immanent' approach to natural laws.

⁵ There is also a considerable volume of scientific production outside the humanistic ground-motive. Early Modern science is not synonymous for 'humanistic thought' (Pearcey and Thaxton, 1994).



Secondly, the universalization of the mathematical method in the classic humanistic view of Nature gave political theory a certain neutrality and precision beyond theological quarrels permeating the Early Modern practice and study of 'international' relations. We notice this feature in the geometric-deductive and arithmetic methods. Baruch Spinoza, Grotius, Leibniz, Samuel Pufendorf (at least in the beginning) and many others described their arguments as Euclidian systems deduced from initial axioms. Dengerink (1978: 15), describing Grotius' method, calls it "purely deductive, after the fashion of geometry". Another use of this type of theorization by Early Modern humanists is their emphasis on the primacy of the parts over the whole (arithmetically inverting the Aristotelian relation inherited from scholasticism). This perspective was instrumental in the several attempts to reconcile the ideal of free personality with the ideal of control through the fiction of the 'social contract', hypothetically signed by a group of free individuals (or linked parties or the voluntary 'sum' forming a whole). Only in Pufendorf does the State finally acquire legal abstract personality, becoming a series of covenants between its many parts (Boucher, 1998: 236-238). The primacy of geometrical and arithmetical abstractions in the intellectual milieu strengthened the deductive mode of theorization and the notion of 'sets' fully emerging from their parts.

This procedure, applied to the analysis of society as a whole, was also present in the study of relations between different States. Conceived in light of the 'mechanistic' worldview, the State is defined as a closed set clashing with the other States or, as Hobbes defines, a 'body politic' subject to the same physical laws as the rest of the universe. It is not surprising that the same argument used in the analysis and synthesis of the 'state of nature' leading to the social contract is 'transposed' to relations between states. Although the Early Modern 'international' is based on the so-called 'domestic analogy', this does not mean that the 'outside' is a perfect mirror of what allegedly occurs 'inside' at the hypothetical moment of the social contract (Walker, 1993). One of the differences between the set of individuals in the state of nature and the set of States in the international system is the fact that States supposedly 'solved' the internal problem of order and security and are, therefore, able to defend themselves more adequately than individuals in the state of nature. This was the argument used by Pufendorf against the implication that only a world State could deal with international anarchy (Boucher, 1998: 239). To this, Grotius adds the concept of 'international society', conceived, also contractually, with basis on natural law (see Bull, 1977). In any case, it was widely accepted that States had the power to pursue stability using strategies like the balance of power or military alliances. By implication, there was no need for a universal centralized entity. Thus, though the same principle of survival and self-interest may be applied in both domestic and international politics, each level requires its own considerations, presenting yet another facet of the dialectic relation between the ideal of control and the ideal of free personality.

Defining the Holy Roman Empire as a polity, especially after the changes facilitated by Westphalia, was one of the great enigmas of humanistic 'internationalist' thought. Most theorists regarded scholastic and Classical thought as inferior to the mathematical approach. However, Aristotelian categories were still popular in the classification of political communities. Besides the insightful, yet ignored, proposal by Althusius, the available 'visions of the Empire' revolved around the Aristotelian concepts of monarchy, aristocracy or a mixture of both. The problem consisted in reconciling the already crystallized definition of sovereignty proposed by Bodin with the double claim of



sovereignty by the Empire, on the one hand, and the German princes on the other. This idea of sovereignty, if strictly maintained, would threaten the power of the local princes and favor the Emperor or, alternatively, reduce the Empire to a military alliance and favor the princes. This was yet another 'puzzle' derived from the tension between control and freedom in the humanistic religious ground-motive.

The cases of Pufendorf and Leibniz are particularly illuminating. Pufendorf sees in sovereignty, described by Bodin and Hobbes, as "the defining characteristic of a State", and even proposes a distinction between regular and irregular States, in which only regular polities have "unified and effective" sovereignty, reducing irregular States to failed attempts at providing security for citizens (Seidler 2007:xvii-xviii). Pufendorf (2007: 176-177), denying any applicability of the Aristotelian categories of aristocracy and monarchy to the Empire, is led to conclude that "*Germany is an Irregular Body, and like some mis-shapen Monster*" (*monstro simile*), which, nevertheless tends more to a "system of States" (i.e. a military alliance) than a unified monarchy. Eulau (1941: 657-658) comments on the humanistic procedure which leads to that conclusion, stating that:

Pufendorf's method [...] consisted in juristic and logical deductions from a priori conceived assumptions. He unconditionally accepted the views of Bodin and Hobbes on the absolute unity and complete independence of the sovereign state. From the nature of state thus conceived, he deduced its sovereignty; from the nature of sovereignty, its indivisibility; and from this indivisibility, the monstrosity of any state supposedly composed of other states. A state cannot contain within itself several other states.

Pufendorf's advice is simply that there should be a greater coordination among the members of the Empire so that it truly fulfils its purpose of being a military alliance and becomes an effective system of States.

Leibniz, on the other hand, was not satisfied with the traditional concept of sovereignty. Criticizing the abstraction of the Hobbesian view, since "no people in civilized Europe is ruled by the laws that he has proposed" (Leibniz, 1988: 118), Leibniz suggests that "the position of the Emperor is a little more elevated than one commonly thinks" (1988: 111). He explains the emergence of States and of the Empire based on the need for coordination in the administration of larger territories. He states that the right to territorial jurisdiction (*Landeshoheit*) of those princes able to lead their own army and in control of a considerable extension of land corresponds to the kind of sovereignty one may find in many countries outside the Empire (1988: 114-117). He establishes the difference between a confederation (military alliance) and a union, stating that in the latter there is a permanent "administration, with some power over the members [...]. Here I say exists a state" (Leibniz, 1988: 117). As for the 'monstrosity' referred to by Pufendorf, Leibniz declares (1988: 119) that these are "monsters similar to those kept by the Dutch and the Polish and by the English and even by the Spanish and the French". In Pufendorf, the traditional idea of sovereignty is maintained as an axiom of the whole system, leading to the Empire being classified as a sub-optimal solution for the dilemma between control and freedom. That problem



can only be solved based on a contract among the parties so that the whole system becomes more effective. Leibniz's proposal, in turn, is arithmetic: sovereignty loses its unitary feature and is divided between main and secondary parts. This fractioning allows the Empire to be classified as a sovereign State, a kind of predecessor of the federal State.

VI. Final Remarks

The Classical Form/Matter motive influenced the scholastic view of Nature, synthesized under the realm of Grace. The core ideas of Nature/Grace, together with the Aristotelian primacy of the whole over the parts and stoic cosmopolitanism, shaped the framework for medieval political thought and later scholastics. This included the concept of Christendom and the coordination between the universal political jurisdiction of the Holy Roman Empire and the spiritual rule of the Papacy. The synthesis of the medieval ground-motives followed its course under the institutional authority of the Church until the onset of the Modern Era. The Reformation, however, allowed for alternatives in Christian humanism and in Protestant thought in general. Though many Protestants kept their scholarship surprisingly close to Roman Catholicism, some in the Reformed branch developed a pluralist ontological system, from which they derived a perspective on society in accordance with their radically Biblical assumptions. In classical humanism, on the other hand, a more secularized theory of Nature together with mathematical elements constrained political theory in terms of both method and content. Facing the issue of reconciling the ideal of control with the ideal of freedom inherent to this new ground-motive, humanists never fully escaped the ultimate questions related to the Origin of cosmic existence, coherence and diversity. The 'long-term' analysis developed here allowed me to illustrate how religious assumptions tacitly influence ontological models on which specialized theorization depends. Whether explicit or implicit, these presuppositions of pre-theoretical *reconnection* with transcendental ideas of Origin have always influenced 'internationalist' political thought.

Both the Holy Roman Empire, and general notions of international order (including the unity and diversity of political communities) operate as a more or less stable point of comparison between distinct trends of thought. My aim was not to provide a history of the Empire or the 'international', though this analysis may eventually contribute to that end by discussing how *ideas* about the Empire and the 'international' were historically formed, shaped by their basic presuppositions. The correspondences between those *ideas* and the 'real' Empire or the 'international' are interesting, yet secondary, issues here. The most important point was, rather, the exploration of the Reformational notion that there is a strong link between the ultimate assumptions of theoretical thought, derived from a certain inclination to a set of transcendental ideas on Origin, and their implications for the specialized analysis of a given object. The impact of that relation cannot be denied in the case of the 'visions of the Empire' and the 'international' at the onset of the Modern Era. During that period, theories belonging to several trends of thought emerged which focused on political order relating 'inside' to 'outside' and the role of the Empire in the general scheme. The nature of 'internationalist' political thought itself, as Keene (2005: 10) affirms, involves coherence and diversity of political community. Therefore, if ontological inquiry is inevitable – as it seems to be, even



today (see Wight, 2006) – then the way in which different ontologies find their roots in religious ground-motives of theoretical thought is also worthy of our attention.

Discussions on ontology are always happening in any specialized academic discipline. In the field of International Relations, where both object of study and ways of theorizing are in constant motion, such debates are welcomed with open doors. The implications of the argument advanced here for the historiography of International Relations and International Law are manifold, and their fertile potential, remarkable. Despite this, little exploration on the theme has been attempted. From ancient times to the onset of the Modern Era, internationalist political thought has evidenced philosophical and religious roots. Any concept of the 'international' will maintain something deeply religious. The manner in which this has occurred has changed over time, but we have no indication that we will ever break completely free from that key dimension of theorization. It may well be the case that most contemporary thought on the 'international' shares a unique set of ground-motives and assumes a certain neutrality and autonomy in theoretical thought. That is still an open issue. Even in this case, it is in *that* presupposition that we find the inclination of contemporary thought towards an Origin.

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SECURITY: A SUPRANATIONAL LEGAL ASSET

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ABSTRACT

This paper discusses the concept of security as a many-sided, multifunctional and multilevel regulation topology which requires its several actors to view legal assets from a polygonal perspective worthy of legal protection from local to global and from global to local space. The concept of security as a supranational legal asset requires criminal legislation which defines the principles of criminal policy and the intervention of criminal Law, barriers to security trends and to the attempt to enhance the principle of *presumed hazard* as a basis for criminal intervention. We contend that the obstacle to "human self-objectification" in the global polygon is a (new) *world legal order* as humanity's future balance.

Keywords:

Security; legal asset; criminal law; humanity; legitimacy; hazard; enemy; multifunctionality; multilevel regulation; topology; polygon; world legal order

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SECURITY: A SUPRANATIONAL LEGAL ASSET

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I. General background

1. The world is in turmoil and conflict in terms of the concept of humanity as effective subject with personal, social, economic, cultural and political rights and freedoms. The assumption imposed to science but not to non-scientific technique by internal and external phenomena (immersed in technique and efficiency without efficacy) towards *human self-objectification* which Habermas discusses (2006: 74) leads us to rethink the concepts that become topologies - *in geometrical spaces of group operations with two-sided topic correspondence among the participants* - and restructure a restricted system - in the *restricted space* - in an open system and macro system.

This perspective recalls community leading actors to pursue the basic tasks of States to ensure efficient effectiveness in the defence and guarantee of *harmonious social life, with quality and well-being*. These aspirations are typical of an organized, topologically structured State to create a *space of freedom, justice and security*. This space is built in daily life and systemic environment *i.e.* it is built in creating life within an *economic, political and legal operating system*. It is in this comprehensive system, *environment and life*, in which humanity finds the "dimension of being a person" (Figueiredo Dias, 2007: 118).

This dimension becomes more relevant at a time (and space) of mutability and uncertainty which values (almost exaggerates) some assets in detriment of others. The idolization of the asset "security" in detriment of the asset "freedom" has gained prominence at the end of the 20th century and the beginning of the 21st and has become almost social schizophrenia: *everything is and becomes security*. This *paneconomia* emerges from a deregulated economic and financial globalization and spreads at a time when real and effective security has the prominence it has never had (Bauman, 2009: 13-51).

2. This topological imbalance of the system's (or macro system's) essence, rooted in a fictional idea of growing fear and uncertainty in *late modernity*¹, can only be limited if we withdraw the idea of security from the *security* thesis and the *hazard* thesis, which advocate the implementation of a punitive preventative law and launch the need for this option to the scientific debate based on the idea that *security is the first freedom*. These theses overvalue security and ignore history and the moments when this has led to atrocities we stubbornly want to forget. These theses centralize the system as

¹ We agree with the topology by José de Faria Costa: "We live in the perverse simplicity of ephemera. Of temporariness. Of the present wishing to be always present. These are features of today's civilization, which some define as post-modernity but that we prefer to call late modernity" Faria Costa, 2010: 7).



human way of being based on security, when we prefer the system focuses on the *human being*: the only reason for *environment* and community *life*.

The scientific context and concept that *security* is nowadays *an asset* to me, to the "other", to "us", *an asset* to everyone, raise issues in scientific legal (and political) debate such as space limitlessness and territorial limitlessness and the challenge to build a topology of security as a *need* and as a *legal asset* crucial to the balanced development of society; the setting up of a constitutional right imbued with defence and protection of rights (and duties) and basic *personal* freedoms - aiming to supervise the "specifically *personal* sphere of action" [individually and collectively considered], as well as *social, economic* and *political* freedoms - aiming to supervise the individual's *social* sphere of action (Figueiredo Dias, 2007: 120-121).

This exercise of subjecting *security*, as a legal asset, to *legal and constitutional order* in a democratic constitutional State imposes a material, procedural and operational limitation, subjected to the principles of criminal policy and the intervention of criminal Law, presented as a value of optimising the individual and his or her dignity. This forces us to limit (and push aside) the hegemony of the *collective* over the individual and place the *human being* at the core of all scientific discussion.

II. Topology security and legal and criminal protection: validity/legitimacy

3. The concept of security as a legal asset of criminal protection is under internal and external debate and should lead us to contextualize it in terms of the specific *cultural thought* of a people, of the *conceptual (dogmatic) thought of the human being* and of the *thought of the State*. This trilogy of thought is, as we have already stated, the cornerstone of a people's organization, regardless of the ongoing organizing structure (Guedes Valente, 2011: 66-67).

Creating a *topology of security* must occur before limiting the legal asset under criminal protection; the scope of intervention of criminal law is extremely wide. This exploration requires the scientist to not be fooled or tempted by political *rhetoric*, typical of today, so that one day, like *Günter Grass*, we DO NOT HAVE TO WRITE and say we would "never" do a "thing like that" (Günter Grass, 2008: 12-15) to justify human monstrosities - *v. g.*, Auschwitz - and the abuse and violation of human rights and fundamental freedoms - *v.g.*, Guantanamo legitimated by the American *Patriot Act*; former URSS Gulag.

The rhetorical speech is based on a *cognitive idea of insecurity* spread by the speed of communication. The diffusion of the crime leads to individual crime becoming community (social) and globalized crime. A murder in a remote village in Portugal is today experienced, lived and (ethically, politically and legally) discussed in every home in the country, multiplied through news massification.

This is no longer one crime and is multiplied through speedy and consuming diffusion. This *hypervelocity* of knowledge of a crime may lead us to speak of insecurity and of the "reign of violence". The construction of a cognitive security topology cannot allow itself to be carried away by this speech but rather focus on the already mentioned trilogy of thought, otherwise a system will be created in which the legal asset of security takes the lead of preventative criminal Law.



4. The security topology has *high conceptual extension* and assumes a *manysided, multifunctional* and *multilevel regulation character*. These features will acquire greater prominence if thought and studied at *local, national, regional and international level* as they are evidence of the versatility and liquidity² of a *globalized world* within *glocalization*: local thought is expanding within global thought and global thought is fostered by local thought. Thinking about a legal asset such as security, worthy of criminal protection, must take into account the *uncertainty* and the idea that material and formal implementation of a *manysided topology* is a challenge, not limited in terms of territory but rather flexible and obtuse, subjected to *gravitational time and space*³ theory.

This structuring in the creation of a topology of security leads us to not confine the issue to moral values, to ethical values, to political values or to exclusively legal values. Furthermore, we cannot limit this structure to values inherent to the work of controlling institutions such as the Police and the Court (the Public Prosecutor and the Judge). As a *manysided, multifunctional and multilevel regulation topology*, security is rooted to a *multi shaped level* so as to encompass its *conceptual extension*. This awareness cannot exempt the legal expert (the legislator) from producing less successful legislation on security.

5. The *multilevel regulation character* of security is echoed in the *principle of legal security* weakened by the inconsistent and unsystematic character of criminal and criminal procedural legislation. On the one hand, criminal Law is called upon to intervene in the protection of legal assets which are unworthy because not directed to protecting the human being's *personal and social* sphere of action and are solely meaningful within a logic of criminal symbolism and promotion of negative prevention; the Law is called upon to be the *police* - in opposition to the scientific principles which should rule criminal intervention in human behaviour. On the other hand, new institutes for criminal prosecution are created, based on "industrialized and commercial" technologies and assigned to criminal police agencies without previous study and assessment of already existing institutes (Hassemer, 1995: 109-113). The process of *policing* criminal action is given more power, leaving the democratic constitutional architecture in force unprotected.

The *principle of legal security*, which should be the first pillar of the topology of security as a legal asset worthy of criminal protection, is in a crisis due to less successful legislation. There is a decrease in the certainty of how to *be* and how you *should behave* in a community that is imposed as "a system of action structures, interactive in many ways", based on a "susceptibility of rules and guidelines" (Zippelius, 1997: 47) rather than a lack of rules for human action.

This concept may be based on the *multilevel regulation character of security*: it encompasses all legal ruling - civil, administrative, economic, financial, criminal (material and procedural) and constitutional, national and supranational - and takes on

² Para um aprofundar da teoria do mundo líquido, Zigmunt Bauman (2007). *Tempos Líquidos*, [transl. into Portuguese – *Liquid Times (Living in Age of Uncertainty)* – by Carlos Alberto Medeiros]. Rio de Janeiro: Zahar Ed.

³ In terms of *system fallibility theory*, including that of mathematical expressions, Karl Popper (2003). *Conjecturas e Refutações*, (transl. into Portuguese – *Conjectures and Refutations* – by Benedita Bettencourt). Coimbra: Almedina. pp. 293-338 (310-322). In terms of *gravitational time and space theory*, Etienne Klein (1995). *O Tempo*, (Transl. into Portuguese *Le Temps* by Fátima Gaspar and Carlos Gaspar). Lisboa: Instituto Piaget.



a crucial role in social life; it accommodates private and public Law, as an asset to preserve, essential to balanced development of the community.

Security, because of its multilevel regulation character, creates a sense of uncertainty which is not typical of fallibility but of the demonstrative type of ruling we have been living in during the last decades. However, it should be the source of fallibility typical of a topology constantly adjusting to the phenomena of a *global risk society* (Beck, 2009: 56-58) and assuming a topology which encompasses the trilogy of thought - *cultural thought, human being's conceptual (dogmatic) thought* and *State's conceptual thought* - and disseminates a globalized operationality.

6. The *multifunctional character* of the security topology is connected with the idea of it being developed in *several spheres of action, in several areas* and in *several spaces* by *several actors* with similar or different functions and competences in accordance with their levels of intervention. The topological structure should aggregate the highest number of active and passive security functionalities to its core and the widest operating public and private scope of activity and production of security.

Constitutional recognition of *security* as basic value to a democratic society and democratic citizens adds the principle of freedom to the multifunctional character of security. This principle includes security in its core as a multifunctional necessity and value: the *individual* overrides the *collective*, enforces compliance to the *principle of freedom* as the highest value of justice and a space of dignity of the human being and as a safe haven.

The *multifunctional character* arises, thus, not from isolated freedom but from several freedoms that charge the *collective* of defending and ensuring the security in the several spaces of freedom of the *individual* [circulation, job choice, marriage, education, environmental, religious, demonstration, expression, etc.]. These freedoms (and human needs) give origin to local and global multifunctionality of security and require science to rethink and rebuild the topology security as *local, national, regional and supranational legal asset*, to find it again among the assets worthy of criminal protection and to restructure it in autonomous criminal types in accordance with the behaviour and injury or danger of injury of the legal asset security [in particular and very restricted or exceptionally in general].

7. The reconstruction of the topology security as legal asset - *value undertaken by the legitimate, valid, in force and effective order* - is the responsibility of science which should consider it a *manysided topology*. Security is a *manysided* topology, i.e., it consolidates as a construction in parallel with forces of the several actors (many-sided or one-sided force) and in proportion with the degree of multilevel regulation and multifunctionality at a given time and place.

This feature of security is expressed throughout criminal history and in the criminal legislation code of protection of **legal individual assets** - *for example, life, physical integrity, freedom* (of decision and of action - movement), *property and its use* - **supra individual legal assets** - *for example, justice, credibility and transparency in the functioning of financial markets, free competition and good functioning of the economy, integrity of the legal State* - and **diffuse legal assets** (which are individual and supra individual) - *for example, the environment with quality, security of road traffic*. The *value security* is a *manysided value* in relation with other values protected by criminal Law and undertakes, in many criminal typologies, as a capsule around personal legal



assets: *v.g.*, *road traffic security* which is the protection of life and physical integrity of all road users.

This leads us to *conceptual extension* of topology security in all criminal (and administrative penalty) legislation, which is extended to spaces of *multilevel regulation* and *multifunctionality* of a *criminal legal assets*: a vital personal (individual) and an essential and structuring supra individual interest for the development of the human being in community and as anthropocentric value of *personal* and *social* action, worthy of criminal protection. However, this conceptual extension does not imply arbitrariness in criminalizing human negative behaviour but rather expresses the integrating extension of an essential concept to the human being - *legal asset*- limited by *multifunctionality*, *multilevel regulation character* assessed by formal and material Constitution, *i.e.*, assessed by constitutional law (Figueiredo Dias, 2007: 119-121).

The conceptual extension of topology security means subjection to a value topology of cognitive epistemological and axiological construction as a vital (but not absolute) asset of all the community (national and supranational). A community without security is a community in which human development and growth is unprotected and, more importantly, it allows the spontaneous *topic (τόπος)* the decision of security as legal asset, whose despair increases with the mutability of *liquid times*. Notice that this statement *is not an appeal to the idolization of security*. It is an appeal to its *inclusion in the dogmatic foundations of State punitive intervention*.

The validity and legitimacy of the assumption of security as a legal asset worthy of criminal protection are in undertaking its essence and necessity and demand to human *personal* and *social* activity and in having an *anthropocentric relational structure* in protecting a value/interest [necessity which becomes legal asset through legal (von Liszt, 2003: 139-146)] individual and supra individual order, crucial to the balanced development of the human within the community. As a legal asset worthy of criminal protection in a democratic constitutional State, *security is at the service* (and thus it is instrumental) of *freedom* and is created in accordance to a people's *cultural thought*, the *conceptual (dogmatic) thought of the human being* and the *State conceptual thought*.

Our epistemological and axiological construction of the establishment of topology security as legal asset, requiring legal and criminal protection, as a source for legitimate intervention of criminal Law *denies the functionalization of criminal Law to meet the emerging needs and demands of the risk society* - based on the idea of hazard and specific edifying threat of criminal Law of risk - Figueiredo Dias, 2007: 138-139), *i.e.*, denies criminal preventative Law or presumed (abstract) hazard and pushes aside the idea of criminal Law with a "police officer's uniform" (Faria Costa, 2010: 10).

III. Space and the legal asset "security"

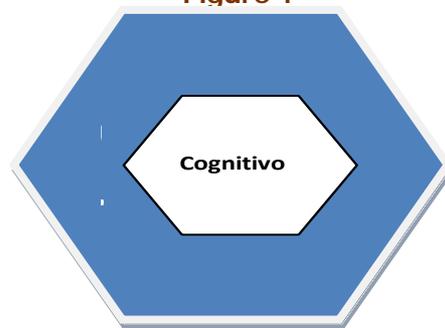
8. Security, as a mansided topology, is present in several parallel polygon levels which interact and are interconnected within national and supranational multifunctionality and multilevel regulation. The texture of this polygon, which involves the round texture of the globe, is *local*, *national*, *regional* and *supranational*. An enhancement is made to security's spacial elasticity in regards to the *mutability of nomadic crime* of a sedentary society and is based on the idea of building a space of



freedom and justice, subject to a balanced, approximate and horizontal political speech which has reduced that space of security to security theory (and warlike here and there).

Converting restricted spaces into an *open system* and a *macro system* arises from the realization of security as anthropocentric topology in space and time and creator of different and centralizing lives. Committing a crime affects the real and cognitive state of topology security in the restricted identifiable space: the *local* space or geographically restricted territory [real polygon]. The multifunctionality and multilevel regulation focus on a mansided concept of territory and time configuration and determination of specific personal and community effects.

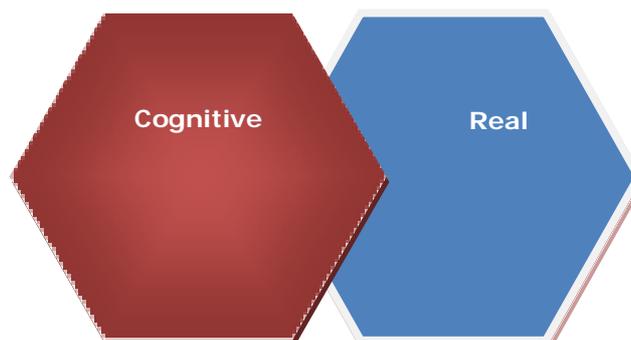
Figure 1



The scalability of the effect of crime is limited to a localized polygon: the *principle of territoriality* finds expression in criminal Law. Real encompasses the cognitive and the whole topology security is established within a *restricted system* which vanishes in time (also restricted because part of the whole system).

9. The gravitational effect of certain crimes projects them beyond the local polygon and increases national space and occupies a world of - local- reality and the world of cognition. This process is guaranteed with the emphasis media gives to crime affecting the *direct victim* (the claimant and owner of the damaged or placed in danger legal asset), the *indirect victims* (personified by the *members of the local community* who see legal assets being damaged by human behaviour) and *members of the national community* (who feel and realize the restriction of space and time in topology security).

Figure 2





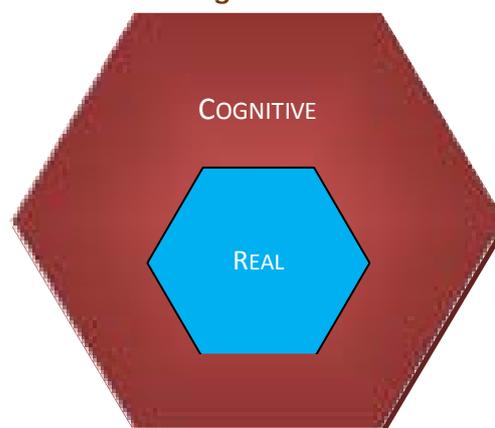
This process no longer simply occupies the *epistemological and axiological field* - the field of reason - which fills the *real polygon*, but occupies the *fictional space* - the field of emotion which fills the *cognitive polygon*. The cognitive polygon increases size and intensity and, with the force provided by the media, engulfs and dominates the real polygon.

The *multifunctionality* and the *multilevel regulation* should be used to reduce the cognitive polygon and establish the legal constitutional statement of *principle of criminal territoriality* within the State territory. Let us consider that, though the (material) function is established through multilevel regulation of topology security, this functionality should be subject to regulation imposed by the place the crime took place in as well as the degree of suffering and intensity of damages caused by human negative behaviour. In case the *cognitive polygon* is encompassed by the *real polygon*, security is established as legal asset at local and national level because the dissemination of *πανεον* was contained.

10. The awareness of crime of reflexive explosion and shockwave, due to its high *personal* and *social* damages and the anthropological perception of seriousness, lead us to establish doctrine and operation implementation of crime "network of networks" (Wilkinson, 2006: 127) of *undetermined and illegible victims*: all citizens at any place and time are victims of structured and organized negative behaviour damaging and/or hazardous to supranational or diffuse individual legal assets.

The *polyhedron* security is, in the area of crime, no longer exclusively local or national, it extends through regional polygon - spaces such as the European Union, the Portuguese-speaking countries, Mercosur, the African Union, the *Commonwealth* (etc.) - and the supranational polygon. The establishment of supranational space extension is undertaken by the scientific and the general community, even by the media, which disseminates the effect of crime through national and supranational space and foster the *subordination of the real polygon towards the cognitive polygon*.

Figure 3



The balance between polygons is essential and only possible if operators - police, judiciary, politicians, journalists and citizens - promote confluence in topology security: multifunctionality, multilevel regulation, conceptual extension which heightens the intensity of force and security operators as many-sided. This conceptual structuring



brings to the debate the rethinking of topology security as local legal asset - *committing a crime* - of national, regional, supranational refraction and as a supranational legal asset with regional, national and local convergence; and imposes the intervention of criminal Law as "solidarity of the cultural world against (international / transnational crime" (Jescheck/Weigend, 2002: 182).

Local becomes global and global converges in local. This pendular and elliptical movement is in accordance with legal thinking on the mutability and liquidity of late modern society and states the *principle of extra territoriality* by means of (complementary) *principle of nationality*, the *principle of protection of national interests*, the *principle of universality* and the *principle of supletive administration of criminal justice* by applying criminal Law in the space because crime, though committed there, regardless of place within the "network of networks" the crime was committed in, is liable of universal criminal charges ⁴because *they damage or endanger legal assets in the national, regional or international polygon*.

11. Furthermore, we must refer to *damaging crimes* - distant or immediate - to *supranational topology security* which affect the *real and cognitive status* of all world citizens because they represent a damage to the core of human rights: *v.g.* crimes against humanity [*for example*, genocide] and crimes against local and global society [*for example*, terrorism] The genocide in Rwanda or the terrorist attacks on September 11, 2001, 11 March 2004 and 7 July 2005, represent an injury to the core of human freedom and security. In this crime scenario, we have *immediate victims* of the massacres and attacks - human beings dead or assaulted - and their *distant victims* - all citizens believe that life, physical integrity and freedom as sacred values and essence of dignity in the human being.

This scenario makes "us all" victims of barbarianism we are all exposed to and makes us possible targets. *Territorial indefiniton* and *target indefiniton* - victims - creates a state of cognitive insecurity, which encompasses the real state of insecurity and creates the schizophrenic fear - *ναρεον* - leading to a *decapitalization of rights, liberties and guarantees* which are crucial to idolized topology security. The consumption of the real polygon by the cognitive polygon generates a conceptual non-rationality and leads to a defence of an armoured State and a space of freedom and justice submerged in the ocean security produced by the theory of presumed hazard. The obstacle to this utopic euphoria of cognitive security is the Law, which is (or should be) a material and formal manifestation of a people's *cultural thought*, the *conceptual (dogmatic) thought of the human being* and the *State conceptual thought*.

As Adriano Moreira states, "tyranny, a concept similar to despotism and close to totalitarianism, indicates types of government throughout history which adopted fear as a tool of submission of society, using violent, cruel and indiscriminate means" (2009: 208). Our conceptual construction aims to avoid this growing tyrannicide in regional and supranational *open spaces and macro systems*. Only the Law may establish a *new world order of reference and human stability* because it claims justice as a substitute of violence (Tocqueville, 2002: 180).

The Law should present itself as the support to *multifunctionality* and *multilevel regulation* imposed by the *supranational security polyhedron* which acquires the status

⁴ We bring up the principal of universality of criminal Law created by Hugo Grotius in *De Jure Belli ac Pacis*, dedicated to Louis XIII of France, in 1625.



of legal asset with legal criminal protection under a (*new principle of European or international territoriality*). The "Law cannot be underestimated" (Oeter 2006: 217) in preventing and repressing hideous crimes by operators who should act according to principles of legal order in a democratic constitutional State.

The *prevention and repression of international crimes - for example, terrorism, arms trafficking, drugs trafficking, asset laundering and corruption - which threaten supranational peace and security* should be subjected to *valid, national, regional and supranational material legal order*. State and supra state operators should implement the *principle of extra territoriality* through the *principle of universality* of criminal Law and prevent a feeling of impunity of criminals which deny a space of freedom as justice due to the nihilification of topology security.

At this point, we may consolidate the idea that the space of topology security is, nowadays, an illegible space at the real territorial level and at the cognitive level; **it is, at the same time, a local/global and a global/local space**. As Otfried Höffe (2005: 19-24 (22) teaches, the principle which, at a local scale, leads individuals and groups to become organized under the Law and Justice must rule at a global scale. The polygon security, watertight, with well defined, flat lines and historically identified and specific spots becomes a multi shaped polygon whose legal and criminal intervention must be adapted without resorting to presumed criminal preventative or policing Law.

IV. Typology "security" becoming autonomous as a transnational legal asset and a restriction to security and hazard thesis

12. The dismantling of borders and economic and financial (including banking) expanding has required that the scientific community rethinks and restructures concepts and ideas on the intervention of the State and national operators in the framework of supranational space. Economic *globalization*, followed by *cultural globalization* becoming *world culture* or *the kingdom of hyper culture* (Lipovetsky, 2001: 14-112), impels us to step out of the limited system towards the open system or macro system of *security as necessary and vital asset to the balanced development of the human being in a legally organized society*.

The economic, financial and cultural expansion, which should promote globalization of political thought rather than political hegemony or economic hegemony, leads to consider security space within a space of freedom and justice under the law due to the easy political hegemonic opportunism of conceptual subversion, of manipulation of fear and withdrawing real protection of the human being. This conflicting reality demands a reconstruction of the legal asset security as an individual and supra individual legal asset as well as a legal asset of supranational criminal protection. This challenge demands *independence* or that the *status quo* be strengthened.

The vulnerability or vulnerable opportunity of human beings *becoming closer* (rather than *blending*) - *v.g.*, in cultural, religious, educational, economic, ideological, political terms - requires that the polyhedron security be analyzed as a necessary and vital asset to community life, as an essential value to human beings' fulfilment, an individual and supra individual value worthy of criminal protection because it is the lynchpin to the balanced development of the community. It is a legal asset that spreads through the consistent and systematic mesh of protecting legal constitutional values by means of criminal Law and administrative offences Law. This implies an assessment of possible



formal and topic independence, better, a material independence inscribed and assessed of the legal types of crime.

13. *Independence in legal types of crime* specifying negative security threatening behaviour, models of damaging behaviour or threatening the legal asset security, realizes the *material dimension* and the *formal dimension* of crime.

The *material dimension* of crime means effective guarantee of negative behaviour (types), limiting the legislator in terms of legislating and criminalizing those behaviours, restricting those who will interpret and apply the rule to the concept and material legitimacy of criminalization or the previewed administrative sanction and establish itself as a real protection of the criminal agent towards *ius puniendi*. This dimension enhances the balance of the Law, in particular, of criminal Law: effective protection of legal assets damaged or placed at risk of damage by delinquent and the delinquent's protection before the State's sanctioning "machine".

The *formal dimension* of crime ascribes the subjection of security actors' actions to the Constitution and democratic legality. It requires to act in compliance to the Law. Requiring the previous existence of constitutional protection of the manysided legal asset security is *conditio sine qua non* for the legislation to opt for criminalizing a negative damaging behaviour against topology security. This constitutional provision is a reality - article 27.º of CRP – and the *supraconstitutional* provision is found in article 3 and 29, n.º 2 of DUDH, in article 5 and 8, n.º 2 of CEDH, in articles 9, 21 and 22 of PIDCP, art. 6 of CDFUE and art. 4, n.º 2, al. j), 67, 68, 82 to 89 of TFUE.

14. The manysided topology security, like liberty and justice, is a legal asset of constitutional and supraconstitutional provisions. However, the validity and legitimacy of a legal asset lies beyond the formal dimension and its material dimension is present in art. 18, nºs 1 and 2 of the Portuguese Constitution. Opting to criminalize negative damaging behaviour, in particular the manysided legal asset security, imposes on the legislator to submit the validity and legitimacy of the option to *the guiding principles of criminal policy* -legality, culpability, humanity and rehabilitation - in terms of its *content and scope of its vectors* - legitimacy and efficiency.

To this list of constitutional and supraconstitutional principles, we should add the *guiding principles of criminal Law intervention*: the principle of *subsidiarity*, the principle of *excess prohibition or of minimum intervention* and *of proportionality in a wide sense* which requires checking the corollaries of *necessity* and *enforceability*, of *adequacy* of criminal intervention to the specific negative behaviour, of *reasonableness* (proportionality in the strict sense), the principle of *indispensability* of criminal intervention and sentencing, the principle of *efficiency*, assessing *future efficiency* of criminal intervention and the principle of *ultima et extrema ratio*.

Based on this material and functional enumeration of the validity and legitimacy of protecting the legal asset security, we may, on the one hand, defend that it is possible for damaging negative behaviour to be independent and establish legal types of independent crimes and, on the other hand, consider that there are spaces inherent to the manysided perspective of security which, for that reason, does not allow for a positive formal independence. However, we consider that this independence is in the material side of the legal type of crime because there you can find the specific legal asset - *for example* physical integrity or freedom - as well as the manysided legal asset security in terms of its multilevel regulation and multifunctionality.



15. The assumption of the mansided topology *security* as a legal asset of multifunctional and multilevel regulation topology which requires a legal criminal protection because it is an essential and vital asset to human life - inherent to personal and social being - and to legal *being* in community, is a model to reinforce. This reinforcement aims to take on cornerstones of supranational intervention of criminal Law values such as the dignity of the human being [*conceptual (dogmatic) thought of the human being*], the will of the people [*cultural thought of the people*] and the democratic constitutional State [*conceptual thought of the State*].

This assumption of security as a legal asset of mansided and multi shaped spaces *sets aside or limits and establishes itself as an obstacle* to the promotional changing security criminal policies of criminal Law and founders of an *emergency criminal Law* typical of a *exceptional status*, sheltered by the democratic constitutional State (Canotilho, 2009: 24). This assumption of security establishes itself as an obstacle to security temptations and to policies of *privatizing* basic tasks of a democratic constitutional State: *i.e.*, as a barrier to *deconstitutionalizing* the legal system (Canotilho, 2009: 25) and replace it with a relational privatization of the individual towards the world, leading to objectification of the individual, an "enemy" of the *legal status*. It is fostered as an insurmountable obstacle of criminal Law of legal asset and of criminal Law of freedom. This concept of the polygon security, legal asset subject to criminal dogma, is an insurmountable obstacle of criminal Law of human being.

This model is rooted in the idea that this is a restriction to human exposure - with *dignity in equality* - and to the rise of a *criminal Law of presumed hazard* and of *national security* or of a *criminal Law of risk*. By defending a comprehensive criminal system of the legal asset of (national and supranational) material legal constitutional assessment, we have blocked the (political) rhetorical speeches, to *cool, publicity and void of ideas'* speeches (ZAFFARONI 2007: 70-91), and built alternative bridges of criminal intervention because we have subjected it to validity and legitimacy of meta-legal values.

V. Security as supranational legal asset and the limitation to collective hegemony

16. The Law - not the positive or formal law but the *the natural law of material legitimacy* - legitimizes the action of security operators to restrict citizens' rights and freedoms as long as that restriction is simultaneously a damage to security as legal asset (and never as expectation) protected by the *criminal legal constitutional axiological order*. This is the *unbreakable axis* of the polygon security which geopolitics or geostrategy of security in hypermodernity have to comply to.

Human action to protect security - the basis for public peace and globalized and globalized legal peace - cannot idolize it nor, in order to implement it, derogate the values of our time and state enshrined in ECHR, as did the United Kingdom in 2001 to have the *law on security and against terrorist crimes* approved, which legalized and legitimized restrictions to freedom through unlimited arrest by ministerial decision, without detainees having access to any evidences (Marchisio, 2006: 198-199). This option is the negation of democracy and the affirmation of *πανειονκρατος*: the power of *paneonomia*.



The American option to reuse *hostis judicatus* - the enemy of the legal state or of the legally and politically organized people, *i.e.*, the enemy with no face or army (Smith, 2008: 378)-, through the *Patriot Act* and the United Kingdom's for the *security law*, is the negation of historical awareness and our ancestors' struggle for a society based on human rights. This reality demonstrates there is no historical awareness, beaten by the immediacy of security efficiency and the affirmation of the hegemony of the collective over the individual.

17. The defence of topology security as legal asset of criminal Law of freedom and the human being (Guedes Valente, 2010: 99-100) is the only alternative to the hegemony of the collective over the individual - the whole imposes security and everything is security - and the only legitimizing source to the action of security operators for the protection of vital assets of the members of a local, national, regional or supranational community.

As Stefan Oeter declares (2006: 215-218), with whom we agree, only an anti-terrorist (police, judicial and, in certain scenarios, military) action, subjected to national and international order is legitimate⁵, because it is in the Law that all geopolitical (and geostrategic) concept and action find sociological (the people's) legitimacy, which ensures the right and duty to act against negative human behaviour, damaging to individual legal assets, supra individual and diffuse: *v.g.*, *security*.

Criminal law of legal asset, as Right to freedom and of the human being, which secures the politician and the legislator to the canon of axiological legal constitutional and international (supranational) order, is the only **centrifugal force** of *absorption of the cognitive polygon of security by the real polygon* and of *negation to create a criminal Law of security or of presumed hazard* leading to a *depersonalized and objectified human being*.

The constant affirmation of a supranational criminal Law, whose positivation and constitutionalization are of daily life, leads to legal science viewing the human being as subject to *international legal rights and duties under international law*: this is the case of CFI, ECHR and ECJ. We may defend that *topology security* as supranational legal asset worthy of legal criminal national and supranational protection, **revokes the hegemony of the collective** and **approves and becomes effective the hegemony of the human being as humanity's genes** and establishes itself as topology inherent to "all concept of legal community" (Faria Costa, 2010: 40) but never as an absolute and sacred asset, otherwise we will crush not only the other rights but the human being as well. Or, as Grass states (2008: 52), "unless humanity gives up on itself".

VI. Small starting idea, but great starting space

18. We advocate a system which searches answers and alternatives within the *valid, legitimate, in force and effective axiological legal constitutional order* without derogating meta-legal values intrinsic to a democratic constitutional State: *v.g.*, the value of freedom. The obstacles to the limitlessness of intervention by several actors in the geometric spaces of two-sided group operations can be found in the epistemology and in the axiology of legal order: they provide legitimacy and restrictions.

⁵ See this consideration by Diogo Freitas do Amaral (2003). *Do 11 de Setembro ao Iraque*, Lisboa: Bertrand Editora.



Our contention is that the challenge is effectively assuming that *topology security* as *manysided legal asset of conceptual extension and rooted in multilevel regulation and multifunctionality*, of legal order in liquid times. This is the only path we believe adequate to *block the wave of security* and the *wave of presumed hazard* based on the media amplification of crime.

This theoretical construction we have put forth for reflection and debate is based on the conceptual extension and development of a criminal Law of freedom and the human being in the framework of *world legal order* or *supranational legal order*, which asserts itself as the *future balance of humanity*.

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INTERNATIONAL RELATIONS AND THE ENVIRONMENT: PRACTICAL EXAMPLES OF ENVIRONMENTAL MULTILATERALISM

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Summary

The “environmental crisis” we experience today and the international community’s struggle to develop environmental standards to reach the epic “sustainable development” are widely known topics. What is needed, then, is an urgent and determined practice, which is only possible if international governance is structured, coherent and effective. The optimization of Environmental Multilateralism (the joining of what are considered the “driving forces” of Environmental International Relations: Law, Politics and international Diplomacy) contributes greatly to this end. To understand its basic concepts and systems, as for example, its actors, negotiation and implementation of Multilateral Environmental Agreements (MEAs) and the carrying out of their Regimes, as well as their development in the United Nations, these are all crucial elements for its improvement and optimization. The United Nations Conference on Environment and Development (Rio de Janeiro, 1992) and “its” Conventions are important examples in the history of Environmental Multilateralism, still very up-to-date not only due to the 20th anniversary of the “Rio Conference” but also due to the continuity and importance that the “Rio Conventions” and their Conferences of Parties (COP) still have. This papers aims to analyze this area of studies transversal to International Relations and to the Environment, namely by studying the relation between the theory of Environmental Multilateralism and its practice¹.

Keywords:

International Relations; Environment; Environmental Multilateralism; International Environmental Governance

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INTERNATIONAL RELATIONS AND THE ENVIRONMENT: PRACTICAL EXAMPLES OF ENVIRONMENTAL MULTILATERALISM

Filipa Tiago Gomes

1. Introduction

Though there are relevant examples of the urgency to solve environmental issues internationally since the end of the 19th century, only in the mid 20th century, specifically after the 60s, were there signs that Multilateralism would be implemented as an attempt to respond to a growing "environmental crisis" whose global dimension led to an obvious need for a coordinated action among all States. In fact, and before this "new era" of Environmental Multilateralism, the Environment, and everything linked to it, was viewed as a local or regional issue. Only after the first (officially recognized) environmental degradations occurred due to the industrial revolution or globalization, did the problems of yesterday, which seemed to be limited in space and in consequences for the human being, started to have a transnational "status" and an increased importance.

Multilateralism has been widely accepted as the *modus operandi* of international politics, namely of international environmental policy. In fact, the last decades of international instability have made States realize that many contemporary challenges are too encompassing and too complex for any State alone; that even a group of States may not be able to face them alone. Among these global challenges whose management would be potentially easier through multilateral cooperation, many are environmental. The fact that no State can fight this battle alone is both beneficial and limiting: its actions together with other actions make it and the international fight stronger but its inactions or those of others may affect the cooperation chain. Meanwhile, we believe that for all, and regardless of their involvement, the Environment frequently "bumps" against more ambitious economic development policies which usually lead to more pollution or abuse of resources and exceeds the optimal which is sustainable development. Besides this, there are still those who confuse "governance" with "government", and are therefore afraid that multilateral actions may lead to a loss of State sovereignty.

But there are answers to this and other criticism: issues related to bureaucracy may be simplified or resolved through adopting a more thorough model of multilateral measures and institutions. Similarly, international organizations and their bodies do not aim at "robbing" State sovereignty but to assist in attaining what no Nation can do alone; they do not aim to interfere with market economy but help to find mechanisms to make it more efficient and equal:



«... Multilateralism not only represents the most efficient, most effective, and most egalitarian approach to addressing global environmental issues, it is quite simply the only approach that brings with it the authority, legitimacy, and resources required to tackle so vast and complex problem...» (Powell, 2003:12).

Therefore, it is obvious why, in the mid of about 700 Multilateral Environmental Agreements - MEA (Mitchell, 2002-2011, retrieved online), it is evident how crucial it is for Parties to converge and negotiate and, most importantly, to implement the MEAs in their national policies because only then can international norms be successful. Meanwhile, there is a variety of Actors, among which the United Nations (UN), pioneer and promoter of Environmental Multilateralism, as well as a number of States, institutions and governmental bodies, and different interests which make Multilateralism, complex in itself, even more extraordinary when linked to the environment. In fact, environmental issues are so huge and brutal that they are not measurable; thus, the difficulty of one solution or the success of an isolated measure. On the other hand, measures are rarely effective immediately or visibly and though the economic benefits from "sustainable development" have been proved, investment on clean energy, the management of waste and of resources, etc. does not lead to immediate (economic or environmental) return and not to "easy profit". Thus, the need to change the mindset of many involved.

Currently, it has become more important to frame Environmental Multilateralism through understanding its evolution in the past decades, its main actors and institutions, how its processes have developed, how its achievements may be applied and optimized and, above all, understand what is wrong in this scenario and the means to improve it. Only then will it be possible to define an assertive way to face a crisis as huge as the environmental crisis.

This is what fostered the interest in understanding the specificities and the development of Environmental Multilateralism within the scope of contemporary International Relations. Simultaneously, it is obvious that this is an issue which does not seem to obtain the attention it deserves at national level. Further theoretical research would not only assist potential stakeholders as well as lead to more centralized studies on the role of Portugal in Environmental Multilateralism as well as on how "external boosts" influence Portuguese environmental policy.

2. How Treaties are made: issues in (un)productivity?

MEAs, because under the rules of the Vienna Convention on the Law of Treaties (1969), have similar features to other international treaties. However, they are also different in that they are intergovernmental documents whose main objective is to prevent or manage human impact on natural resources. Thus, they are legally binding to countries that participate in it through ratification or accession, as well as to those who accept it through signing it because that in itself assumes an "official agreement" between the States and the MEAs. The former must abide to the latter or they will compromise the objectives of the MEAs. Because they are not simply declarations of intent but tools of International Law, they should be viewed as valid and effective means to implement



policies whose objective is environmental protection and sustainable development. They should be used by the whole international community to carry out these assumptions (Dodds *et al.*, 2007).

Besides, and though they do not have an established structure, these tools have a number of specific features. In case of regulating regional or global environmental issues, the framework partnership agreements are commonly adopted, which allows for a more encompassing and dynamic development of the tool through pre-defining and establishing a series of general obligations and procedures and adjusting potential pre-agreements (Sands, 2009). In fact, most environmental treaties do not include specific, clear and detailed rules but rather a set of general principles and requirements, fostering participating States to overcome their lack of assertiveness and adopt all the adequate measures and mitigate environmental imbalances, namely through complementary tools to the development of the MEAs, in particular, Protocols.

The advantage of regulating environmental imbalances this way, through framework partnership agreements and their regimes, is that its norms and standards may be easily changed or reinforced, according to the evolution of scientific knowledge or due to the need to adapt to new social and economic realities, among other reasons. In fact, not always have Protocols been given the credit they deserve in environmental standardization, since often it is the "Soft Law" (Resolutions, Declarations of Principle or Recommendations, etc.) which is responsible for providing "consistency" to too "encompassing" norms of environmental framework agreements. On the other hand, since the early stages of Environmental Multilateralism, it being "encompassing" is the reason for criticism by international public opinion, who increasingly use adjectives as "vague", "without content", "abstract, etc. to describe the tools' too generic approach and consequent inability for action. However, is it condescending to view these tools and the whole process they are involved in light heartedly, i.e., listing all its faults and ignoring the difficulties they face? Kate O'Neill (2009), on this issue, stated that:

«... The construction of international environmental treaty regimes rests on a complex process of bargaining and negotiation among nation states (...) States often have different, frequently conflicting interests around a particular issue area. They may not always trust their negotiating partners (...) or they may be unwilling to make concessions (...) Government representatives are concerned about domestic costs (...) Multiply all this factors by the number of states involved in negotiations, and it may seem surprising that any cooperative agreements are agreed upon in the first place...» (Kate O'Neill, 2009:81).

Both before and after negotiations start, it is crucial that the "Treaty-making Process" is put in place, allowing for an organized and phased process and minimizing the typical impasses of MEA negotiation. There usually suffer delays, are sometimes put on hold and have their approval and application compromised. Thus, there are several measures that, if adopted, foster negotiations and prepare States from implementing the document such as: constant exchange of information between the Parties; systematic consultation in ongoing negotiation; workshops on how to implement the MEAs; institutional and ministerial coordination at national level; avoid overlaps and



encourage internal synergies involving existing MEAs (Bruch et al., 2006). However, and despite optimizing the treaty-making process, these measures by themselves do not solve all possible problems. As such, five examples will be provided of situations potentially damaging to good "Treaty-making Process", and which should be avoided as much as possible.

The first situation is that in which there is no formal procedure which indicates how negotiations should be prepared by Party-States, i.e., an official document that may provide guidelines for governments on how to plan multilateral meetings around the MEAs, both "extraordinary" meetings (those that will result in new treaties) and "regular" meetings (such as most COPs).

A second recurring situation which may damage the "Treaty-making Process" derives from lack of research to prove the need of that specific international tool, which means it is crucial that States include the environmental issue in their political agendas and those that join them also know the issue well. This lack is rather obvious. However, there have been situations in which more skeptical States or States more concerned with their national interests "boycotted" negotiations by means of presenting scientific opinions that best served their perspective and won over those opinions first presented.

A third situation is linked to the approval of "drafts", this being the stage when negotiations usually get significantly delayed: discussions are often about the norms and/or the text to include and they may arise because of disagreement on an article's provisions and/or simple semantics.

A fourth situation occurs in the context of decision-making, in the voting process, usually defined by Conventions, more specifically by the "Rules of Procedure for Meetings of the Conference of the Parties"ⁱ. In general, the decision-making process in MEA negotiations follows the "Principle of Consensus", in practice, somewhere between "unanimity", allowing all Parties the right to reject a decision, and "qualified majority", no requiring a positive vote from all Parties involved. Besides, decisions are not usually made through quality vote by through gradual removal of objections to certain details in the treaty's draft, thus making the agreement stronger and more difficult to oppose to, mainly because the "indifferent" Parties, i.e., those who had not yet expressed for or against it, tend to accept the final result and reinforce its support (Gehring, 2008).

The attempt to resolve confrontations in a consensus have been fairly successful: it is rather difficult to convince a State to internally apply a measure it does not agree with and which it did not support during the negotiations; on the other hand, the fact that some States are more influential when what is at stake is to persuade undecided parties makes consensus in Environmental Multilateralism decision-making extremely ambiguous and subject to much criticism. However, and as Kate O'Neill (2009) states, there is nothing like a "good (environmental) crisis" for States to gather strength to solve a common problem. Yet, we believe that this type of "pressure", namely when over the top, may not always lead to positive results; in fact, in the "rush" to get good results, certain issues may be left unresolved for which a solution is never found. This may damage environmental preservation and sustainability.

Finally, a fifth situation, not always considered but relevant to the good performance of any "Treaty-making Process": that Delegation remain in the negotiations. In fact, «... States often rotate negotiators. This means that no one really has a complete picture of what happened in previous negotiations or necessarily understands the broader context



and history of issues currently under discussion...» (Bruch *et al.*, 2006:88). Attention should be given to avoid changes in national Delegations and ensure their continuity, effectiveness and strength. However, when that occurs due to government changes and, therefore, inevitable, there are alternatives which may assist in Delegation transition, namely the implementation of a platform where all relevant information to Environmental Multilateralism may be archived and organized and be of use to negotiators, other ministerial authorities and Actors involved. Furthermore, it may be used as database for the general public and to academicsⁱⁱ.

Meanwhile, during environmental Regimes two contradictory features have emerged that still confuse some reference authors: on the one hand, these include a *sui generis* institutional element that allows Parties to constantly adjust to new circumstances and obligations, as well as to supervise and react to possible failure to carry out agreement or to insufficient implementation; on the other hand, the development of Environmental International Law evidences «... the fragmentation of the institutional setting from which it emerges...» (Gehring, 2008: 495), as the Parties seem to prefer to establish new "treaty systems" instead of including new norms to already existing systems, causing a "boom" of MEAs, often counterproductive in terms of the international community and in terms of the Environment.

3. The boom of Environmental Multilateralism Agreements

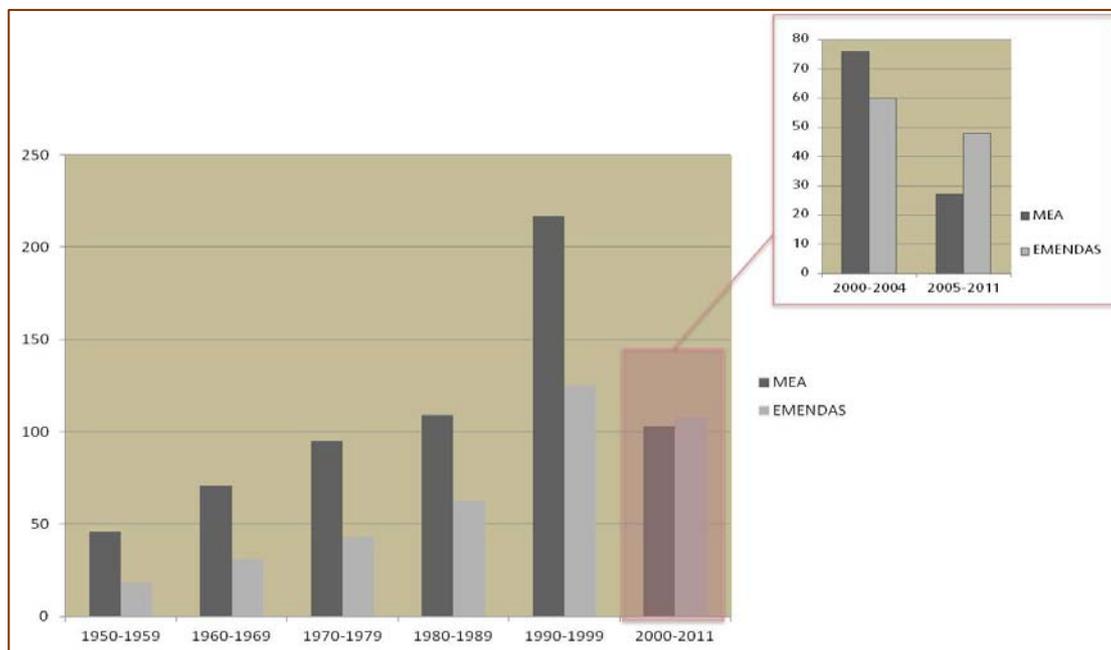
Considering some of the data collected at online databases, we may realize that Environmental Multilateralism has gained popularity in the past decades, at least in terms of the adoption of Multilateral Environmental Agreements. Yet, is this development really noteworthy? In fact, and according to reference authors, this development has experienced "negotiation fatigue" (Kanie, 2007: 74), "treaty congestion" (Sand, 2008: 39) or "summit fatigue" (O'Neill, 2009: 5). Many of the negative aspects can jeopardize potential positive ones.

In fact, the current MEA system has some advantages, for example, that advocated by those who believe that complex issues as those of the environment are best handled using a wide, fragmented and decentralized system. This way, information may be transmitted and functions are rather redundant, preventing the inactivity of one institution from jeopardizing the whole system. Furthermore, with problem solving specialization, solution will be tailor-made and, as a consequence, optimized. Finally, a diffuse MEA system may allow its secretariats the flexibility needed for creativity and innovation (Kanie, 2007).

However, the accuracy and functionality of the above mentioned pre-eminences may be rather debatable and ambiguous. For example, it is clear that the more individualized a problem is, the easier and optimized its solution will be. Yet, we may not forget that environmental issues, as well as the existing MEAs, are transversal. Therefore, it is almost impossible to believe that for environmental issues there will be "tailor-made solutions". On the one hand, there is an obvious need of centralized solutions, on the other, these must be part of a strategic and transversal plan that encompasses several issues and their Conventions.



Figure 1 - The boom of MEAs: number of MEAs and Amendments between 1950 and 2011



Source: adapted from Mitchell, 2002-2011, retrieved online

It is precisely this lack of coordination that may be viewed as one of the negative aspects of the "boom" of current MEA system. On this issue, Kanie (2007) refers to the lack of «... coordinated and synergistic approach to solving common problems...» (Kanie, 2007:74), as well as unnecessary duplication of rules and inconsistent objectives. In fact, the proliferation of MEAs, and a consequently too wide system and excess number of secretariats with low coordinating authority, leads to the already mentioned treaty congestion and to an institutional and political work that is incoherent, confuse and repetitive. Thus, if "redundancy" may have positive effects because it avoids the "ripple effect" when an institution becomes dysfunctional, this may also cause MEAs, or, in extreme cases, a great part of the system, to become inefficient (Kanie, 2007).

Therefore, and in regards to the disproportionate and somewhat uncontrolled increase in Multilateral Environmental Agreements, there are different opinions on what could improve the MEA system today. In fact, and no matter the many mistakes made along the way, i.e. since the mid 20th century up to now, we must not forget that only recently were environmental issues no longer "unknown territory". As such, the international community knew little of their resolution, let alone that the MEA system should be more concise and transversal or wider and more "tailor-made". Only now are the first steps being taken to adapt Environmental Multilateralism to complex and unpredictable variants as environmental issues and the world we live in.

4. National Implementation

That being said, a question arises: in practical terms, how efficient are MEAs and their Regimes? On the one hand, the negotiation and adoption of an international treaty, whether long or short, complex or simple, may simply "fall down" when the agreed



measures are transposed to national legislation or when objectives are met by each State; on the other hand, if almost two hundred States coming to an agreement is extremely complex, the more so it is to apply what was agreed upon.

«... the mere fact that certain states have become parties to a treaty committing them to take measures to deal with some environmental problem does not per se ensure, or even necessarily promote, harmonization of national law (...) states will often have considerable discretion in the methods of implementation they use, and possibly also in the standards and timetables they set (...) They may all be working to the same goal, but doing so in very different ways...» (Birnie et al., 2009:10).

Therefore, so that national implementation is complete and fruitful, this work should be started at the beginning of the negotiations, making the adoption and ratification of measures as swift as possible and avoiding difficulties in adapting them to national legislation and function. However, there are other considerations to bear in mind at this critical moment of the MEAs, for example through previous revision and definition of the Focal Pointⁱⁱⁱ of the treaty. These should be well prepared, both in terms of administrative resources as well as in terms of the authority to implement them. In this context, cooperation and coordination of governmental institutions are crucial; there should permanent team work to implement the MEA in a fair and transversal way. Furthermore, Governments should also be prepared to possible restrictions, common in the first stage of implementation. As such, they should always have a plan which will allow them to solve eventual problems within a specific period. States are usually fostered to design National Implementation Plans.

Another crucial situation in MEA implementation process, in legal terms, occurs in the preparation of implementation programs and frameworks, which hopefully will «... deter, punish and redress violations...» (UNEP, 2006: 194), and which should be fully followed not only but especially by State bodies and agencies so as to set a "good example". Meanwhile, for a fruitful national implementation, the following should be taken into account: situations such as skills development and technology transfer (crucial mainly to developing countries and economies in transition); the involvement of the main interested parties, such as NGOs, the Private Sector, local communities, the use of the media to raise public awareness. In fact, many times legal measures are considered the only ones with the power to attain results, which is somewhat true; in practice, the law allows for more measurable results. Yet, we must not forget that these are negligible measures without a secure a cohesive support.

Finally, there is another crucial item in national implementation of multilateral measures and commitments which deserve attention: MEA, for example, encompass a series of «... specific prohibitions, which states are required to implement through the application of specific 'measures', but to leave the method and means to the state...» (Redgwell, 2008:940), i.e., the "obligations" agreed upon by the Parties are usually concerned with results obtained and not with the whole process of implementing those results, which does not allow equality of the latter and hinders success of the former.



Therefore, there are some who question MEA and Environmental Multilateralism counter productivity: can you expect better results than those achieved so far or will they always depend on the sensitivity, good will and even the "mood" of States? In fact, in the current scenario, the answer will inevitably be affirmative; yet, if the historical evolution of MEA national implementation is taken into account, a progress is visible which may well be the motto for future changes:

«... The first generation of international environmental treaties rarely provided for any degree of monitoring or oversight of national implementation. Increasingly, however, modern environmental treaties provide for a comprehensive feedback loop, from implementation, to monitoring, to reporting, to international review, and to non-compliance mechanisms (...) Under many recent international environmental agreements, states parties not only have the obligation to implement, but also have an express obligation to report upon such implementation...» (Redgwell, 2008: 941, onwards.).

5. The Reform of UN Environmental System

The institutional structure of the UN for the Environment contrasts with other international governing systems, such as those on Health or Commerce. In fact, and though in this case competences are allocated in a more or less wide institutional structure, therefore not always efficient, organized and optimal, experts' opinions on the lack of centralization and coordination in terms of international environmental governing, namely that of the UN, is very clear:

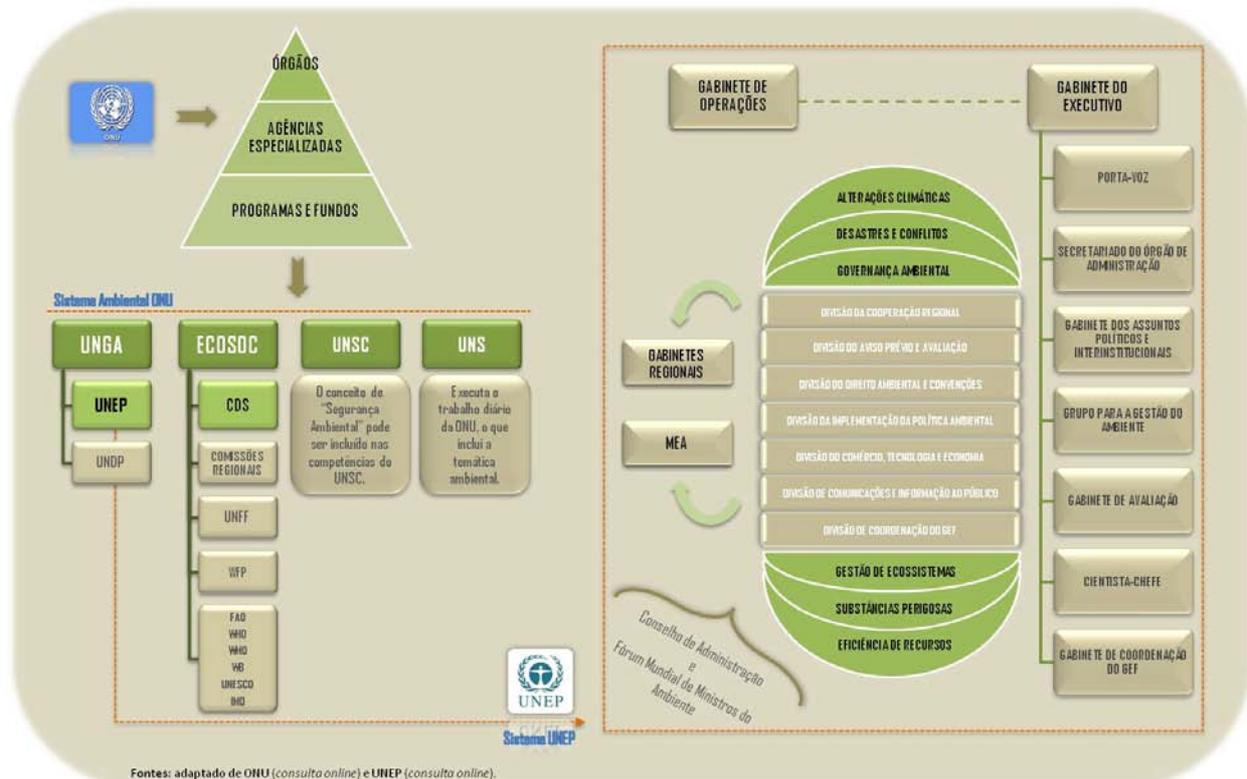
«...the institutional architecture for the environment lacks clarity and coherence. No one organization has been able to emerge as a leader to actively champion environmental issues ensuring their integration within economic and social policies. International environmental responsibilities and activities are spread across multiple organizations, including (...) (UNEP), numerous other UN agencies, the international financing institutions, and the World Trade Organization. Adding to this tapestry are the independent secretariats and governing bodies of the numerous international environmental treaties...» (Ivanova et al., 2007: 48).

In fact, the UN includes and is responsible for the management of several bodies with different competences in Environmental Multilateralism. It is obvious that, depending on their involvement in terms of the environment, they may receive more or less focus. The one that stands out is the United Nations Programme for the Environment - UNEP. Though it was initially expected that it would be a catalyst in environmental development and coordination within the UN, its limited resources and autonomy did not allow it to fully fulfil the task. However, the creation of other bodies, such as the Commission on Sustainable Development (DCS) and the Global Environmental Facility (GEF) (the latter is not part of the UN system but it is directly linked to its main



environmental bodies), as well as the competences other bodies acquired, resulted in a "competition" and in two of the major issues within the UN environmental system: an overlapping or multiplication of competences and responsibilities, together with a significant decrease in UNEP influence.

Figure 2 – UN and UNEP Environmental System



Fontes: adaptado de ONU (consulta online) e UNEP (consulta online).

Sources: adapted from <http://www.un.org> e <http://www.unep.org>

Considering this, it is remarkable how UNEP competences were expanded so as to develop International Environmental Law, having become supervisor of bodies responsible for daily running environmental regimes and a home to several MEAs and their secretariats. However, there is more and more evidence that the latter have become more autonomous in developing and managing their specific areas, relations and probable overlaps, which must be «... inevitably emerged in the complex and piecemeal system of global environmental governance that currently dominates international environmental politics...» (Jinnah, 2008, quoted by O'Neill, 2009: 56), which will again weaken UNEP competences.

The first references to a reform of UNEP and a restructuring of international environmental governance appear in this context. Though not recent (the issue was already discussed in the "Rio Conference" in 1992), the "solutions" resulted merely in the creation of CSD and, later, in extending the mandate of the Program and the creation of the Global Ministerial Environment Forum.

Thus, and while criticism is being made, such as «...the large number of bodies involved with environmental work has (...) increased fragmentation and resulted in uncoordinated approaches in both policy development and implementation. This lack of



coherence in the system has "placed a heavy burden on all countries as well on international organizations..." (Berruga and Maurer, quoted by Ivanova, 2007: 54), or «... Protagonists rightly point to fragmentation of existing structures, the relative weakness of UNEP as the principal UN body with general environmental competence, and the powerful focus the IMF, the World Bank, and the WTO bring to economic development...» (Birnie et al., 2009: 69). Different and more or less grandiose proposals have been put forth, such as the merger of environmental institutions and treaties in a "mega forum" with decision-making and executing powers, which would issue agreements ruling international environmental governance, or that UNEP would be "promoted" to UN "Specialized Agency". However, there are others who consider that, since the UN system does not work through "institutional manipulation", one of its bodies with environmental competences cannot monopolize a specialized area, nor could it take over competences from other "Specialized Agencies". Furthermore, other believe it is not true that MEA coordination, negotiation and revision is easier or more successful if led by a hypothetical environmental agency or organization.

Regardless of the point of view, it is impossible not to consider the need for new solutions for UN environmental governance and there could be no better example of it the continuous environmental degradation. In view of this "environmental crisis", the action's practicality and success must depend on a specific strategy and planning, which in turn results from a coherent international governance, which is not always what happens today. Yet, is the solution that advocated by those "for the new environmental organization/agency?". This, we believe, will be answered in time. Meanwhile, we must consider the necessary "changes" for international environmental institutions and governance to obtain more and better results.

6. Final Considerations

There is much to write and discuss on Environmental Multilateralism: from basic concepts such as who are its Actors and institutions, what can be understood by Regimes and Treaty-making Process, the role of Conventions and their Protocols and the so-called "Soft Law" in the environmental issue; to more complex questions, such as if International Environmental Law is not just a branch of International Law per se or if it can be viewed as a separate type of Law, different from other "international laws", as Human Rights, and, in this sense, its importance in Environmental Multilateralism may be the same or higher than that of Eco-politics and Diplomacy.

All this leads to questioning how Environmental Multilateralism is viewed, which should be as a transversal and twofold issue: on the one hand, International Environmental Law must be acknowledged as the main "ruler" in the environmental problem, considering that, though there no real "international legislation", there is, in practice, a complex "legislative process" which includes several sources of International Law, from which new laws are issued and others updated, which must be respected and complied to by the whole international community. On the other hand, a series of International organizations and their institutions, some Non-Governmental Organizations, Diplomatic Conferences, regular or extraordinary, and the MEAs (which include treaties and their regimes) are all part of this process; above all this, about two hundred States, with different features and environmental interests but with the mission to develop political



agendas and discussion forums as well as negotiations appealing to all (Birnie *et al.*, 2009).

In this context, it is not surprising that the "legislative process" is widely considered as essentially political, as it mostly "legislates" through diplomatic means instead of the usual work carried out by legal experts and institutions. Therefore, and though International Law is crucial in the development of environmental legislation, this is mostly the result of political and diplomatic decisions imposed by the international community, from which often derive tools with vague content and with few effective rules which will lead States into acting coherently. On the other hand, «... periodic meetings of the parties to multilateral treaties (...) constitute 'ongoing, interactional processes', and that 'It is this boarder process and not the formal act of consent that infuses the legal norms generated within with the ability to influence state conduct'...» (Brunnée *et al.*, quoted by Birnie *et al.*, 2009: 45), i.e., it is precisely this "political-diplomatic" legislative process that fosters States to act and not exactly the fact that they signed this or that tool of International Law.

Thus, we may conclude that the problem does not necessarily derive from vague MEAs, as, for example, environmental Framework-Agreements are usually described; these evidence the aims of the Parties in the agreement, which rather makes the problem even more complex. If, when negotiating a new tool, a State is not motivated or is simply interested in imposing interests not related to the Environment, then its contribution to the agreement will be null. Meanwhile, negotiations being over and a new treaty adopted, you cannot expect that initially demotivated State to have simply changed its perspective and commitment; most probably it will have accepted to be a "Party" and draw "diplomatic benefits" from it but it will not necessarily make its development easy or strictly abide to its implementation. Therefore, the "vague" tool allows this and other States to progress as they had wished, taking full advantage of Multilateralism which sees international cooperation and a procedure evolving through consensus but does not allow room for maneuver to others whose strategies in their environmental agendas are "ambition" and "commitment". This is a perverse process which does not only weaken the MEAs and their actions but also directly influences issues related to Environmental Multilateralism, such as the treaty-making process making it longer and eroding its credibility.

The weakness of bodies such as UNEP and CSD, which are supposed to have institutional and legal influences substantially higher than those granted to them today, is another huge flaw in the international environmental system, in particular of the UN. It is true that the separation of these two bodies within the environment does justice to the progress in terms of intervention since the 1970s and 90s. However, they are still far from being able to fully design and implement an ambitious strategic plan which the Environment and Environmental Multilateralism so urgently require, especially in today's scenario. The fact that both UNEP and CSD report to ECOSOC instead of directly to UNGA is, in itself, a sign of these bodies' weakness. Most critics of this system state that their "voices" are notoriously limited, the more so in the case of UNEP, because of its status as "Program" rather than "Specialized Agency", with all the additional disadvantages that poses to it.

But the main flaw - which ultimately influences the ones I have mentioned and others - is without a doubt the lack of coordination and coherence the institutional system designed for the Environment has been labeled and rightly so. In fact, the analysis to



the UN environmental system demonstrates it: a huge number of MEA, often resulting in a new Regime, innumerable Actors (and within them several UN bodies), all having some competences, objectives or mandate, with more or less scope and autonomy in the different environmental issues.

Therefore, and despite the attempts to restructure international environmental governance in the last two decades, progress has been limited; noteworthy is that «... while governance discussions continued, they were never explicitly on the political agenda...» (Ivanova, 2011: 5), which has made this a real and concerning issue to the international community, in practice a "ghost" problem. In fact, only recently did a political opportunity open up to restructure the international institutional framework for the Environment, namely through United Nations Conference for Sustainable Development (Rio+20 Conference), which was held in Rio de Janeiro, precisely 20 years after the first Rio conference. One of the conference's highlights was the item "Institutional Framework for Sustainable Development" which focused on two very important points which, if put into practice, could completely change the international environmental governance framework: changing CSD into a council for Sustainable Development, which would be «...authoritative, high-level body for consideration of matters relating to the integration of the three pillars of sustainable development...» (UNCSD, 2012:9), or, from a more ambitious perspective, «... to establish a UN specialized agency for the environment with universal membership of its Governing Council, based on UNEP, with a revised and strengthened mandate (...) on an equal footing with other UN specialized agencies...» (my emphasis) (UNCSD, 2012: 10).

Expectations were temporarily focused on the results from the "RIO+20 Conference", whether bold or worthless, as «...even a decision for no reform will have enduring consequences and will shape the actions of the global community over the next twenty years...» (Ivanova, 2011: 5). However, the meeting seemed, from the start, to be destined to limited progress, especially after the launching of "Rio+20 Zero Draft – The Future We Want" (10 January 2012), which gave origin to a series of prognoses, mostly insignificant. Though some potential had been attributed to the meeting, most critics identified flaws in the "Zero Draft". In some cases, these flaws were rather alarming, which evidenced, on the one hand, the expectations on the Conference and, on the other, the fear of it being unsuccessful. Besides this, "Zero Draft" led to opinions being expressed by States and for it to become a delicate situation, for example, on the updating of UNEP status as UN "specialized Agency", the US stated that they would rather «... avoid the distraction of trying to set up something new and untested...» (Duyck, 2012, retrieved online), while India declared that «...elevating UNEP to the status of a UNEO or a specialized environmental agency, would give disproportionate weight to the environmental pillar of sustainable development...» (Duyck, 2012, retrieved online). This was and still is the only one of three officially not represented by an international organization or agency.

Thus, and though many wanted to believe that the doom-and-gloom forecasts could be turned around in the final hours before the Conference agreement - which would not be a first - the results widely met the negative expectations. Despite many opted for stating that "it was better something than nothing at all", most were not convinced. It is obvious that restructuring the UN environmental institutional framework was not, in itself, a panacea but it would undoubtedly be an extremely important development, without which future successes of international environmental governance would be



very difficult if not impossible. Thus, consensus in promoting CSD into a Council for Sustainable Development, though small progress, seems "nothing" when compared to what could have been achieved, while the plunging number of initial articles in the "Draft" of the final agreement proved that skeptics of Environmental Multilateralism were right.

We do not yet know what to expect from International Relations and the Environment and of international environmental governance. Now that the Conference, which was seen as a turning point, is over, international community is at a deadlock. Is Environmental Multilateralism as we know it strong enough to face an increasing "environmental crisis" and to more and more concerning social and economic scenarios? Will States have the judgment necessary to continue to respect international environmental governance without institutional changes being implemented that would make it stronger and more cohesive? In fact, we believe the real solution lies in governmental intervention at the highest level: those in power should legislate and ensure their national programs are developed and implemented in accordance with environmental objectives agreed upon by the international community in general and the United Nations in particular. Those in power are also responsible for proceeding, unafraid of "diplomatic crises" or offending sensibilities, with effective and coherent multilateral measures which become more than promises sealed with an applause. We must reach a consensus, indeed, so that all may apply what they agree on and understand. Yet, most importantly, the economic interests and/or selfishness of some Nations cannot be allowed to boycott negotiation after negotiation, in which often the convenience of the few overrides the well-being of many.

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ⁱ See, for example, the "Rules of Procedure" of the Convention on Biological Diversity: <http://www.cbd.int/doc/legal/cbd-rules-procedure.pdf>.

ⁱⁱ There are already a few models which could be adapted to national and/or regional scenarios: the "Earth Negotiations Bulletin" (<http://www.iisd.ca/voltoc.html>), where there is a good amount of documents linked to Environmental Multilateralism available, or other sites, such as the "Environmental Treaties and Resource Indicators" (<http://sedac.ciesin.columbia.edu/entri/index.jsp>) or the "IEA – Database Project" (<http://lea.uoregon.edu/page.php?file=home.htm&query=static>).

ⁱⁱⁱ Focal Point, or National Focal Points, are environmental bodies, represented by people and appointed by national Governments, which are the main liaison between the State and the MEA Secretariat. For example, in regards to the "Rio Conventions", the Portuguese "Focal Points" include ICNB, the Committee on Climate Change (Comité Executivo da Comissão para as Alterações Climáticas-CECAC), the Department on Climate Change, Air and Noise (Departamento de Alterações Climáticas, Ar e Ruído-DACAR), and the Ministry of Agriculture (see <http://www.cbd.int/doc/lists/nfp-cbd.pdf>; <http://maindb.unfccc.int/public/nfp.pl>; <http://www.unccd.int/focalpoints/focalpoints.php>).

**RECONSIDERING THE ORIGINS OF THE SOUTHERN AFRICAN REGIONALISM
THIRTY YEARS LATER:
TOWARDS A CONSTRUCTIVIST APPROACH TO THE ORIGINS OF SADC**

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Summary

The creation of SADCC has generated a debate over the real origins of the southern African model of regionalism. This paper develops the idea that the origins of SADC are both internal and external. Thus, southern African regionalism is understood as a constructivist articulation of internal and external inputs, which determined the creation of SADCC and its transformation into SADC.

Keywords:

Southern Africa; SADC; SADCC; Front Line States; Regionalism; Constructivism

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RECONSIDERING THE ORIGINS OF THE SOUTHERN AFRICAN REGIONALISM THIRTY YEARS LATER: TOWARDS A CONSTRUCTIVIST APPROACH TO THE ORIGINS OF SADC

José Abel Moma

Introduction

The origin of SADC (the Community for the Development of Southern Africa) remains controversial as, on the one hand, authors such as Lee (2003) state that SADCC (Southern African Development Coordination Conference), as the predecessor of the SADC¹ is a western creation; and, on the other hand, researchers like Mandaza and Tostensen (1994) consider that SADCC was created by the states of Southern Africa based on their own experience of cooperation in the *Frontline States* (which included the member countries of the political alliance created in the 1970s against the white minority regimes in Southern Africa). Thus, based on the issue of the creation of SADCC in view of internal and external factors, this paper explores the debate on the origin of the regional organization based on the idea that SADCC is a result of a constructivist articulation, by States in Southern Africa, of their experience of regional cooperation and western contribution. As such, internal and external factors in the creation of SADCC are reconsidered here under the concepts of *continuity* of previous regional cooperation mechanisms and *adaptation* of international models on regionalism.

We aim to propose a theoretical understanding of the creation of this regional organization based on the evidences presented by those authors who claim that SADCC is western inspired as well as by those who state that it is the result of the regional cooperation in the Front Line States. Therefore, we will focus on the two opposing perspectives on the origins of SADC, considering they are in opposing poles, and we will propose a unifying point of view based on constructivism. This approach will lead to a series of questions and possible applications of constructivism in the study of regionalism in Southern Africa during the 1980s and 1990s.

1. The concept of regionalism

The current analysis of Southern Africa regionalism in the 1980s is based on the idea that there is a difference between regionalism and regionalization. The latter focuses on the economic dimension, the former on politics, of the cooperation among states (Mansfield and Milner, 1999: 591). Fawcett (2005: 24) proposes the concept of regionalism based on this assumption, emphasizing political intent. In fact, the author defines regionalism as politics and project through which states and non-states

¹ In this paper, SADC is viewed as a *continuity* of SADCC. Therefore, we will refer to SADCC in terms of regional organization and we will use SADC to refer to the current and renewed organization.



cooperate and coordinate strategies in a specific region. Based on that same idea that regionalism is politically-linked, Farrell (2005: 2) defines it as a response to the process of globalization and acknowledging the diversity and specificity of that response. Farrell has a plural perspective of regionalism. She states that regionalism is the product of actions standardized, on the one hand, by internal regional dynamics and, on the other, by external pressures, such as globalization, instability and security.

This possibility, proposed by Farrell, of a twofold approach to regionalism, is the basis of our argument to consider internal and external factors in the origin of SADC. Therefore, it is our contention that these two aspects are essential to understand regionalism in Southern Africa.

2. Polarization in the debate on the origins of SADC

The debate on the origins of regionalism in Southern Africa is even more meaningful due to the fact that the 'southern Africa type of regionalism developed from mere *cooperation* (Cardoso, 1991: 80; Haarlov, 1997: 61; Khadiagala, 1994: 229-242) to include a project on regional *integration* (Lee, 2003: 44-50; Poku, 2001: 74-78). This change is institutionally symbolized by SADCC having become SADC in the 1990s. To better understand SADC, we must understand the creation of SADCC.

In fact, some authors suggest that SADCC, as the forerunner of SADC, is the product of a western idea "sold" to countries in Southern Africa. Though unanimous in the claim, these authors do not agree in terms of SADCC being a creation of western Europe or there having been the contribution of the United States. For example, Amin (1987: 8), the editor of a collection of papers on SADCC, states that SADCC was not just a proposal by the Front Line States. There was strong encouragement by western countries that wished the region to be more connected to the west. This opinion is shared by Mandaza (1987) who, though recognizes the crucial role of the Front Line States in the creation of SADCC, affirms that its origin is externally influenced, namely by Europe and the United States.

This 80s movement questioned whether it was the states in Southern Africa which had initiative to create SADCC was resumed by Lee (2003), who states that the Southern Africa regional organization was the result of external factors and emphasizes its relative financial dependency from western governments and international financial institutions.

While some authors claim that SADCC is an external creation, others focus on its internal (regional) origins. For the latter, SADCC results from the cooperation among countries in Southern Africa, in keeping with the reality of the region. Thus, though they acknowledge that, since their foundation, states in Southern Africa have resorted to external support (in particular, technological and financial), these authors focus on the fact that SADCC is the historical and political result of the so-called Front Line States. Mandaza and Tostensen (1994: 4) declare that the most immediate basis for the creation of SADCC were the Front Line States. This idea is shared by Khadiagala (1994: 226) when the author states that SADCC was basically founded on the structures of political collaboration among the Front Line States. Other authors also discuss this link between the Front Line States and SADCC (Clough and Ravevhill, 1982: 162; Grungy, 1982: 160; Cardoso, 1991: 74; Mhone, 1991: 181-183; Rukudzo,



2002: 158). For these authors, despite its challenges, the regional organization in Southern Africa is real and promising.

An analysis of the main arguments and the debate on the origins of SADCC, we realize it continues due to a polarization of points of view which are, however, not incompatible, as the concept of regionalism must be seen as dynamic and including both external and internal elements. Therefore, Anglin's (1983) historical explanation of the origins of regionalism in Southern Africa is less controversial and allows for a coherent basis for a more comprehensive reconstruction of the origins of SADCC, evidencing both the formal and the informal conditions of its foundation.

As such, and in accordance to Anglin's perspective, it is our contention that we cannot have a comprehensive understanding of the origins of SADCC if the arguments focus on the polarization around internal and external factors. Thus, we must deconstruct this polarization by understanding the reasons why academics differ in their view of the creation of SADCC.

3. Arguments and evidences on the origins of SADCC

Two main points may be examined in relation to perspectives on the origins of SADCC: the *nature of the arguments* and the *historical evidences*. This analysis may be carried out through the most representative authors within each perspective.

Lee (2003) is one of the most recent authors to criticize those defending the internal origins of SADCC and may be seen as representative of those who advocate the relevance of external factors in the creation of SADCC. She bases her argument in other authors who raised the same question and provides some historical evidence for her claim in the external origins of SADCC. On the other hand, Mandaza and Tostensen (1994) may be considered the representatives of the advocates of the internal origins of SADCC. In fact, their work on the organization focuses on providing evidence of the creation of SADCC by the states in Southern Africa themselves.

As far as the *nature of the argument*, while Lee bases hers on *economic and financial reasons*; Mandaza and Tostensen explore *political* reasons. Lee (2003: 48) states that the regional organization was an external continuous creation, highly controlled by western governments and international financial institutions through financial support to the organization. This point of view, based on economic and financial elements, is confirmed when Lee later states that if international financing was withdrawn, the organization (SADC) would probably not survive (*Ibid*: 49).

On the other hand, Mandaza and Tostensen (1994, 1994: 3) identify five elements to support the argument that SADCC has internal origins: geography, social and cultural context, colonial experience, alliance with Front Line States, and the apartheid regime in South Africa (as a common enemy). They argue that all these factors contributed to the foundation of Southern Africa's distinct personality and identity, which firstly supported political solidarity and then economic cooperation.

As far as *historical evidences* are concerned, Lee focuses on the *informality* in the creation of SADCC, while Mandaza and Tostensen are more interested in discussing the history of the organization's *formal creation*. Thus, quoting authors who have questioned the internal elements in the creation of SADCC, Lee refers to an interview to



Daniel Ndela, a consultant from Zimbabwe, who reconstructs a series of (not always official) meetings between leaders from the countries in Southern Africa and the Managing Director of the Commonwealth Fund for Technical Cooperation, David Anderson, which contributed to the design of SADCC.

On the other hand, Mandaza and Tostensen (1994: 17) focus their studies on evidence in official documents, even suggesting that the misunderstanding about the origins of SADCC derives from a formal distinction between meetings and conferences:

"The debate about the origins of SADCC stems from the confusion over the Southern African Aid Coordination Conference (SAACC), the meeting; and SADCC the institution".

From this point of view, we realize that while both perspectives provide an answer on the origins of SADCC, they focus and answer different sub questions. One is concerned with providing an answer to its *informal origins* while the other to its *formal origins*.

After studying both perspectives, based on the arguments and historical evidence presented, it is important to acknowledge external influence in the creation of SADCC. However, this acknowledgment cannot deny the relative autonomy of states in Southern Africa in defining the type of regional cooperation which would best help them attain their objectives. As Mandaza declares (1987: 215), if SADCC had external origins or not, we must not forget that this organization "can truly reflect the aspirations of the African people and thereby generate genuine regional economic cooperation in southern Africa". This idea may foster an understanding of the origins of SADC from a constructivist point of view.

4. For a constructivist understanding of the origins of SADC

Mandaza's statement is in compliance with a crucial element in regionalism - affinity among member states. From Hettne's perspective, the concept of regionalism implies a political dimension supported by affinity among states. In fact, the author goes even further and uses Benedict Anderson's concept of '*imagined communities*', to support his view of regions and symbolically built entities:

"Like the formation of ethnic and national identities, the regional identity is dependent on historical context (...). And like nations and ethnies, regional formations (...) also possess a subjective quality, and can consequently be seen as «imagined communities»" (Hettne, 1999: 9).

Hettne's contribution to the idea of regionalism includes important elements of the case of Southern Africa, often undervalued by those who emphasize the external origins of the creation of SADC. Therefore, a constructivist approach on the origins of SADC may help us understand those elements of conflict and identity which led to its creation without neglecting internal and external elements. In fact, the history of the creation of SADC shows how the region is not a static but dynamic structure, open to change and



adaption (Farrell, 2005: 8). Therefore, from a constructivist perspective, the region of Southern Africa should be studied in terms of *continuity* and *adaptation*.

In terms of *continuity*, we cannot fully understand the creation of SADC without considering the immediate history of regional cooperation in Southern Africa before SADCC. This history is deeply influenced by the existence of the Front Line States. After one of its most significant victories, the independence of Zimbabwe in 1980, the members of this alliance realized their efforts against South Africa's apartheid could not be effective against the country's economic power (Thompson, 1986; Khadiagala, 1994). This is why the declaration stating the creation of SADCC was signed under the title: "Toward Economic liberation" (Mandaza; Tostensen, 1994: 116)². This declaration evidences the intention to decrease the economic dependency many states in the region had towards South Africa.

Considering its origin, SADCC may be seen as a regional project against the domination of South Africa's apartheid regime. It is from this perspective that we can understand Poku (2001: 100) when the author states that, in practice, it was the anti-South African feeling rather than economic interests joined together the countries in SADCC. Thus, the type of regionalism initially adopted, characterized by a low level of integration and a focus on cooperation, may be understood within the regional context of confrontation against the interests of the region's hegemonic power - South Africa. Hence, in his studies on the model of regionalism adopted by the countries of Southern Africa up to its change in the Southern Africa Development Co-ordination Conference, Haarlov (1997: 61) states that Southern Africa adopted a "*the cooperation approach*". Further in his text, he defines

this cooperation model of Southern Africa stating that the way SADCC operates is incremental in the search for consensus and decentralization, both in administration of regional cooperation areas and in project implementation". (Ibid: 61).

It is important to consider the context of regional cooperation among the countries in Southern Africa before SADCC, as it helps explain the need of external contribution in the creation of this organization. In fact, in the 1970s and 80s, most new independent states in Southern Africa was somewhat economically dependent on South Africa. This country was the region's "hegemonic" power. As Khadiagala declares (1994 23), in terms of economic capacity (though not in terms of extension and population), there is a wide gap between the poverty and weakness of SADCC states and the wealth and power of South Africa. The economic dependency of SADCC countries was especially evident in the lack of transport and communication infrastructures and in the low level of industrialization when compared to South Africa (Khama, 1981; Mandaza and Tostensen, 1987).

This situation of "dependency" may explain the need of support by actors external to the region so that countries in Southern Africa could attain economic freedom. Therefore, SADCC's basic strategy was to attract external financial and technical

² in Appendices, 'Southern Africa: Toward Economic Liberation.



assistance to pursue internal objectives defined by the organization³. The need for outside support provides a partial explanation to the contact between states in Southern Africa and external actors during the creation of SADCC. As acknowledged by the former president of Tanzania, Julius Nyerere:

"We did have invaluable technical help from individual non-African experts as we establish SADCC, but SADCC was formed on the personal initiative of the late President Seretse Khama, with quick and enthusiastic support from the other Frontline States' leaders" (in Mandaza and Tostensen, 1994: 17).

The fact that the states in Southern Africa received technical and financial support from western countries for the creation of SADCC may be partially explained in terms of a rationalistic perspective. As such, the relations between countries in Southern Africa and western countries may be viewed within the scope of maximizing interests. As a matter of fact, if, on the one hand, Mandaza and Tostensen believe it was ironic that SADCC, made up of states politically linked to the Soviet Union and ideologically closer to socialism, received technical and economic support from western countries such as the European Community and the Commonwealth, on the other side, western interest in supporting SADCC is explained by Lee in terms of a strategy of distraction. She understood that SADCC was a strategy for western states to cover their support to South Africa's apartheid regime (Lee, 2003)⁴.

Though there is basis for the rationalistic explanation, it focuses exclusively on either external or internal factors. Therefore, applying a constructivist theoretical approach to the debate on the origins of SADC may contribute to a more thorough explanation of regionalism in Southern Africa and its evolution.

Within the scope of this theoretical perspective, we consider the regionalism created by the states in Southern Africa a blend of existing models on regionalism and the experience on regional cooperation among those states. In fact, the exchanges of experience among African leaders and non-African technicians, during the design of SADCC, cannot be understood merely as a strategy to maximize the interests of countries in Southern Africa. External and internal contributions are part of a *learning and socialization process* which is still typical of regionalism in Southern Africa.

Thus, the fact that countries in Southern Africa search support from western countries, despite the fact that they disagree with some western political and economic positions, is not ironic. On the contrary, it evidences a deep structure of international relations and regional cooperation. As Wendt (1995: 71-72) emphasizes, the fundamental

³ For example, Lee declares that in the 1980s, 90% of SADCC budget came from its cooperation with western countries and international financial institutions.

⁴ In terms of the conceptual creation of SADCC, though authors such as Lee (2003) mention the direct involvement of individuals connected to the Commonwealth, technical and economic assistance was not only provided by Commonwealth states. Mandaza and Tostensen (1994) present a long list of economic and political support from different sources, including the United States of America (during the Carter Administration) and the United Kingdom. The list these authors propose includes the following states and international organizations: The European Union, the Nordic countries, the United States of America, the Commonwealth, the United Nations, the USSR /CMEA and Japan.



structures of international politics are social rather than strictly material and they shape the identities and interests of the actors, not just their behaviour.

The fact that regionalism is not a new reality, but had already been tried by other states in the social context of international relations, changes the conditions in which new regional organizations emerge and are set up. The new integration or regional cooperation experiences are not oblivious to previous experiences. The structures of new regional cooperation organizations are informed and shaped by the previous experience. Thus, newcomers to regionalism learn and internalize existing models.

However, *internalization* is not simply repeating models. As in intra-national societies, an international society is defined by the dynamics of new actors, which are not just shaped by existing structures but also influence those structures; regional models (structures) are not merely copied by new agents. As stated by Acharya (1997: 320), the impact of ideas and regulations, especially if from a certain regional social and political context, depends largely on the self-defined identity of local actors. Therefore, we may state that, as social models, regionalisms are *adapted* at the very moment of their *adoption*.

The argument of creative adaptation goes beyond the dichotomy between internal and external factors in the creation of SADC. In fact, adaptation presupposes the intervention (in this case coordination or synthesis) of internal and external factors. This implies the reference to existing models of regionalism and the innovation of actors who *adapt* the models they *adopt*. As Poku declares (2001: 9) when discussing constructivism, while the structural properties of social life are constructed and reconstructed by agents, they are also part of those agents. Evidence of the adaptation of regionalism in Southern Africa is the fact that, in the beginning, countries in Southern Africa adopted a type of regionalism which emphasized cooperation (Lee, 2003; Haarlov, 1997; Khadiagla, 1994). If they had simply repeated the European model, perhaps SADCC would have adopted a regionalism aimed at market integration. As Cardoso states (1991: 80),

"the name chosen by the organization, Development Coordination Conference, reflects the strategy adopted (of small and agreed upon steps), as well as the resistance SADCC has, even now, posed to the attempts of changing it into a classical body of regional integration, mainly focused on commerce".

Likewise, the slow change in the west, evident in the support to SADCC, cannot be explained in rationalistic terms only. The western attitude was not simply an involvement aiming to distract countries in Southern Africa, as Lee emphasizes (2003). Western involvement must be seen in a wider context of apartheid's loss of international legitimacy and international internalization of the new role of regionalism, not just in terms of cooperation among states but in terms of cooperation among regions.

The focus on economic and political interests of western countries towards Southern Africa (Asobie, 1985) prevented some authors from exploring the fact that in the 1980s the South Africa's apartheid regime was not simply losing internal legitimacy as well as



its international legitimacy. Though the mid 1980s were the peak of western discomfort towards South Africa, its roots may lie much earlier⁵. This situation reinforced South Africa's isolation not only in Southern Africa as well as in other regions in Africa and the world.

This legitimacy we are referring to cannot be restricted to economic interests (see Hurd, 2007). Hence the possibility of a constructivist perspective helping us understand, for example, the involvement of Nordic states in Southern Africa. In fact, it is somewhat limiting to affirm that those states were simply motivated by economic interests. As Sellstrom declares (1989: 13),

"the involvement of the Nordic countries should be understood, first and foremost, as a political statement towards two obsolete and inhumane regimes in Southern Africa after WWII, i.e., colonialism and apartheid".

The case of the support to SADCC by the Nordic States shows how the rationalistic approach understands and explains only a part of reality, it fails in understanding important elements in regional and international environment which altered the states' position.

Applying a constructivist approach to understand the creation of SADCC does not merely complement the rationalistic perspective. It provides thoroughness to the study of regionalism in Southern Africa. Though beyond the scope of this paper, we may mention that applying a constructivist approach leads us to realize a coherence in the regionalism in Southern Africa, even when discussing the change from SADCC to SADC (from a more cooperative to a more integrative perspective). In fact, the models of regionalism, just as identity and interest, are *socially constructed*. Adapting these models implies that conventional structures are absorbed by the social context of the reality adopting the model. Newcomers cannot ignore the experience of others but learn from their predecessors. However, the learning process is active; it shapes existing models. This social adaptation process implies internal and external factors.

Another aspect which may be cleared through a constructivist analysis is that of SADCC efficiency and its relation with other regional organizations, mainly European ones. In fact, though literature tends to assess SADCC success focusing on the economic area, which is entirely justified, the success of a regional cooperation organization cannot be limited to its economic achievements. As such, the constructivist approach may help raise a few questions and explore other explanations on the design of regional cooperation in Southern Africa and its relation with other regional organizations and international actors. For example, we may question how much SADCC contributed to the change in perception between countries in Southern Africa and western countries. How legitimate was western intervention in the Southern African region through the cooperation with SADCC? How different was the perception of states in Southern Africa as far as the old colonial powers and their allies are concerned? Although the answer to these questions may not yet be evident, the constructivist approach seems better equipped to help in its understanding.

⁵ See Gibb (1987, p. 396).



Conclusion

To conclude, we believe the debate on the internal and external origins of SADC is largely motivated by the dichotomization and polarization of the arguments and historical evidences. Some authors focus on formality and politics, others on informality and economics. Though a rationalistic analysis of the creation of SADC should not be ruled out, it evidences only some elements in the creation of SADC, leaving others behind, such as those socially constructed, crucial in the understanding of SADC from a teleological point of view based on the causative factors of SADCC. Thus, a constructivist approach helps to understand that the construction of regional organizations such as SADC involves internal and external factors.

These factors were here linked using the concepts of continuity and adaptation. SADCC is a continuity of previous regional cooperation mechanisms in Southern Africa. However, this cooperation changed its form, ideas and rules; it also was a creative adaptation of existing models of regionalism. In this sense, reconsidering the origins of regionalism in Southern Africa based on a constructivist approach, linking internal and external factors, may be used as the basis for an explanation for SADCC becoming SADC and, more importantly, for the role of SADCC in the change in perception between states in Southern Africa and western counties.

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**OFFENSIVE COUNTERTERRORISM
TARGETED KILLING IN ELIMINATING TERRORIST TARGETS:
THE CASE OF THE USA AND ISRAEL**

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Summary

Due to the "global terrorism project", some States have adopted offensive counterterrorism measures which, though within national strategies on security and defense, contemplate the use of military power and the use of lethal force against non-state actors - individuals, groups or terrorist organizations - beyond their national borders.

Reformulating the security paradigm has led, in these cases, to policies against terrorism. This is the case of *targeted killing* - the killing of selected targets - by the USA and Israel. Targeted killing *actions* - using essentially but not only *drones* - in Pakistan and Yemen by the American administration, as well as the Israeli response to Palestinian terrorism, are under heated debate in terms of their efficiency and legality. Thus, this paper aims to not only provide an analytical framework on this theme but also analyze the scope and impact of these counter terrorist strategies by the two countries

Keywords:

Offensive counterterrorism; *targeted killing*; Israel; the United States

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OFFENSIVE COUNTERTERRORISM TARGETED KILLING IN ELIMINATING TERRORIST TARGETS: THE CASE OF THE USA AND ISRAEL

Hermínio Matos

"The State of Israel has had very, very little faith in Biblical prophecies. This is why it still exists, when some - wrapped in their religious myths - want to erase it from the world map."

PEREIRA, JOSÉ TELES, 2008

"Targeted Killing It is the ultimate prevention (...) a policy of taking them out to lunch before they have you for dinner."

O'CONNOR, T., 2011

"If the Arabs put down their weapons today, there would be no more violence... If the Jews put down their weapons today, there would be no more Israel."

GOLDA MEIR

The Problem

The context of a terrorist action evidences the symbiotic relation whose ideological, and therefore crucial, roots are one or more issues of identity - ethnical, religious or cultural - ultimately converging to one common end: changing, keeping or exercising Power¹.

It is under the proclaimed global Islamic Jihadist movement that lies the ambitious political and religious project aiming to create a *"pan-Islamic theocracy and the restoration of the caliphate"* (Bakker, 2008: 69), reinforcing the claims announced long ago, the "end of history" (Fukuyama, 2007), the *Huntingtonian* paradigm of "civilizational clash" (Huntington, 2001).

Due to the "global terror venture", some States, within varied counterterrorist strategies, have adopted offensive responses which, though part of national security strategies, in some cases contemplate the use of military force, either autonomously or in coordination, and the use of lethal force against non-state actors - individuals, terrorist groups or organizations - beyond their territorial borders.

Though the best known examples are those of the United States and Israel, which we will analyze in detail, some European states could also be included, either in terms of

¹ A concept which is very clear here, despite its conceptual ambiguity. To Joseph Nye, for example, "power is a controversial concept. There is not a widely accepted definition and the opting for a one reflects your own interests and values. Some define power as the ability to create or resist change" (Nye, 2012: p. 24). Similarly, "it can be defined as the set of means able to coerce others to behave a certain way. (...) there is a series of means able to impose a behaviour, therefore, there is a wide range of powers defined by their means which provide them with their basis" (Lara, 2011: 256).



their individual action or within the framework of international security and defense organizations they are members of, NATO being the major example.

This type of actions is, however, not a recent phenomenon. Military action against non states was intimately linked to colonial hegemony of some European powers, especially in the second half of the 20th century, as an offensive response to subversive movements of rebellion and liberation. These essentially military actions were either large scale military operations or focused on the mere elimination of the leaders of insurgent groups².

The insurgents, on the other hand, mainly used guerrilla and counter-guerrilla strategies as "terror action"³, viewed by other liberation groups as effective "insurreccional doctrine" (Rapoport, 1971: 55) against the colonizing power.

Religious-inspired terrorism, in particular from Islam, started at the end of the 1970s as a result of three events which occurred in 1979: the Iranian Revolution, the beginning of the new Islamic century and the invasion of Afghanistan by the Soviet army (Rapoport, 2004: 61). The so-called "fourth wave of terrorism", whose distinctive feature was made evident in the 9/11 attacks, provided "al-Qaeda & Associated Movements" (AQAM⁴), then as well as now, the top spot in the list of threats to international security⁵.

According to Jenkins (2012: 1-3)⁶, this "Jihadist Galaxy - itself a "moving target" - allows al-Qaeda and its associated movements the status of arch-enemy of the West, dividing academics and specialists, today more than ever, as far as their strategic and operational potential and as their threat level are concerned.

Al-Qaeda, besides the scope of its terrorist action – from the perspective of "hard power"⁷ – has been able to project, more successfully than the West, what Joseph Nye (2004; 2009; 2012) defined as "soft power"⁸, i.e., "the ability to get what you want through attraction rather than coercion". In some cases even, using both powers and results - in different areas such as recruitment, violent radicalization or terrorist training - the organization has been able to be globally implemented and have an

² As examples, we could mention CIA activities in Chile, Cuba, Guatemala and Panama at the referred time.

³ The expression is in inverted commas as the insurgents or "liberation movements" were also seen as "freedom fighters".

⁴ In Portuguese, *al-Qaeda e movimentos associados*.

⁵ For extensive description of "terrorist waves", proposed by Rapoport, See Rapoport, David C. (1971) *Terrorism & Assassination*. Toronto: Canadian Broadcasting Corporation; [ed.] (2001) *Inside Terrorist Organizations*. London: Frank Cass and (2005) *Terrorism: Critical Concepts in Political Science*, 4 vols. London: Routledge.

⁶ Therefore, the analyses of the organization are both non-consensual and eventually plural: "al Qaeda is many things at once and must therefore be viewed in all of its various dimensions. It is a global terrorist enterprise, the center of a universe of like-minded fanatics, an ideology of violent jihad, an autonomous online network. It is a virtual army. Increasingly, it is a conveyer of individual discontents".

⁷ Or "Hard Power". For Nye, hard power is linked with the use of force and coercion. Basically, the difference lies in that "Hard power is pushing; soft power is pulling." (Nye, 2012: p. 39). On this issue, see Gray, Colin S. (2011) *Hard Power and Soft Power: The Utility of Military Force as an Instrument of Policy in the 21st Century*. Carlisle: Strategic Studies Institute, US Army War College.

⁸ Soft power, in short, may be seen as "the ability to affect others through framework cooptation of objectives, persuasion and positive attraction so as to obtain the desired results. (...) The type of resources associated with soft power frequently include intangible factors " (Nye, 2012: 39-40). Noteworthy is that "soft power" is the term used in the books this author published in 2009 and 2012, translated into Portuguese in two different ways "poder suave" and "poder brando", both deriving from the concept of "Soft Power".



ideological influence (through "Intelligent Power"⁹), allowing it to become what some describe as *supra-state power*¹⁰.

The well-established American imperialistic perspective contrasts with the idea that the intervention in Afghanistan in 2001 and the invasion of Iraq in 2003 proved the old maxim that the United States "soft power" is in decline (Nye, 2004 and 2012).

We aim to analyze the dynamics and the scope of counterterrorist strategies which contemplate, on the one hand, the use of the military applied to executing terrorist targets - mainly directed to individuals who are "high value" targets - and, on the other, the core role of *Intelligence* both in prevention and in offensive counterterrorist action.

Our analysis will focus on the two counterterrorist strategies which contemplate the use of this strategy: that of the United States and that of Israel.

In the first case, and with added "efficiency" after 2009, the use of *targeted killing*¹¹ in Pakistan and in Yemen. As far as Israel is concerned, the counterterrorist response to the threat of Palestinian terrorism - in particular from groups such as the *Hamas* (*Izzedin al-Qassam Brigades*) the *al-Aqsa Martyrs (al-Fatah)* – or the Lebanese *Hezbollah*.

Antiterrorism versus Counterterrorism

A State's response to terrorism results from the convergence of preventative, pro-active and reactive actions. However, often doubts persist as far as the conceptual framework and the differences, if any, between the terms antiterrorism and counterterrorism.

According to Baud, counterterrorism is the activity "*qui est l`ensemble des mesures destinées à combattre le terrorisme en amont de l`action terroriste. Il est la composante préventive de l`action et implique une combinaison de mesures politiques, des méthodes très pointues d`infiltration des réseaux et de recherche de renseignement active*" (Baud, 2005: 298). It includes, therefore, the measures taken to prevent or eliminate the phenomenon upstream of terrorist action. It is the pro-active component which includes, among others, infiltrating networks or cells and the research and active collection of information through human sources (HUMINT)

Antiterrorism "*rassemble les moyens de lutte en aval de l`action terroriste. Il est la composante préemptive et réactive de l`action, et résulte souvent d`un échec d`une*

⁹ In general terms, *intelligent power* is viewed as the "combination of the hard power of coercion and payment with the soft power of persuasion and attraction." (Nye, 2012: 14).

¹⁰ See Term used by Guedes, Armando M. (2012), "*Política e Segurança: teorias e conjunturas da actualidade*". Paper presented on 14 March at the *Seminar on Political Power and Security (Seminário O Poder Político e a Segurança)*. Lisboa: ISCP/ISI.

¹¹ "A *Targeted killing* is the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under color of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator. (...) States have adopted policies, either openly or implicitly, of using targeted killings, including in the territories of other States". See United Nations HRC (2010), "*Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston*". General Assembly: Human Rights Council -HRC/14/24Add.6, 28 May, p. 4. However, "targeted killing" is not a term defined under international law. Nor does it fit neatly into any particular legal framework. It came into common usage in 2000, after Israel made public a policy of "targeted killings" of alleged terrorists in the Occupied Palestinian Territories", See Idem, *Ibid*.



stratégie de contreterrorisme" (Baud, 2005: 298-299). It is the reactive component¹², downstream of terrorist action, that is almost always placed into practice after the failure of a counterterrorist action.

Loureiro dos Santos considers that this conceptual dichotomy is resolved by the use of the umbrella term "response to terrorism", in which he establishes four "strategic axes of simultaneous action", one of them more important for management and stabilization, in case of a successful terrorist action, mainly focusing on "emergence and aid measures to implement" (Santos, 2009: 165-171).

the remaining three axes of strategic action would then be reserved to act on:

- 1) "deep causes" of terrorism in an attempt to (re)balance in terms of "political, economic and social measures";
- 2) ideological struggle against violent radicalization and terrorist recruitment; and
- 3) the offensive perspective which includes essentially information, the police forces, the judiciary - the military, either additionally or in situations which require the use of exceptional means (Santos, *Ibidem*).

A document by the American Joint Chiefs of Staff defines both concepts as separate: antiterrorism includes "the defensive measures to reduce the vulnerability of people and goods to terrorist attacks"; counterterrorism includes "offensive measures to prevent, stop and respond to terrorism"¹³. From this point of view, the fight against terrorism is the set of actions – antiterrorist or counterterrorist - implemented to stop the terrorist phenomenon in the full scope of the threat¹⁴.

However, and considering the previous definitions, the symbiosis between the concepts and the scope of action may lead to different analyses which immediately influence the understanding of the phenomenon and the adequacy of the means used in response. In this sense, we have adopted the following integrated concept¹⁵, both of the phenomenon and the response:

"Terrorism is a gray-area phenomenon, something between crime and war, state violence and insurgent violence, conflict and violence, and propaganda and direct action. It is often intermeshed with other phenomena, such as migration, competition for resources, social

¹² From the "recovery" perspective and that of tactical intervention or of *Intelligence*, in particular in the case of multiple or coordinated attacks or in case of strong indication or confirmed threat of new attacks.

¹³ See U.S. Joint Chiefs of Staff (1993), *Joint Tactics, Techniques and Procedures for Antiterrorism* - JP 3-07.2, 25 de June, p. 1-1. In the same document, the concept of terrorism is also restated in DOD Directive O-2000.12, as "The calculated use of violence or threat of violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological".

¹⁴ See *Ibidem*.

¹⁵ In an attempt to conceptualize political science, terrorism may be viewed as "(...) an action technique used against human targets, selected or random, through especially violent means, or the threat of their use, or specifically against non-human targets such as physical, critical or symbolic infrastructures, raising terror and insecurity which affects not only the primary targets, their direct victims, but also potential targets, indirectly coercing the action of governments and organizations and influencing public opinion so as to achieve their political, ideological, criminal or religious objectives"; See (Matos 2012, 2011).



movements and social protest, political and religious ideology, mass media and electronic communication, ethnic conflict and identity or single-issue politics, subversion, insurgency and revolution, and self-determination of peoples and nations. (...) Countering terrorism is intimately related to understanding the nature of the terrorist phenomenon and how it fits into the wider security environment. How we conceive of terrorism determines to a great extent how we go about countering it and what resources we devote to the effort" (Crelinsten, 2009: 39).

The difference in concept, which is often more a case of semantics, is today overcome by the general use of the term "counterterrorism" which includes, regardless of its operational or linguistic origin, both vectors - preventative and responsive - in any of its stages.

The counterterrorist efficiency is necessarily dependent on the correct perception of both the nature and the strategic implications of the phenomenon within a wide security framework. Once these objectives are met, the adequate response strategies could be designed as well as the most efficient resources could be selected for its fight.

The Outline of the Threat

Al-Qaeda is currently a hybrid, flexible and extremely versatile structure in organizational terms, known for its decentralized action and node transversality, with few links among cells allowing, based on the regional and local nodes, for the creation of new identities from already existing ones or the reproduction of identities, structurally simple but complex in terms of action and vertically independent, for operational and logistics purposes, in terms of command or leadership in planning and executing terrorist attacks (Matos, 2012).

The organization, and its associated groups, are a key-element of the global threat which the Jihadist terrorism¹⁶ - of international scope¹⁷ and Islamic influence - has long represented and which is implemented and disseminated under the ideological umbrella

¹⁶ Members, groups and organizations share, besides the Islamic faith, a political and ideological activism based on an extreme and revivalist interpretation of the teachings of the Koran, in particular the Salafist perspective. (Matos, 2011: p.15). The term "Jihadist Terrorism" is commonly used to designate a variant of international terrorism based on an extremist interpretation of Islam to support political and ideological objectives whose origin and scope of action are not limited to any particular geographical area. However, it must not be viewed as equivalent to other forms of Islamic terrorism, as is the case of the group *Hamas*, whose objectives are different from those of bin Laden and al-Qaeda and focus on particular political objectives: the Palestinian cause (Matos, 2011: 15-16; Moghadam, 2008: 94).

¹⁷ International terrorism is that whose aim is to affect the political structure of more than a country, even the world, when participants have spread their action to a significant number of countries or geographical areas. Noteworthy is the fact that international terrorism, in these terms, necessarily includes transnational terrorism. See (Matos, 2011: 14-15; Reinares, 2005: 2). It also includes that which "involves more than one nation, either in terms of national identity of the perpetrators or victims, or when the attack is committed on the territory of a third-party country, or if a state sponsor of terrorism is involved in the attacks". See Ganor (2005: 57).



of the acclaimed "Global Jihad"¹⁸, started against the West in general and against the Jews and the Crusades¹⁹ in particular.

Al-Qaeda, in terms of its central structure²⁰ - upstream and downstream of the "common" hierarchical and network models - appears to have adopted a *design* close to that of the "dune structure" (Mishal & Rosenthal, 2005: 275-284), whose (re)structure is different from the pyramid structure the organization had in the first stage of its existence²¹, and that of the network structure it adopted up to the attacks on September 11, 2001. This changed the organization into a hybrid and versatile structure whose inconsistency has allowed it to, on the one hand, be physically implemented yet structurally absent at global level and, on the other hand, have a "present" though virtual leadership (Matos, 2012). Thus, the concept of a dune organization is inspired on the deterritorialized character of a (new) globalized world which fosters the adoption of these organizational dynamics by terrorist groups:

"The Dune movement is almost random, moving from one territory to another, affecting each territory, changing its characteristics and moves on to the next destination (...) act in a dynamics of a fast-moving entity that associates and dissociates itself with local elements while creating a global effect. The never ending associative connections link the Dune Al Qaeda as a Dune Organization in a decentralized and networked way with unknown number of affiliated groups. This network is temporary, attaches and detaches, moving onward after changing the environment in which it has acted. Afterward, it moves on while looking for another suitable environment for the Dune to act in" (Mishal & Rosenthal, 2005).

The threat of Islamic terrorism, according to some experts, results from three overlapping circles: the first, at the core, includes the members of the network al-Qaeda²² and its affiliates; the second includes ethnical and nationalistic groups which share al-Qaeda's ideology but whose objectives are local or regional; finally, a third circle, rather undefined but probably the largest and most dangerous, which includes individuals and groups who do "freelancer terrorism" (Bures quoting Errera, 2011: 37-39)²³.

This wide typology would include the so-called "lone-wolves", individuals who commit terrorist actions and: 1) operate individually; 2) have no connection to any terrorist group or organization; 3) do not act under the direct influence of a leader or structured hierarchy; 4) use tactics and methods they have designed and implemented, without

¹⁸ In Arabic, it means "effort in the search for the path of God; more extreme Islam sees it as a Holy War against the enemies of Islamic faith". See Costa, Hélder Santos (2003), *O Martírio no Islão*. Lisboa: ISCSP: 36.

¹⁹ The reference being Israel and the United States.

²⁰ There is top and intermediate leadership, i.e., besides the directing structure there is a group of operationals, experienced and highly trained, who are responsible for areas such as recruitment and radicalization, religious affairs, financial operations, propaganda and strategic communication, terrorist training and operation planning in Europe, Africa, etc.

²¹ Since its creation in 1988 up to the terrorist attacks in Kenya and Tanzania in 1998. The "Afghan Service Bureau" - or MAK or *Makhtab al-Khimadat* - created by *Abdullah Azzam* during the conflict with the Soviets, was its root.

²² Usually referred to as "al-Qaeda Core".

²³ Errera, Philippe (2005) "Three Circles of Threat", *Survival* 47 (1): 71-88.



influence of supervision of others (COT, 2007). "Freelancer" acts are those carried out by individuals who, though they do not have a direct relation with a terrorist organization, act under the tactical and operational guidance of one of its members (Jenkins, 2011: VII).

In an expert's prospective analysis, al-Qaeda, though weakened, still aims at a global terror campaign. Though currently it is not able to launch large scale attacks, difficult to plan and implement, the organization invests on homegrown recruitment for an individual Jihad based on a "do-it-yourself" terrorism (Jenkins, 2011; Matos, 2012).

Considering Europe, and in particular the threat of endogenous or homegrown terrorism, the classification into three types of cells in Europe is rather interesting:

Figure 1 - Types of terrorist cells operating in Europe

	AUTONOMY	SELECTION
Chain of command	Directed	Top-down
Guided	Takes initiative, but seeks approval	Self-recruited, but "link to jihad"
Self-starter	Autonomous	Self-selected

Source: Neumann & Brook (2007: p. 26)

"Command cells", formed and run by the top hierarchy, aim to carry out actions planned by the command and under its coordination. Its operationals have been trained by the organization in camps, either already set up or especially built, and they may remain "dormant" until activated.

The "commanded cells" are usually self-recruited and self-radicalized, have autonomy in terms of initiative but require approval by the organization. They view the approval as a means of becoming integrated in the structure and, in the future, as a possible access to logistics or financial support. Though not formally integrated in the organizing structure, these cells share ideology, logistics and operational strategies for supervision and control with the organization or with some of its members.

"Autonomous cells" - created "automatically" or spontaneously - are exclusively self-recruited and self-radicalized. Its members have no connection with the organization and are trained at their own volition, almost always in a "virtual camp", which leads to the majority of their initiatives being limited to planning and target approach.

However, this last type of cell becomes exponentially dangerous due to its ability to be integrated in society. Acting autonomously and uncoordinatedly, their visibility is lower and the monitoring of their members' movements only occurs when more extreme ideologies and narratives are inflated or actions are carried out that evidence their availability to terrorism (Neumann & Brook, 2007: 23-26)²⁴.

Another perspective, more misleading, divides this threat into two subtypes: the "outsiders" and the "insiders". The first would include individuals, exiled, refugees or students, who can enter and remain in countries from Western Europe; the second would include second and third generation immigrants from the Arab Diaspora (Bures, quoting Leiken, 2011: 38).

²⁴ Also quoted by Bures (2011: 37-38).



This variant is undoubtedly and intimately related with the Diaspora of the Islamic community which settled in Europe long ago. We cannot, nevertheless, establish a cause effect relation, the more so because the extremists represent a very low percentage of a mostly integrated community.

We may also divide the formation of these cells in Europe as follows:

External penetration cells: small groups of individuals already somewhat organized, who cross the borders of a State or region - with the support of the Islamic community settled there, at least in terms of logistics, cover and financing - and have a previously established target. They are an external threat, unpredictable and of difficult detection and control due to their heterogeneous nature and its members' professional skills. In general, they enter the target country at a date close to the attack, requiring just enough time for approach, recognition, counter-surveillance, security test and execution²⁵. These cells usually include elements of different nationalities but in which one is predominant²⁶.

Endogenous cells include this subtype of autonomous cells, either active or "dormant", formed by elements of first or second generation immigrant community. These cells emerge in the context of sharing ethnic, nationalistic or religious values and are fostered by friendship, neighborhood or even family relations. Many members share a past life of crime, which has enabled or quickened their recruitment, doctrination and violent radicalization. These cells are formed in neighborhood communities, connected through the Internet (through social media and Islamic discussion forums) and rather easily "camouflaged" because of members' social and family insertion. They are very mobile, either in pendular movements between Europe and the country of their family or within that very country.

Offensive Terrorism: from efficiency to the "boomerang" effect

A counterterrorist strategy may be efficient within a specific context and completely inefficient in another, given the heterogeneous nature of the phenomenon, both in terms of the individuals involved and the action itself.

"Even relatively ineffective terrorist attacks can do grave harm. The damage can be measured in lives lost or injuries, in property damage and other material costs, or in something less easily quantifiable – the fear that another attack is coming. (...) mounting effective counters to terrorism is an especially difficult task. Because of the stealth and surprise that accompanies terrorism, the anonymity of the attackers, and the frequent willingness of terrorists to die for their cause, tackling terrorism is daunting at best. (...) The list of possible counterterrorism

²⁵ Some of these actions are often carried out by other elements of the terrorist group, usually referred to as "information cell". For security reasons and for the success of the operation, no contact should be established with elements of the cell executing the attack.

²⁶ As an example, we may mention the "penetration cell" responsible for the 9/11 attacks on American soil: though "commanded" by the Egyptian Atta, of the cell's 19 members, 14 were Saudi. See McDermott, Terry (2005) *Perfect Soldiers. The 9/11 Hijackers: Who They Were, Why They Did It*. New York: Harper Collins Publishers.



strategies is long and growing, in part because of the evolving dynamics of the terrorist threat" (Banks et Alii, 2008: 3).

It is in this sense that Crelinsten²⁷ presents different action focuses which, though towards a shared end - the counterterrorist response - allow to implement the most adequate strategies, not only as far as the specificities of the phenomenon at each moment and of the specific actor involved, but also in terms of the depth and scope of its application. This means that if it focuses on short term objectives - group analysis - abilities and means of acting, motivation, targets, *etc* - or, if it aims a wider and long term objective, analysis should include social, religious, political or economic factors that frame the context of terrorist action so as to better understand and act on its causes, action abilities and counter-response to a State's counterterrorist action (Crelinsten, 2009: 45).

Equally important is that, in the design of a counterterrorist policy, not only are basic analytical perspectives taken into account - time, space, types of power and modes of intervention of the opposing party - but also dichotomies such as offensive/defensive, reactive/proactive, local/global, which serve as basis for adjusting the focus of action and the intensity of the response. (Crelinsten, 2009: 44-47).

In general terms, Crelinsten subdivides counterterrorism into 5 categories: coercive, proactive, persuasive, defensive and "long term".

Coercive counterterrorism, the most relevant for us, is essentially offensive and based on two models: the *War Model*²⁸, which favors the use of the military, and the "*Criminal Justice*"²⁹, clearly based on the police and the judiciary³⁰.

The advocates of the "criminal" model argue that terrorism should be treated as any other type of organized and violent criminal activity. The defense of the "military" model is based on the assumption that the previous model does not have the means, in the majority of cases, to deal with the threat, which is why its protagonists should be seen as fighters - since the civil population is their random target - and the response tools adequate to armed conflict.

Though both models are related with the monopoly of the use of force by the State, in both cases there are restrictions to their actions: in the former, the restraints are those deriving from criminal legislation and criminal procedure; in the latter, military force should only be used against fighting targets or, by extension, against individuals who provide them with military support.

For Ganor, a world specialist on counterterrorism, any counterterrorist policy, by definition, should meet the following objectives:

²⁷ Crelinsten, Ronald (2009), *Counterterrorism*. Cambridge: Polity Press.

²⁸ "The war model of counterterrorism treats terrorism as if it were an act of war or insurgency. Because wars are usually fought between states, countering terrorism within a war model implies that the terrorist group represents the equivalent of a state." See Crelinsten(2009: 72-73).

²⁹ "A criminal justice approach to counterterrorism treats terrorism as a crime. This makes perfect sense, since most terrorist acts constitute crimes defined in criminal codes." See Crelinsten (Idem: 52).

³⁰ Here, considered as a whole; i.e. legislative *corpus*, the judiciary, the prison system, prevention subsystems and criminal investigation, information, etc.



- 1) eradicate terrorism;
- 2) minimize the damages caused by its actions;
- 3) prevent the increase in terrorist action (Ganor, 2005: 25-27).

According to this, the "terrorist equation"³¹ paradoxically leads us to the dilemma of the "counterterrorist equation": that in which the increase in offensive action to reduce the action of a group or organization will lead to more support and motivation. Therefore, a counterterrorist strategy should attempt to balance the means to crush an organization's operational ability to terrorism and, on the other, reduce the level of motivation to carry out those actions³².

A State which adopts an offensive policy of counterterrorism must equally take into account the "boomerang effect". According to Ganor (2005: 129-130), the "boomerang effect" theory establishes that offensive action against a terrorist organization may trigger an escalation of response - more attacks and often more lethal ones - by the organization.

Nevertheless, advocates of the use of offensive actions state that this is not valid, considering that the variable limiting the scope of action and the *modus operandi* of a terrorist organization is its operational ability to attack and not particularly its degree of motivation.

Thus, "the motivation of terrorists is always high and attacks are committed solely as result of operational readiness. A serious blow to the terrorist organization's infrastructure will jeopardize its operational capability, and even if it elevates the organization's motivation to commit a counter-attack, it will not be able to act on it" (Ganor, *Ibidem*).

To sum up, this is a matter which is far from consensual. The "decapitation" - through elimination or capture - of leading members of terrorist organizations' has long been claimed for. The contention is that this would weaken the organizations' ability to plan and carry out actions as well as their integrity and organizing cohesion. We believe, however, that this will lead to better results when the target organization has a more or less defined hierarchy. In the case of al-Qaeda and the *terrorist nebula*³³ linked to it, the results may be less efficient given the inconsistency³⁴ and little connectivity³⁵ of its organizational model.

³¹ This is made visible in the formula: [*Terrorism = Motivation + Operational Ability*]; See Ganor (2005: 41-43).

³² "(...) the offensive activity raises the organization's motivation to continue perpetrating, and perhaps even to escalate, terrorist activity in retaliation and in response to the country's actions. (...) Planning and carrying out effective offensive counter-terrorism activity is a complex task and difficult to achieve." See Ganor (*Idem*: 43).

³³ Term proposed long ago by DENÉCÉ, Éric *et al.* [dir.] (2002). *Guerre Secrète Contre Al-Qaeda*. Centre Français de Recherche sur le Renseignement. Paris: Ellipses Édition: 29 e161-163.

³⁴ This organizational inconsistency, which Jessica Stern designated as "*The Protean Enemy*", allowed al-Qaeda to resist - at least until the death of bin Laden - to successive counterterrorist, military and *Intelligence* operations carried out against its top leaders in the Afghan and Pakistani area. See Matos, Herminio J. (2012) "*E Depois de bin Laden? Implicações Estratégicas no Fenómeno Terrorista Internacional Uma Reflexão*". Politeia, Year VIII: 9-38. Lisboa: ISCP SI, p. 24; STERN, Jessica, "*The Protean Enemy*", *Foreign Affairs*, 82 (4), 2003: 27-40.

³⁵ For a thorough and detailed analysis of the organizational models of terrorist structures, see GUEDES, Armando Marques (2007), *Ligações Perigosas. Conectividade, Coordenação e Aprendizagem em Redes*



Offensive Responses

The threat of terrorism caught the West off guard; the most common means to make war today, in this area, are of little or no use (Statman, 2004: 179). Adriano Moreira described this impasse in the conflict as the complex "relation between the International System and the world Strategic Context, in which the distance between the *normative definition* of the system and *world reality*" (Moreira, 2011: 433), which inevitably leads us to a "gap between reality and the dimension of the threat due to it being underestimated" (Tomé, 2010: 37).

Thus, there seems to be a disturbing, maybe paradoxical, element in the fight against terrorism: on the one hand, groups emerge and disseminate, complex organizational strategies and models are adopted which allow for increased resistance and efficiency in terrorist action; on the other hand, counterterrorist models are implemented which simultaneously lead to more effective results yet are controversial in terms of legitimacy and legality.

Therefore, the reformulation of the paradigm of security, here in its holistic perspective, may (re)structure the response policies to terrorism and the risk of "militarization of non-military dimensions of security"³⁶. "The symbolism attached to the fall of the Berlin Wall, the international community, used to a balance of terror, is forced to acknowledge the importance of other actors in the international system" (Garcia, 2010: 72), which include, *inter alia*, terrorist groups and organizations such as al-Qaeda and associated movement.

The issue here is to know whether the responses by some States, through the adoption of active measures of offensive counterterrorism - as, for example, the use of "*targeted killing*" - are not simply another form of terrorism?

As Guedes Valente writes, when discussing this dialogue, sometimes antithetic, between *National Security* and the defense of basic rights, "neither can security be underestimated, nor can basic rights be sacrificed endlessly." (Valente, 2010: 55).

Thus, and as stated in a United Nations³⁷ report by rapporteur Philip Alston³⁸ on "Extrajudicial, Summary or Arbitrary Executions", at international level it is admissible to use this type of offensive response against international terrorism, either *per se* or in armed conflicts which oppose State and non-state actors, scenarios in which the specificity of the threat and the basic rules of war and peace, which remind us now of the (re)emerging concept of "asymmetric war"³⁹, precisely that in which military force

Terroristas. Coimbra: Almedina. See also Matos (2010), "*O Sistema de Segurança Interna: O Caso Português*", in Moreira, Adriano e Ramalho Pinto [coord.] *ESTRATÉGIA*, Vol. XIX: 173-246. Lisboa: Instituto Português da Conjuntura Estratégica, p. 206 onwards. [quoting GUEDES, 2007: 47-58].

³⁶ Tomé (2010: 37).

³⁷ See United Nations (2010), *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Philip Alston*. General Assembly: Human Rights Council -HRC/14/24Add.6, 28 May: 3-5.

³⁸ Special Rapporteur, between August 2004 and July 2010, of the Office of the United Nations High Commissioner for Human Rights. Currently (since July 2010), the task is carried out by Christof Heyns, from South Africa

³⁹ For Garcia (Quoting Rupert Smith, 2010: 86), "*classifying a war as asymmetric is a euphemism, because the art of war is in [always] managing an asymmetry in relation to the enemy*" (our brackets and underlining); "*Asymmetric war (...) mostly explores the surprise factor, refuses the rules of combat imposed by the adversary, uses unforeseen means and acts on places where confrontation should be unlikely*", essential requirement in any terrorist organization's strategy (Garcia, *Ibid.*).



is deemed necessary though the "battle field" is not in the territory of the aggressor or the victim but in third States, where the former seeks refuge and support at all levels.

We are referring to the use of "*targeted killing*"⁴⁰ as an offensive action tool in counterterrorist strategies of some countries, as the United States and Israel⁴¹.

The United Nations Report defines this action tool as follows:

"A targeted killing is the intentional, premeditated and deliberate use of lethal force, by States or their agents acting under color of law, or by an organized armed group in armed conflict, against a specific individual who is not in the physical custody of the perpetrator. (...) Such policies have been justified both as a legitimate response to terrorist threats and as a necessary response to the challenges of asymmetric warfare. In the legitimate struggle against terrorism, too many criminal acts have been re-characterized so as to justify addressing them within the framework of the law of armed conflict. New technologies, and especially unarmed combat aerial vehicles or drones, have been added into this mix, by making it easier to kill targets, with fewer risks to the targeting State." (UN Report, 2010: 3).

We use the concept by Melzer (2008: 3-5) which states that, for an action to be referred to as "*targeted killing*" it should fulfill five requirements:

- 1) the use of lethal force;
- 2) premeditated and deliberate intent to kill;
- 3) previous selection of individual targets;
- 4) non-physical possession of the target;
- 5) accountability of the action by a subject of international law.

Therefore, besides the definition proposed by the United Nations Report, though not very different,

"The term 'targeted killing' denotes the use of lethal force attributable to a subject of international law with the intent, premeditation and deliberation to kill individually selected persons who are not in the physical custody of those targeting them" (Melzer, *Idem*: 5).

⁴⁰ We opted to keep the Anglo-Saxon terminology because we believe the translation would imply a loss, if not in its conceptual efficiency, at least in terms of its "psychological" scope. Other designations include "selective killing", "selected target elimination", "extrajudicial executions" and "selective targets".

⁴¹ Other countries such as France, Russia and the United Kingdom have made (or still make) use of this "offensive action technique". NATO, within the scope of its action in Afghanistan, is the more current example.



The theory of "just war", nowadays within the framework of Human International Law, the International Law on Armed Conflict, The United Nations Charter and the Geneva Conventions, associates self-defense and the principles of need and proportionality. The United Nations forbid the threat or use of force against the independence or territory integrity of other States. It includes, however, two exceptions:

- 1) individual or collective right of response to an armed attack, laid down by article 51 of the Charter, which allows the use of force only as a response to an armed attack or, ultimately, as "anticipatory defense" to an imminent armed attack;
- 2) the use of force in collective security operations, previously authorized by the Security Council.

Anchored in these "three subtypes of security trend" - the "*Law and Order Movement*, the *Zero Tolerance* and the *police-State*" - the "new threats and new dangers (...) are jeopardizing common Criminal Law and legitimizing the defense of the enemy's Criminal Law, based on the dogma of the author's Criminal Law, (...) which should be viewed as an enemy because representing a danger, a threat, a risk to security". We, therefore, run the risk of changing "terrorism as the root of war schizophrenia" which thus promotes the most offensive counterterrorist response (Valente, 2010: 62-67).

Though the legal framework of this issue is under deep and endless debate, especially considering human international law and human rights, our analysis will only focus on the technical and tactical issues involved in this type of counterterrorist action.

The Target Selection Process

According to US military doctrine, a "target" is an entity or object whose approach is susceptible of immediate or future execution (FM, 3-60, 2010: 1-1). In this rather wide category we may include military forces, mobile or stationary, physical structures, critical infrastructures or other capacities deemed necessary to meet the adversary or enemy's strategic or operational objectives (JP 3-60, 2002: 1-2).

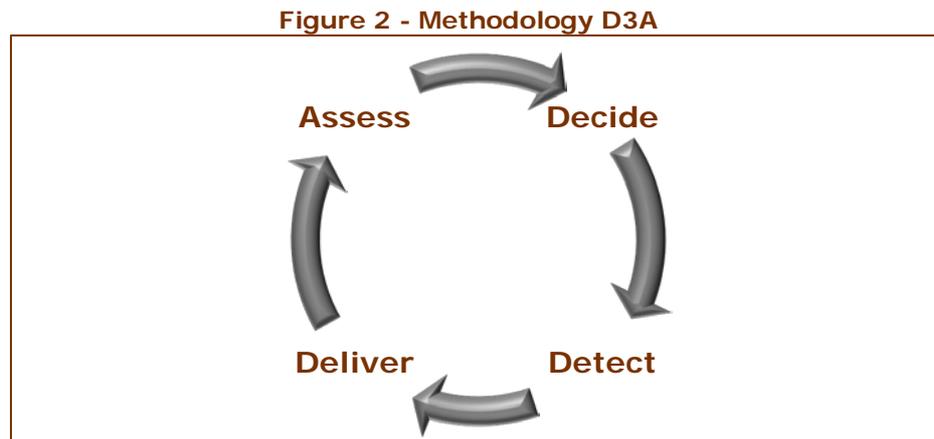
The process of target selection - "*Targeting*" - therefore encompasses the set of actions to identify, select and define current or future target priorities which, when carried out, are able to destroy, damage or decrease the opponent's abilities (FM 3-60: *Ibidem*).

Targets' abilities necessarily include the human means at their disposal, whether individuals belonging to an army - regular or insurgent - or to a terrorist organization. The advantages of a target selection process are, among others: the ability to identify sources or resources allowing an opponent, from the conflict perspective, to carry out actions and use resources and abilities. This makes its application extremely efficient within the scope of offensive counterterrorism.



Therefore, the selection of "high value targets" ⁴² aims at approaching (elimination or capture) of individuals in directing or leadership positions and are an asset in either technical or operational terms within a terrorist organization.

The process is divided into essentially four stages:



Source: Our design, See FM-3-60 (2010: p. 2-1)

D3A methodology cycle is:

- 1) **DECIDE** - decide on the target;
- 2) **DETECT** - detect and establish the target;
- 3) **DELIVER** - lead the operation (approach the target);
- 4) **ASSESS** – effects/damages in the approach ("have" the target).

The dynamics of this process, whose cycle can be longer or shorter, may be simplified in this formula: "*Find, Fix and Finish*"⁴³.

HUMINT offensive perspective: successes and (some) failures

On 31 December 2009, *Humam Khalil al-Balawi*, a Jordan doctor who had supposedly been recruited by GID⁴⁴ as a double agent to infiltrate the terrorist organization al-Qaeda, committed a suicide attack⁴⁵ and exploded at the Khost military station, in

⁴² *High-Value Target* (HVT): "Those assets that the Enemy Commander requires for successful completion of his mission"; *High-Payoff Target* (HPT): "Those HVT's that must be acquired and successfully attacked to achieve the Friendly Commander's mission" See FM 3-60 (2010), *The Targeting Process*, p. 2-2.

⁴³ "*Find*: find the enemy; *Fix*: Ensure the enemy stays (is fixed) in that location; *Finish*: Defeat the enemy". See Peritz, Aki, Eric Rosenbach (2012) *Find, Fix, Finish. Inside The Counterterrorism Campaigns That Killed Bin Laden and Devastated Al-Qaeda*. New York: Public Affairs.

⁴⁴ The Jordan Information Service, whose acronym is *General Intelligence Directorate* or *Mukhabarat*. One of the *al-Balawi* victims was exactly his handler, an agent of the Jordanian services and a cousin of the Jordanian King *Abdullah II, Ali bin Zeid*.

⁴⁵ According to a recording by *al-Balawi* immediately before the attack, he claimed avenging the death of the terrorist group leader *Tehrik-e-Taliban Pakistan* (TTP), *Baitullah Mehsud*, in August 2009, the target of a "*targeted killing*" action by *Drones*. See Warrick, Joby (2011) *The Triple Agent, The al-Qaeda Mole Who Infiltrated The CIA*. New York: Doubleday.



Afghanistan, eliminating the whole CIA team in the region, who was then expecting his contact for information collection.

This incident illustrates the complexity of counterterrorism *intelligence*⁴⁶, especially in HUMINT actions.

In the fight against terrorism, in particular that of Islam, the technology that most information services today have is incomplete without the *Intelligence* that is HUMINT.

Within the scope of the selection process of terrorist targets, *Intelligence* plays a crucial role in all its phases. However, it is in the infiltration of human sources of information in terrorist organizations or groups - or at least in their scope of action - that the process becomes difficult, not only due to the secrecy and closeness that are typical of these activities but also due to the specific features - linguistic, ethnic and religious - of the Jihadist terrorist circuit.

Ultimately, *Intelligence* seeks the most important for terrorism prevention: location and identification of elements from a terrorist organization whose knowledge, in advance or in time, will allow, on the one hand, canceling the action and, on the other, ruining its structuring and to capturing its members.

The most important use of *Intelligence* in counterterrorism is, thus, to gather and make available the information on terrorists, individuals, leaders, cells or groups, so as to break them up.

Paradoxically, the elimination of a terrorist target is not always the best option. The information which may be gathered - on the organization's structure, its members, plans of action, etc. - based on the "interviewing" of captured elements is important⁴⁷.

"Many intelligence and military officials argue that detaining and interviewing terrorists suspects is the most effective way to finish them, since they can provide information that will allow the find-fix-finish cycle to begin again; the debriefing of one suspect can aid in locating, isolating, capturing, or killing others" (Peritz & Rosenbach, 2012: 8 e 207-218).

HUMINT has therefore an important role in counterterrorism. Obtaining information from sources connected to ⁴⁸the structures of terrorist organizations allows access to precise and updated information on their structure, abilities and plans of action (Ganor, 2012: 155-156).

⁴⁶ The whole concept is visible here: information as a process (in general, the so-called "information cycle"), as the final product of this process (*Knowledge*) and from the functional perspective of the organizations carrying it out. See (Matos, 2011: 16).

⁴⁷ This is the case of the interrogation to *Khalid Sheik Mohammed* and later to *Abu Faraj al-Libi*, which may have led to identifying and locating bin Laden's "personal courier" - *Abu Ahmed al-Kuwaiti* - and, consequently, to the elimination of al-Qaeda's leader in May 2011.

⁴⁸ This "connection" to the source of the organization can be twofold: through a HUMINT infiltration process, in which the infiltration movement is operated from the outside to the inside of the organization. On the other hand, "penetrating" an organization can only be achieved when someone from the inside or someone with access to it can be "recruited". Frequently, both terms - infiltration and penetration - are used random and alternately. The infiltration process is harder to carry out, though, in counterterrorism, success is difficult to achieve in both cases.



Usually, *targeted killing* actions are part of a wider plan of action - beyond the action of "special forces" - with special focus on HUMINT and "*Covert*⁴⁹ & *Clandestine*⁵⁰ *Operations*". In the case of the USA, it is not uncommon for the CIA to lead the operations of "*targeted killing*" in the field, including coordination and leadership of attacks by *drones*.

"Targeted Killing"

The United States

The United States has come a long way since 9/11 up to now in terms of restructuring their foreign and security and defense policies.

As stated in their 2011 National Counterterrorist Strategy⁵¹, the American administration faces today "the world as it is"⁵² but does not give up from the attempt to make it "the world we seek"⁵³.

Part of the US military response to 9/11 terrorist attacks, though under the name "Global War on Counterterrorism" (GWOT), the air raids on the mountains of Afghanistan (where al-Qaeda top leaders were supposedly hidden) are the beginning of what later, in an offensive clearly directed against selected terrorist targets, would be designated *targeted killing*.

Despite the shadow of the American administration counterterrorist action being spread throughout the globe, the use of this tool is reserved to specific operation fields as, for example, Afghanistan, Pakistan, Yemen and Somalia.

Pakistan & Yemen

In a short analysis of the results obtained by the USA within counterterrorism - through *targeted killing by drones*⁵⁴ - in Pakistan and Yemen, an exponential increase in the number of attacks between 2004-2012, particularly after 2008, is visible. The (high) estimate for the period between 2004 and 2012, in particular in the Pakistani territory, is a total of 3,191⁵⁵ deaths, including "militants", "civilians" and "unknown".

⁴⁹ "Covert operations are defined as an operation that is so planned and executed as to conceal the identity of or permit plausible denial by the sponsor. A covert operation differs from a clandestine operation in that emphasis is placed on concealment of the identity of the sponsor rather than on concealment of the operation"; See U.S. Department of Defense (2010) *Dictionary of Military and Associated Terms*, Joint Publication 1-02: 88.

⁵⁰ "Clandestine operation as an operation sponsored or conducted by governmental departments or agencies in such a way as to assure secrecy or concealment. A clandestine operation differs from a covert operation in that emphasis is placed on concealment of the operation rather than on concealment of the identity of the sponsor. In special operations, an activity may be both covert and clandestine and may focus equally on operational considerations and intelligence-related activities." See Idem, *Ibid*, p. 56.

⁵¹ *U.S. National Strategy for Counterterrorism*, Washington D.C.: White House, June 2011: 1-2.

⁵² "The World as It Is". See *U.S. National Security Strategy*, Washington D.C.: White House, May 2010: 7-9.

⁵³ "The World We Seek". See *U.S. National Security Strategy*, Washington D.C.: White House, May 2010: 9-16.

⁵⁴ Manufactured by *General Atomics Aeronautical Systems Inc.*, in San Diego, the most used by the USA are MQ-1B Predator (CIA) and MQ-9 Reaper (USAF). Usually referred to as UAV (Unmanned Aerial Vehicle), they are also used for ISR (*Intelligence Surveillance and Reconnaissance*) VISINT (Visual Intelligence) operations. Both may be armed with *Hellfire* missiles, the MQ-9 Reaper may also have *laser* guided bombs. See Llenza, Michael Steven (2011) "*Targeted Killings in Pakistan: A Defense*", *Global Security Studies*: 47-59, Vol. 2 (2): 48-49.

⁵⁵ Data source: <http://counterterrorism.newamerica.net/drones> (data reported to 01 October 2012).



Noteworthy is also the increase in the "precision" of "selected" target execution, since, in 2012, the number of "civilian" casualties - frequently named "collateral damages" - is zero according to the referred data source.

The beginning of the Obama administration coincides with the increase in attacks and in deaths among militants or terrorist leaders⁵⁶.

Therefore, between 2004 and 2012, the USA eliminated, through executing selected targets, forty-nine individuals from the Taliban, al-Qaeda and Haqqani directing structures⁵⁷.

In the case of Yemen, the USA began their *drone* attack campaign in November 2002. That month, the first victim was *Qaed Salim Sinan al-Harethi*. Since then, fifty-one attacks have been launched, leading to two hundred and sixty-seven eliminated terrorists, among leaders and operationals, and eighty-two civilian casualties⁵⁸.

Israel

In an analogy with the metaphor used by Nye⁵⁹, we could say that Israel sleeps with an elephant⁶⁰ by its side; the problem is if the animal turns in its sleep.

The project of the State of Israel has been *ab initio* an endless political and military confrontation with neighboring Arab states, in particular with those next to its geographical borders. Most of the times, the confrontations have been in the form of terror actions against civilian or military targets in Israeli territory or against economic interests, critical infrastructures or Israeli citizens outside the country's borders.

This way, the terrorist threat on Israel is materialized through organizations or groups like the Hamas, particularly, through its "military arm" - the *Izzedin al-Qassam* Brigades - the *al-Aqsa* Martyr Brigade and the Lebanese Shiite group *Hezbollah*.

From this point of view, its counterterrorist response strategy is essentially offensive, carried out by IDF (Israel Defense Forces), by *Intelligence* and by police forces.

On 27 December 2011, IDF's⁶¹ page mentioned the elimination of two terrorist targets, *Rami Daoud Jabar Khafarna* and *Hazam Mahmud Sa'adi Al-Shakr*, members of the Sunni group Hamas, which were preparing a terrorist attack on the border between Israel and Egypt (in the Sinai peninsula). IDF classified the attack, carried out by an Air Force plane, as "surgical", adding in its official statement⁶² that

"The IDF will not allow any attempt to harm the State of Israel and IDF soldiers, and will continue to operate against anyone who uses terror against the State of Israel. The

⁵⁶ In 2008, 35 attacks; in 2009, 53; in 2010, 117; in 2011, 64; and in 2012, 39 attacks. From 2008 to 2012, there was a total of 308 attacks. Source: <http://www.longwarjournal.org/pakistan-strikes.php> (reporting to October 1, 2012).

⁵⁷ Source: *Idem, Ibid.*

⁵⁸ Source: <http://www.longwarjournal.org/multimedia/Yemen/code/Yemen-strike.php> (reporting to October 4, 2012).

⁵⁹ See NYE (2012), *Op. Cit.*: 26: "(...) Canadians complain that living next to the United States is like sleeping with an elephant. (...) if the monster turns, it will lead to harm".

⁶⁰ Especially Lebanon, Egypt, Syria and Iran, as well as the "old" threat from Palestinian terrorism.

⁶¹ Israel Defense Forces: Israel Defense Forces is a term which includes the country's Army, the Navy and the Air Force. See www.idf.il/.

⁶² Message always included at the end of news report related to terrorist action against Israel. In this sense, the "targeted killing" action, within the scope of counterterrorist response, is always publicly acknowledged by Israel.



*Hamas terror organization is solely responsible for any terror activity emanating from the Gaza strip*⁶³.

Up to a point, we could consider the operation "Wrath of God"⁶⁴ a distinctive feature in *targeted killing* actions by the State of Israel. The operation "Wrath of God", carried out by the *Mossad*, had a specific mission: "Committee X"⁶⁵ made the historic, but top secret decision to assassinate any Black September terrorists involved, directly or indirectly, in planning, assisting, or executing the attack at the Olympics. (...) The mission was not to capture anyone. It was out-and-out revenge – to terrorize the terrorists"⁶⁶.

More recent cases, as the elimination of Hamas military leader *Mahmoud al-Mabhouh* in Dubai, in January 2010, or the recent case of the Iranian nuclear scientist, *Mostafa Ahmadi-Roshan*, this January, make evident, on the one hand, the difficulties faced by counter terrorist strategies in which the role of *Intelligence* is that of objective efficiency and, on the other, legal, diplomatic and political restraints which, in unsuccessful cases as those mentioned, may weaken the image and positioning of a State within the international community.

The next figure (figure 3) shows the encompassing and coordinated Israel Intelligence community.

Considering that most terror activity occurs in areas controlled by the Palestinian Authority, Israel attributes great importance to the protection of its territorial borders and to actions aiming to infiltrate them. Frequently, IDF penetrates Palestinian jurisdiction areas for arrests or armed interventions against terrorist targets, which can be an individual or a physical structure in which it is known they are hidden. In the latter case, operations even contemplate air support (preferably helicopters) for total destruction of the location. These actions are referred to as "*house demolitions*"⁶⁷. This type of intervention may imply huge collateral damages, i.e., the physical elimination of civilian targets and the physical destruction of adjoining buildings. In general, they are a response to rocket launching from the Gaza Strip against the State of Israel.

⁶³ See "IAF aircraft target two Global Jihad affiliated-terrorists in northern Gaza who prepared attacks on Israel-Egypt border", (27.12.2011): <http://www.idf.il/1283-14340-EN/Dover.aspx>.

⁶⁴ "Wrath of God" Name of the operation carried out by *Mossad* against those responsible for the terrorist attacks on the 1972 Israeli Olympic team in Munich - Black September group, whose leader, *Ali Hassan Salameh* ("The Red Prince"), would only be eliminated on 22 January 1979 in Lebanon, seven years after the beginning of the retaliation by "the long arm of the Israeli Justice".

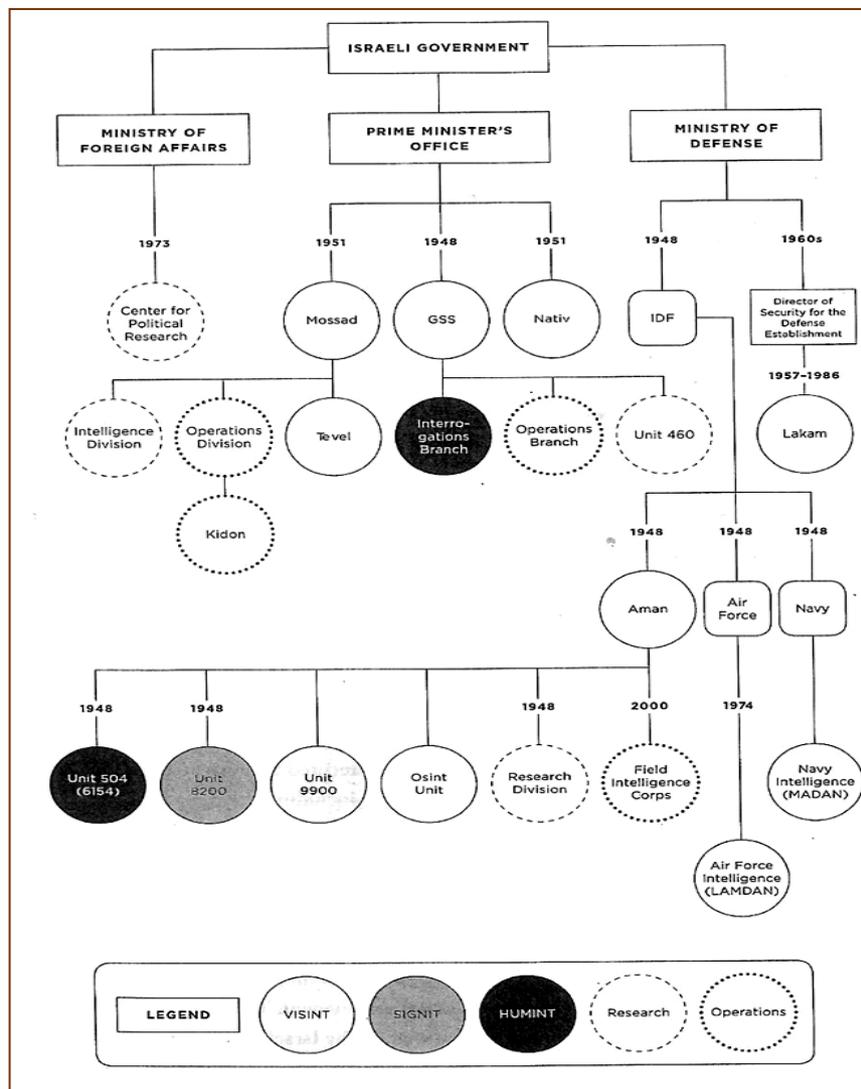
⁶⁵ "Committee X", presided by Golda Meir and Moshe Dayan, was top secret.

⁶⁶ See Raviv, Dan, Yossi Melman (1990) *Every Spy A Prince, The Complete History of Israel`s Intelligence Community*. Boston: Jaffe Book, p. 186; Payne, Ronald (1990) *Mossad, Israel`s Most Secret Service*. New York: Bantam Press.

⁶⁷ See Benmelech, Efraim *et alli*. (2009), "*Counter-Suicide-Terrorism: Evidence from House Demolitions*", Cambridge: National Bureau of Economic Research, Working Paper n.º 16493: 1-4.



Figure 3 - Israel Intelligence Community

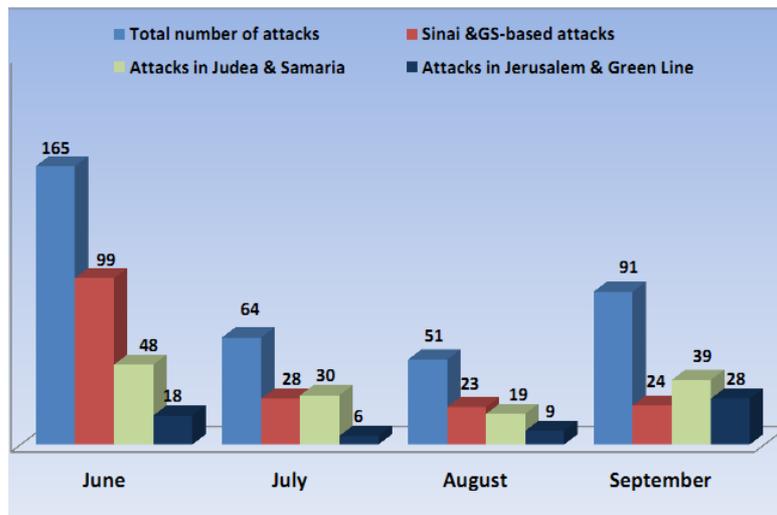


Source: Pedahzur (2010: p. 4)

Besides this "heavy fire" method, the most lethal threats against Israeli targets are bombs and suicide attacks. Figure 4 shows the terrorist activity against Israel between June and September 2012, in "demarcated" areas such as Judea and Samaria, Sinai and the Gaza Strip and Jerusalem. Though the number of attacks is significant, their lethal degree is rather low or null, except for a few cases, as a result of Israel's long experience in terrorism as well as of the country's increase in protective measures and offensive response, which has been in place for long.



Figure 4 - Perspective of terrorist attacks in Israel (June – September 2012)⁶⁸



Source: www.shabak.gov.il

According to the report mentioned above, and though there was an increase in terrorist activity in October when compared to July and August, the total number of successful attacks was much lower than 165, the number of attacks in June.

However, for this period, and taking into account the total of 371 attacks within the four months, "only" one military from the Defense Forces of Israel was killed and another wounded, and four police officers suffered minor injuries.

Conclusion

Within the scope of more offensive counter terrorist strategies, other techniques could be mentioned as related to *targeted killing*, as is the case of "*shoot to kill policing*", generally more used by police forces in urban context⁶⁹, or "*extraordinary renditions*"⁷⁰ which may be particularly useful in *Intelligence* because of the timely information they can provide on terrorist activity.

However, no counter terrorist strategy has proven complete efficiency in terms of response to terrorism. Even the use of most offensive models has been unsuccessful in the cancelling or predicting events such as those which occurred in Madrid, London or, more recently, in Oslo and Toulouse.

⁶⁸ Israel Security Agency (2012), *Monthly Summary – September 2012 Report*, p. 2. Available at: www.shabak.gov.il. [Retrieved on October 10].

⁶⁹ The most relevant example is that of Jean Charles de Menezes, shot in London on 22 July 2005, after the successful attacks on July 7 and the failed attacks on July 21, due to mistaken identity. The British police, believing he was a terrorist and due to his reluctance to abide to police request to stop - increasing police suspicion - shot and killed him (about 5 to 9 close range shots to the head).

⁷⁰ "extraordinary rendition occurs when American Authorities render an individual without the consent of the host country. (...) Renditions, extraordinary or otherwise, have advantages. First and foremost, rendition is one way of removing terror suspects from the streets. (...) The act of rendition may also disrupt terrorist plots in their planning phases, as individuals critical to the successful planning of a terrorist operation are incapacitated". See Peritz, Rosenbach, 2012: 64.



A qualitative analysis (successful vs. unsuccessful attacks) of the independent cells' efficiency, for example in Europe, would allow us to conclude that these are less efficient than those which, though autonomous - as the Madrid and London cells - establish links with other terrorist structures. Diffuse and poorly organized structures, limited to one individual as in the case of individual (lone-wolf) terrorism, may present a serious obstacle to security forces and services monitoring and controlling their activities.

The recent case of Mohammed Merah, French citizen of Algerian descent responsible for the murder of seven people in the French region of Toulouse, among which three Jewish children, evidences the threat of "spontaneous" or "trigger" terrorism.

Only time will allow us to understand this individual's links to other terrorist groups or his frequently claimed role in an attempt by DCRI⁷¹ or DGSE⁷² to infiltrate extremist groups. We aim to further discuss this issue.

Meanwhile, "The failure may be content; the victim may claim damages; and the loser may get ready for the next round. On the contrary, extreme losers hide away, become invisible, care for their ghosts, gather energy and wait for their turn. (...) they are, for once, masters of life and death" (Enzensberger, 2008: 10 and 17).

This is, thus, an invisible, silent threat... which we are not ready for. This army of "extreme losers" are, even if just once and for one last moment, at the head of the game.

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⁷¹ Direction Centrale du Renseignement Intérieur.

⁷² Direction Générale de la Sécurité Extérieure.



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TERRORISM, ETHNICITY AND ISLAMIC EXTREMISM IN SAHEL

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Abstract

Terrorism is a threat in the Sahel region, where peoples and rulers seem to be losing control of the situation. Yet, the true origins of the instability are questionable. Ethnic conflicts and the religious differences, especially those related with the spreading of Islamic extremism among the local population, are two of the main reasons. This research paper analyzes different theories so as to attain some answers to these issues.

Keywords:

Terrorism; Sahel; Touareg; AQIM; Boko Haram

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TERRORISM, ETHNICITY AND ISLAMIC EXTREMISM IN SAHEL

Maria Sousa Galito

1. Introduction

This research paper focuses on analyzing the context of African Sahel. From a methodological point of view, several hypotheses are studied which we deemed relevant, duly founded in specialized scientific sources.

First, we will discuss whether the growing instability in that strategic region is due to a border issue and, if that is so, what are the grounds for this.

Secondly, we will study whether there are indeed insoluble ethnical conflicts and if these are the main reason for terrorism or if it is more an economic issue related with the lack of resources in Sahel.

Thirdly, if the responsibility should be assigned to religious differences, namely to the leaders of religious extremism in terrorist groups such as Boko Haram in Nigeria, AQIM as regional al-Qaeda cell, or if they are due to the Touareg Islamic extremism or autonomy struggle.

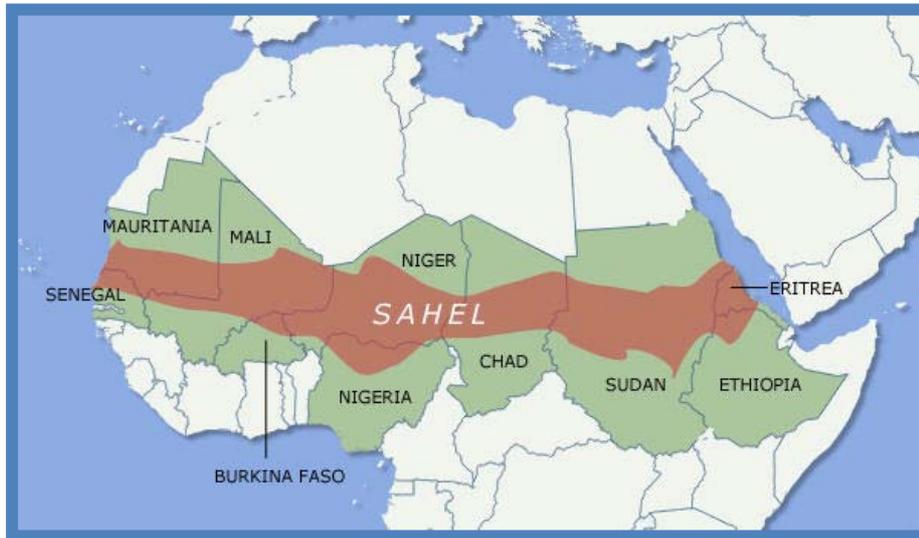
2. Sahel Geopolitics

Sahel is a region which crosses Africa from East to West. South of the Maghreb, it includes countries such as Senegal and Mauritania, Mali, Niger, Burkina Faso, Nigeria and Chad, Southern Sudan and Northern Sudan, Eritrea and Ethiopia - as shown in Map 1.

Other countries are related to it, either because of their closeness or of their strong link with Sahel. Somalia, given the porousness of the borders with Ethiopia. States on the coast of Africa between Senegal and Nigeria, i.e., Gambia, Guinea Bissau, Guinea Conakry, Sierra Leone, Liberia, the Ivory Coast, Ghana, Togo and Benin. The Maghreb itself, considering the conflict in west Sahara; the fall of the regimes in Egypt and in Tunisia after the "Arab Spring", which influenced mercenary and bomber mobility from North to South; and Algeria, due to its history of violence and terrorism.



MAP 1: Sahel–Geography



Source: Qantara.de (Deutsche Welle)¹

This is a particularly wide area inhabited by different peoples and cultures, making it rather difficult to analyze. There are common features, such as: instability in political borders, significant increase in violence and the fact that national governments seem unable to control the activities of organized crime - either because they are unstable, corrupt or because they are badly prepared to fight terrorism in terms of logistics.

What can account for the situation? This paper aims at providing some explanations. Firstly, the Berlin Conference (1884/85) was a historical milestone in this context because it created a border issue in Africa. The powers which participated in the conference (13 from Europe, plus the USA and Turkey) focused on negotiating a peaceful agreement for the balance of powers at the time. However, it did not take into consideration the political and social reality of each area, leading to nations being separated and rival peoples being united, regardless of the consequences and long-term impact of these decisions², besides the fact that it led to mass exploitation of the peoples living in those areas. Sahel was mainly ruled by Great-Britain (Nigeria, Southern Sudan and Northern Sudan) and France (Mauritania, Senegal, Burkina Faso, Mali, Niger, Chad). Italy rather influenced the eastern part of the territory (Eritrea, Ethiopia and Somalia).

¹ Dorsey, James M (2010). "Islamic Terrorism – Drugs Money Fills al Qaeda Coffers in West Africa". *Qantara.de, Deutsche Welle*, Federal Center for Political Education, January 22, URL: <http://en.qantara.de/Drugs-Money-Fills-al-Qaeda-Coffers-in-West-Africa/6973c7042i1p447/>.

² "Artificial States are those whose political borders do not coincide with the division of nationalities as desired by the populations. Former colonizers or post-war agreements established among winners, not taking this into consideration, created monstrosities in which ethnical or religious or linguistic groups were united or separated without regard for the aspirations of the peoples. 80% of African borders follow latitudinal or longitudinal lines and many scholars believe these artificial divisions (...) are the roots for the African economic tragedy." [Alesina, Alberto *et al.* (2006). "Artificial States". *Harvard University Working Papers*, February, p. 2. URL: http://www.economics.harvard.edu/faculty/alesina/files/artificial_states.pdf].



The powers which obtained international rights over wide territories in Sahel realized that their presence in Africa would be more tolerated if the peoples were not united against them. The objective was divide to rule, so they took advantage of local rivalries and, in some cases, even fostered them. As a consequence, European companies could continue to explore the natural resources crucial to their industrialization without many obstacles.

Secondly, at the end of World War II, Great-Britain, France and Italy were half destroyed and no longer could keep their economic and military power over Sahel. Ethiopia participated in the Bandung Conference in 1955. It wasn't long before the several countries became independent, especially during the 1960s. The *Non-Aligned Movement* developed and held regular meetings. Curiously, a certain consensus was reached to maintain the borders established during the colonial period and the Organization of African Unity (OAU) was a great supporter of this strategic decision³.

Thirdly, the new independent States seem to have concentrated their efforts in terms of military and administrative control in the capital cities and left the rest of country in the lurch. This leads to huge migration movements and exodus of people from rural areas, particularly evident in dry and semi-dry regions near the Sahara desert because of the low level of fertility and lack of population⁴.

In any case, it is important to understand why these difficulties continue decades after independence. Though it is acknowledged that there are problems due to external intervention, which is potentially destabilizing, from a theoretical point of view, you would expect these peoples to have had the time to propose or impose adjustments in their areas of influence. Can this be an issue of lack of resources, an economic issue?

Sahel is about 5 million Km². However, if we simply add the area of the ten countries analyzed in Table 1 (Burkina Faso, Chad, Eritrea, Ethiopia, Mali, Mauritania, Niger, Nigeria, Senegal and Sudan⁵), we have about 6.69% of the world's total area. With the exception of more populated countries like Nigeria, with 164.752 million inhabitants, and Ethiopia, with 88.918 million, the majority of States has less than 15 million inhabitants: Eritrea has about 5 million and Mauritania a little over 3 million citizens.

Sahel includes dry and semi-dry regions in the confluence of the Sahara desert. It has gone through regular dry periods, which conditions territories with low agricultural capacity and which have little food for cattle, where peoples' economic activity is pastoralism. This means that the populations' activities are in the primary sector but under precarious conditions; unemployment rates are high and people live in an area in which the population is very sparse (Chad has an average of seven inhabitants per Km² and Mauritania two; in the ten countries the average is 32 inhabitants per Km²).

³ "By keeping the borders and the modern State as their main organizers, the African countries also kept the conditions to consolidate the power conditions from the colonial period. The Organization of African Unity (OAU) endorsed the new countries, emphasized the importance of keeping the borders and rejected any type of self-determination except that of countries still under European control." [Schneider, Luíza G. (2008). "As Causas Políticas do Conflito do Sudão: Determinantes Estruturais e Estratégicos", *WP Universidade Federal do Rio Grande do Sul*, Faculdade de Ciências Econômicas; p. 14. URL: <http://www.lume.ufrgs.br/bitstream/handle/10183/16012/000685618.pdf?sequence=1>].

⁴ "(...) these new countries did not have enough state capacity, which led to power being concentrated in the capital cities and economic enclaves, leaving the rest of the country unattended." [ID IBID.].

⁵ Presently, Sudan is divided into two countries (North and South) but statistics in this table use statistical sources, which is why there is reference to "Sudan" in general.



TABLE 1

<i>Countries</i>	<i>Population (in millions) 2012</i>	<i>Area (% World)</i>	<i>Population density (2012) inhabitants/Km2</i>	<i>GDP PPP per capita (dollars) 2012</i>	<i>Failed States index (2012)</i>
Burkina Faso	15,379	0,18	48	1524,063	41
Chad	10,740	0,86	7	1969,907	4
Eritrea	5,659	0,08	39	776,978	23
Ethiopia	88,918	0,74	68	1135,157	17
Mali	16,345	0,83	11	1173,635	79
Mauritania	3,334	0,69	2	2268,692	38
Niger	15,553	0,85	10	863,457	18
Nigeria	164,752	0,62	147	2722,250	14
Senegal	13,766	0,13	59	1921,495	71
Sudan	33,510	1,7	14	2495,902	3
Total Sahel	367,956	6,69	32	16851,536	--

Source: FMI (2012)⁶, Nations Online (1998-2011)⁷ e Fundo para a Paz (2012)⁸

Therefore, the region includes wide spaces with sparse population, where it is possible to circulate without much state supervision, providing an opportunity for terrorism and international networks of organized crime.

On the one hand, Sahel includes very poor States such as Eritrea, whose GDP PPP *per capita* is only 776.978 dollars, and Niger, whose GDP PPP is 863.457 dollars. The highest numbers are found in Nigeria and Sudan, but still there are not high; they are due to the high revenue of the oil sector, which is badly distributed among the population.

On the other hand, these States are at the top (especially Chad and Sudan) of the Failed States Index for the African Peace Facility (2012)⁹. Bad governance and corruption prevent economic development and, consequently, the implementation of measures to efficiently fight terrorism.

⁶ INTERNATIONAL MONETARY FUND (2012). "Report for Selected Countries and Subjects". *World Economic Outlook Database*, Data and Statistics, April. URL: <http://www.imf.org/>.

⁷ NATIONS ONLINE (1998-2011). "Countries by Area". *The Nations Online Project*, Earth/Continents, URL: http://www.nationsonline.org/oneworld/countries_by_area.htm.

⁸ THE FOUND FOR PEACE (2012). "The Failed States Index 2012". *FFP on-line*, Washington D.C. URL: <http://www.fundforpeace.org/global/?q=fsi2012>.

⁹ The name "failed State" is controversial. According to Rotberg (2002), Failed States are tense, confrontational and dangerous. Criminal and political violence has increased in those countries; there is loss of border control; ethnical, religious, linguistic and cultural hostilities have risen; there is civil war; terror is used against their citizens; their institutions are fragile; their infrastructures have deteriorated or are insufficient; taxes cannot be collected without coercion; there is much corruption; their health system has collapsed; child mortality rate has gone up and average life expectancy rate has gone down; there are no regular school activities; GDP rates *per capita* are decreasing; inflation is galloping; foreign currency is generally preferred; there is lack of staple goods, which leads to hunger; attacks to fundamental legitimacy have increased; leaders focus on their own interests; *lobbies* show less and less loyalty to the State; citizens feel marginalized and that they do not belong to the political community; the relation between the population and the State has collapsed; animosity is visible on a daily basis. [Rotberg, Robert I. (2002). "Failed States in a World of Terror". *Foreign Affairs*, July-August, V. 81, N.4, p. 132].



But are there ethnical conflicts in Sahel? The borders are violently disputed because the limits are non consensual and the established *lobbies* fiercely fight for the control of natural resources. But is the basis for the fight ethnical or is this a subsequent problem? This is not an easy question. First, we must analyze if, in each particular case, there are two or more ethnical groups (or if the populations are just angry at one another) and, if there are, whether they are in conflict.

In Nigeria, the ethnical issue is rather politicized. Each group fights for stronger representation of their interests in key or government positions and claims a bigger slice in the distribution of national resources. This means that the ethnical issue is, at this point, insurmountable in a country practically divided in two, the north and the south, in parallel with the religious divide (in the north, Islamism is prominent). The Niger Delta has been particularly affected by terrorist attacks.

In Mauritania there are members of the Wolof ethnical group who are Islamic but the country is mainly populated by Berbers, subdivided into two categories: the "white Moors" and the "black Moors"¹⁰, who are mostly Muslims. Is there an ethnical issue here? The problem in Mauritania is that the anti-slave laws are not complied to in certain areas of the country because skin colour discrimination is very deeply rooted in the population's frame of mind¹¹. Thus, the issue is more political and social than ethnical.

But what about the ethnical conflicts with the Touareg? First of all, the terrorist attacks are perpetrated by religious extremists, so they should be viewed accordingly. In general, they are a mild people of Berber origin and nomadic life who keep their ancestral lifestyle and who are mostly Muslim.

The problem is that the Touareg (whose Arabic name means "abandoned by the gods") were victims of the Berlin Conference (they are still today scattered throughout the Sahara desert in countries such as Algeria, Mali, Libya, Niger and Burkina Faso). When the Touareg are in conflict with neighbouring peoples because of independence or as a consequence of their guerrilla activity, is that an ethnical conflict? Yes, it is, but one which could have been prevented if a State had been created that institutionalized them and allowed them a peaceful coexistence in the area they live in. However, as they live in at least five States, this would demand strong national cohesion among the Touareg and a multilateral negotiation with the countries involved and international organizations such as the African Union or the UN.

The Touareg are influential in the routes through the desert of Libya, namely in the southwest, and there were members of this ethnic group among the revolutionaries

¹⁰ "The complex racial issue in Mauritania also affects the areas where the Islamic population lives. Mauritania has three main racial groups: the *Bidan* or "White Moors", who speak Arabic; the *Haratin* or "Black Moors", who also speak Arabic; and the black populations who do not speak Arabic, including ethnical groups such as the Wolof and the Soninke." [Thurston, Alex (2012). "Mauritania's Islamists". *The Carnegie Papers*, Middle East, Carnegie Endowment for International Peace, March, Washington DC, p. 6]».

¹¹ "The White Moors descend from slave traders and have been at the top of the political and social hierarchy in Mauritania for a long time. Slavery of non-white moors has continued up to the present despite the laws forbidding it. Since the 1970s, non-white moors have become more and more vocal in their fight against slavery, demanding a more prominent role in political power. Islamic leaders and activists have been essentially White Moors. However, as the *Haratin* have become more influential and taken on leadership roles, not only in politics but also as Imams and Muslim scholars, Islamists, who seem interested in using Islam as a pan-racial political rallying platform, may now be able to attract new groups." [Thurston, Alex (2012), *op. cit.*, pp. 6-7].



against the dictatorship. The changes in the geopolitical chess game after the "Arab Spring" have led to political and social instability, to the lack of government and to greater freedom of action for organized crime in Sahel and Maghreb, especially after the fall of Muamar Kadafi, who had controlled the rivalries among tribal leaders with an iron fist.

Libya is now in a climate of uncertainty as to the future of its new democracy, yet unable to establish social order and peace. The country is on the verge of generalized chaos after the breaking up of local alliances to overthrow Kadafi; militias now defend the interests of the regions they belong to. Tribal leaders take advantage of the lack of power to invest in terrorist attacks and in organized crime (and its huge profits), including in drug trafficking, whose main international routes are through Sahel - from Latin America, especially from the Andes and from Colombia, in the case of cocaine, towards Europe and the Middle East (where powers such as Saudi Arabia and Iran are probable receivers of drug trafficking and financiers of terrorism).

3. Terrorism in Sahel - AQIM and BOKO HARAM

The penetration of Islamist fundamentalism in Sahel is the result of decade-long historical development. Associated to arms and drug trafficking, money laundering and strategic support of religious, humanitarian and cultural local non-profit organizations (NGOs), it is carried out by different dissident groups. These NGOs appear under the guise of charities who care for those in need as well as *protect the Muslim from their enemies* as well as spread the faith and raise funds (the sources are countries in Sahel such as Sudan or the Arab Peninsula) which are then used to finance logistics in terrorist organizations. These NGOs even have subsidiaries in Europe and the USA, which help to globalize extremist activities and rhetoric among immigrant communities (often marginalized in the host countries, which adds to the vicious cycle).

In the Sahel region, two terrorist groups are relevant: AQIM and Boko Haram (in Nigeria).

AQIM (Al-Qaeda in Islamic Maghreb) has been based in Algeria since the civil war (1991/1992), considering that some its leaders were radicals from the Islamic Salvation Front (ISF). The strategy of Salafist Group for Preaching and Combat (SGPC) which was the predecessor of AQIM, founded in 2007, is to create a network that spreads extremist rhetoric at local as well as global level¹². AQIM operation centre has, however, been transferred to the north of Mali, where its recruitment and training camps are located.

We cannot rule out the chance of AQIM being involved with Touareg in smuggling and arms and drug trafficking across Mali, specifically in the region of Katibat al-Mulathamine. Even when authors like Black (2009) state that "there is no clear evidence of the relation" between the Touareg and members of AQIM¹³ due to lack of common ideological agenda and to foreigners rather than Mali dissidents being the main smugglers in the region.

¹² See Marret, Jean-Luc (2008). "Al-Qaeda in Islamic Maghreb: A «Glocal» Organization". *Studies in Conflict and Terrorism*, Vol. 31, N.º 6, June, pp. 541-552.

¹³ See Black, Andrew (2009). "Mokhtar Belmokhtar: The Algerian Jihad's Southern Amir". *Terrorism Monitor*, Vol. VII, Issue 12, May 8, p. 2.



AQIM is becoming famous and, consequently, popular in Sahel¹⁴. Lohmann (2011)¹⁵ admits that the terrorist organization was initially overlooked because it was considered weak and isolated. Yet, it has become stronger in the last decade due to successful integration strategies in the region and to leaders' activities (who are highly competitive among themselves, which may contribute to internal disintegration of the organization's command structure). Also because of its link to Al-Qaeda, which has spread from the Middle East.

When Al-Qaeda is discussed, the attacks to the Twin Towers and to the Pentagon are mentioned. Haim Malka (2010) even contends that the terrorism in Northern Africa was localized and controlled before the international anti-terrorist campaign after the attacks on September 11, 2001, in the USA and that after that everything changed¹⁶.

To confirm this idea, see Map 2, in which it is visible the significant increase in the number of terrorist attacks in Northern Africa since the historical date of September 11, 2001; from 21 (in 2001) to 44 (2004), 104 (2005) and 204 (2009); there was a slight decrease in 2010, when the number of terrorist attacks did not reach 200 (178, to be precise).

It is admitted that AQIM is adopting measures similar to those of 19th century colonizers Who divided to rule. A strategy that is still successful. If, for some reason, it is difficult to control wider spaces, where there are too many groups fighting for them (some of which not Muslim or which do not identify with extremist practices used by Al-Qaeda or by AQIM), separatism and nationalism are fostered, popular in this area of intervention, and integration of terrorist cells are facilitated in a highly profitable strategic scenario.

AQIM focuses especially on kidnapping (usually of foreigners) with high ransom requests. This terrorist group is also an intermediary in different trafficking, including drugs, counterfeit medicines, human, organs, which generate high revenue and others' greed. Whenever AQIM sells arms to local insurgents for their military campaigns, it maintains its control over leaders who own it money. It manipulates the rivalries among leaders and peoples so that they not unite against AQIM or its main sources of financing from the Middle East.

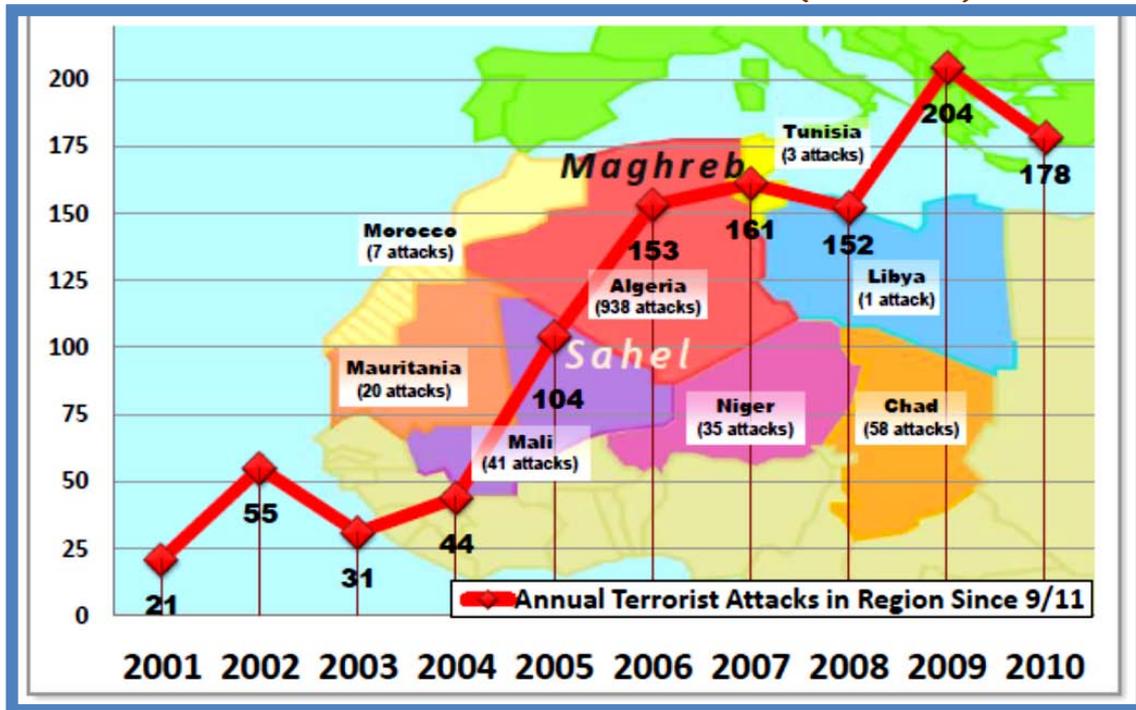
¹⁴ "Any violent insurgent in the Muslim world, whether a politician or a common citizen, and regardless of their motives, will easily understand they must publicly act in the name of Al-Qaeda if they wish to be taken seriously, if they aim to act and be acknowledged by others and if they want to draw international attention to their activities." [Taje, Mehdi (2010). "Vulnerabilities and Factors of Insecurity in the SAHEL". *Sahel and West Africa Club (Swac/OECD)*, West African Challenges, N.º 1, August, p. 6].

¹⁵ "AQIM was considered weak and isolated but it managed to integrate with local communities and establish a cooperation with government authorities and those responsible for security, as well as with regional drug traffickers and other criminal organizations. Therefore, it aims to destabilize the whole region so as to promote its economic and political interests through raising insecurity" [Lohmann, Annette (2011). "Qui sont les Maîtres du Sahara? – Vieux Conflits, Nouvelles Menaces: Le Mali et le Sahara Central entre les Touaregs, Al Qaeda et le Crime Organisé". *Friedrich-Ebert Stiftung*, FES Peace and Security Series, N.º 5, June, p. 9].

¹⁶ See Malka, Haim (2010). "The Dynamics of North African Terrorism". CSIS – Center for Strategic & International Studies, Conference Report, Middle East Program, March, Washington DC, pp. 1-8.



MAP 2: Terrorist Attacks in Northern Africa (2001/2010)



Source: Yonah Alexander (2010)¹⁷

AQIM has benefitted from the flow of arms and militia from Libya after the fall of the regime as a consequence of the "Arab Spring". Arms are getting into Mali, an already vulnerable country, brought by Touareg extremists. This somewhat undermines the anti-terrorist cooperation effort which was being established among Algeria, Mali and Mauritania.

Thus, social and political rivalries and religious alliances are managed according to conveniences and used to control the situation from a wider perspective. Instability mainly results from terrorist groups' manipulation of internal conflicts. These groups are often financed and controlled from abroad. Both civilians and guerrilla fighters are highly manipulated by malicious criminals who only apparently care with poverty or justice of independence claims but are rather more interested in using them for their own interests, often economic.

The issue is also eminently economic in Nigeria, a country rich in natural resources, including oil and natural gas. This is the area of Boko Haram, an Islamic fundamentalist organization which advocates the application of *Sharia* laws and takes advantage of the high levels of government corruption to act with impunity¹⁸.

¹⁷ Yonah Alexander (2010) "Maghreb & Sahel Terrorism: Addressing the Rising threat from al-Qaeda and other Terrorists in North and West/Central Africa". *International Center for Terrorism Studies*, Potomac Institute for Policy Studies, January, p. 4.

¹⁸ "The government of Nigeria has tried to efficiently deal with the complaints and sources of tension in the country and there is widespread belief among northern Nigerians that the government continues to fail in terms of the needs of those aiming for a better future for the country. Though resources are limited, the distribution of those resources is unbalanced and the well-known levels of corruption among the elites prejudice the government's efficiency. On the other hand, corruption and general perception that government officials application of the law is unworthy further undermine the government's capacity



Boko Haram received media coverage in December 2003, when it drew world attention. However, its origins may be the Maitatsine movement¹⁹ (name of a series of rebellions started by a martyr from the northeast of Nigeria, Mohamed Marwa or Maitatsine, especially dangerous in the 1970s and whose steps were followed in the 1980s by another Mujahidin rebellion leader, Yan Tatsine).

The intensity (and number) of more recent activities of Boko Haram is considered "highly concerning" by authors such as Pham (2012)²⁰.

In Northern Nigeria, the rules are set by Muslim ethnical groups, the Hausa-Fulani being especially influential, the more so because of their international relations with Muslim brotherhoods from Africa and the Middle East. The headquarters of the terrorist group Boko Haram is in the north, but the group also operated in the south.

In the south of Nigeria, most of the population is Christian or animist. The main ethnical group is Ijaw and the extremists in this group are mostly army dissidents aiming to control local natural resources. The Hausa-Fulani are Islamic and dominate the north of Nigeria. They have strong relations with Muslim brotherhoods in other regions of Africa and even in the Middle East

The instability in the Niger Delta, in the south of Nigeria (which includes States such as Abia, Akwa Ibom, Bayelsa, Cross River, Delta, Edo, Imo, Ondo and Rivers), is essentially ethnical and political. Nevertheless, it is the greed to manage local natural resources that is the source of conflict among rival groups in this strategic region.

The Niger Delta is the big source of oil in Nigeria. Several foreign companies operate there, which are accused of exploiting local populations. The populations have a low quality of life and survive in a context of increasing pollution due to the emissions of carbon dioxide, acid rain and *flaring* (gas emissions associated with oil extraction). This is the reason why the populist and inflamed speeches of members of Boko Haram are carefully listened to. The population feels they are poor and wronged and have no means to react to an ongoing situation of social and economic imbalance. They therefore admit resorting to violence to promote, even if through violence, to a greater balance in the distribution of natural wealth.

Yet, the question arises: if since its independence Nigeria had been ruled by credible and incorrupt leaders, if it were a true democratic constitutional State which ensured the fair distribution of resources among the populations in the north and south of the country, would the country today have such a significant ethnical politicization? Would the population be as vulnerable to Boko Haram's extremist ideologies? This is a hard question to answer as it would require field test. Yet perhaps the divide would not be as wide. Confidence and reciprocity are bases for good neighbourhood relations; fair

to influence the behaviour of local community members in the positive, far from the radical ideological temptation of extremists such as Boko Haram." [Forest, James J. (2012). "Confronting the Terrorism of Boko Haram in Nigeria". *Joint Special Operations University – JSOU Reports*, May, p. 11].

¹⁹ See Isichei, Elizabeth (1987). "The Maitatsine Risings in Nigeria 1980-1985: A Revolt of the Disinherited". *Journal of Religion in Africa*, Vol. 17, N.º 3, pp. 194-208.

²⁰ "The re-emergence of the Nigerian Islamic group Boko Haram is reason for great concern. This group has orchestrated, since the end of 2010, a campaign of attacks in the whole of northern Nigeria, against authorities and public institutions and more and more against innocent lives, including children's. In 2011 alone, 550 people died in 115 attacks, a terrifying number which never ceases to increase. Meanwhile, Boko Haram's discourse and tactics show that the organization has spread its influence beyond its original basis - the northeast of Nigeria. In fact, it is becoming an transnational threat, with ramifications in other fundamentalist groups in the north, the west or the east of Africa." [Pham, J. Peter (2012). "A Ameaça Crescente do Boko Haram". *Centro de Estudos Estratégicos de África*, N.º 20, Abril, p.1].



and integrating, peace-caring and transparent policies lead to peaceful citizens. Otherwise, everything becomes more complex and problematic with time.

In this context of spurious alliances, it is not easy to establish a direct and intense relation between groups such as AQIM and Boko Haram but it is possible they are getting closer in the field. Noteworthy are the recent change in *modus operandi* and in discourse²¹ of members of Boko Haram (who preferred kidnapping of foreigners and now carry out more suicide attacks)²², the fact that members of AQIM have expressed greater availability to train members of Boko Haram²³ and the suspicions among the population.

This means that, regardless of there being ethnical or religious conflicts (or of only apparently being so as a consequence of other variables), the possibility exists of solutions for the region including policies of economic growth that provide work opportunities for populations in need, as well as that an elite rises to power who is less focused on their personal/group interests and more on the real needs of the country and its population.

Within the scope of security, more equipment is obviously necessary in the fight against terrorism. Yet, if the levels of corruption are maintained, the investment will be of little use. It is important to negotiate a better coordination of security services, both at internal and at regional levels, as the effort needs to be coordinated among countries to be successful. With better social cohesion and "everybody pulling together", difficulties may become opportunities to build stronger, more democratic and economically more stable countries which allow their populations to have a more peaceful and safer life, one free of terrorism.

4. Conclusion

The borders of the countries in Sahel were inherited from colonialism, which defined them arbitrarily. These were kept after the independence but they are mostly artificial borders because they do not take into consideration how the peoples are organized and distributed in the territory. To rule the capital as if it was the whole country has been a recurring mistake made by the governments of these States because it neglects the supervision of wide areas where organized crime often acts freely. It is important to

²¹ "More recently, the Islamic fundamentalist group Boko Haram, from Northern Nigeria, have increased the number of national attacks against civil and governmental targets and has also attacked (the building of) the United Nations in Abuja, announcing they are not only concerned with internal developments but also have a wider and transnational agenda (...) the increase in Islamic extremist activity in Sub-Saharan Africa, and more specifically in Nigeria, is starting to echo as in the Middle East." [Forest, James J. F. and Giroux, Jennifer (2011). "Terrorism and Political Violence in Africa: Contemporary Trends in a Shifting Terrain". *Perspectives on Terrorism*, Vol. 5, Issues 3-4, September, p. 10].

²² "Boko Haram's transition to suicide attacks suggests that the group may have relations with other major Salafist Jihadist organizations. The posting of a video of a faith martyr in September 2011, a media event not associated to regional radical Islamic groups, suggests links with AQIM or with Al-Shabab, both of which use this methodology." [Cook, David (2011). "The Rise of Boko Haram in Nigeria". *Combating Terrorism Center at West Point – CTC Sentinel*, Vol. 4, Issue 9, September, p. 5].

²³ "Allegedly, members of Boko Haram have received training in Algeria and in Mauritania (...) two areas where AQIM is the major operator (...) members of Boko Haram have allegedly been trained directly by AQIM in Niger after AQIM opened to the group (...) If Boko Haram will become a franchise of Al-Qaeda is still not certain. There is strong possibility this may occur and, if it does, that will take place in the next one or two years, considering the information available." [Gourley, Sean M. (2012). "Linkages between Boko Haram and Al Qaeda: A potential Deadly Synergy". *Global Security Studies*, Summer, Vol. 3, Issue 3, p. 10].



understand that Sahel is mostly populated in the south; in the north the territory is sparsely populated (in average less than 10 inhabitants per Km²).

To eradicate terrorism in Sahel demands, first and foremost, solutions in terms of defense and security, because if there is no control over the activities carried out by organized crime (trafficking of arms, drugs and counterfeit medicines, of human beings and organs), to maintain the order in these territories will be very difficult. The peoples need to feel safe but also to understand that to commit illegal activities has negative consequences in their lives.

The government of these countries must be able to impose rules that are in accordance with their own actions because, if they are corrupt or do not abide to the rules, the populations will follow their example. This leads us to the second issue, politics. Good governance practices should be fostered in an environment of generalized peace and trust.

Terrorism tends to spread in badly governed, poor and desperate populations in accordance with the difficulties they go through. At the same time, we must not forget that fear is instrumental to control natural resources and their main distribution channels. And if these are oil and natural gas, the revenue is so high that they attract people who are willing to use any means to attain their goals.

Another variable is ethnical, but this is more difficult to establish. Firstly, because there is not always an ethnical division among angry populations. We must then conclude that there is in fact an insoluble conflict due to breaking-off of relations. Whether the instability does not truly represent ethnical conflicts but is a result of contextual upheavals or due to other circumstances.

There is also the religious issue, which is simultaneously cultural. Regardless of what is written in the holy book, there are always religious leaders who give it their own interpretation. If it is an extreme interpretation or if it leads to fanatic behavior among his followers, rivalries and conflicts may arise which may be viewed as religious but which are rather more political and economic or social and cultural, in terms of translating the divine word to secular life. This occurs because religions are different and each people adapts religion to their own cultural roots and typical lifestyles.

Islamic fundamentalist groups as Boko Haram and AQIM aim to implement Sharia, the Islamic laws. Yet, regardless of their religious reading of the sacred texts or the reading of their cultures, we know they manipulate populations to more easily control them; for the populations to follow them.

In this network of contacts there are also Islamic fundamentalists and Touareg dissidents, a nomadic people with desire of independence and which have significant control over the desert routes, through which smuggling and international trafficking of arms, drugs, counterfeit medicines, humans and organs travel freely and with impunity. This trafficking is highly profitable and poses a real threat to physical and moral integrity of the peoples in Sahel.

While this high level of violence, corruption, lack of governance and values coexist with high unemployment rates and an unfair distribution of resources, it will be very difficult for anti-terrorist government measures for national security to be efficient. A change in favor of peace and human rights in the region will be very hard to implement.



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IN SEARCH OF SPACE FOR INTERNATIONAL INTEGRATION: THE PRAGMATISM OF BRAZILIAN FOREIGN POLICY IN THE FIRST DECADE OF THE 21ST CENTURY

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Abstract

This paper focuses on the pragmatism of Brazilian foreign policy in the first decade of the 21st century and discusses its performance in the context of an international agenda characterized by United States pressures on securitization. The text also discusses the consequences of American foreign policy in terms of adopting unilateral and exclusively military actions in the international scenario, considering the US helped to create most governance structures in the world.

Keywords:

Global governance; Brazilian foreign policy; securitization; international agenda; International Relations

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IN SEARCH OF SPACE FOR INTERNATIONAL INTEGRATION: THE PRAGMATISM OF BRAZILIAN FOREIGN POLICY IN THE FIRST DECADE OF THE 21ST CENTURY

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Introduction¹

Our contention is that the Brazilian foreign policy in the first decade of the 21st century used skilful pragmatism towards Brazil's international integration².

The emergence of new patterns in international relations during the first decade of the 21st century is an issue that deserves some considerations because it influences the analyses and the perception of major actors in contemporary political agenda³. In fact, this period was characterized by circumstances related to the globalization process in a context where the reconfiguring of power is visible.

As a consequence of these developments, new actors are clearly emerging - as is the case of, for example, G-20 and BRICS⁴ - ready to and already performing new roles in international agenda. While some of the new state functions are carried out by new actors, a new scenario is developing in which global governance⁵ is gradually a more inescapable reality in contemporary international relations.

Though we do not aim to summarize the debate on this issue, this paper focuses on analyzing, from a non-deterministic perspective, developments linked to Brazil's international integration from the point of view of the options taken in terms of its foreign policy during the first decade of the 21st century.

Within this analytical framework, two main issues will be directly discussed. The first is the relations with the United States. The second is connected to the first and concerns the Brazilian foreign policy agenda in the context of multilateral global relations. Our

¹ Although the foreign policy of Dilma Rousseff's administration, which began in 2011, shares similarities with that of Lula's (Visentini 2011), this paper focuses only on the first decade of the 21st century.

² Noteworthy is the fact that the said pragmatism is not a novelty in terms of Brazilian Foreign Policy but rather one of its distinctive traits and, thus, a continuity feature. Therefore, we will briefly analyze Brazilian foreign policy in terms of bilateral relations with the United States during the first decade of the 21st century, as well as actions concerning global governance.

³ G. John Ikenberry and Anne-Marie Slaughter, co-directors of the *Princeton Project on National Security*, state some of these perceptions in *Forging a World of Liberty under Law, 2006*. Available at <http://www.princeton.edu/~ppns/report/FinalReport.pdf>. For these scholars, the world does not generally have one organizing principle in the first decade of the 21st century, such as anti-fascism or anti-communism. Noteworthy is that these patterns do not necessarily arise in the 21st century but have rather been evolving since the fall of the Berlin wall.

⁴ In 2006, the concept of BRICs, created by Jim O'Neal, gave origin to a group incorporated in Brazilian, Russian, Indian and Chinese foreign policy. In 2011, in the Third Summit, South Africa became a member of the group.

⁵ According to the UN Commission on Global Governance (1995), global governance is viewed as "the set of ways in which individuals and institutions, public and private, manage common matters. It is a continuous process through which conflict or different interests may be accommodated and cooperation may occur... At global level, Governance was essentially seen as intergovernmental relations but today it may be viewed as involving non-governmental organizations, citizen movements, multinational corporations and the global capital market."



contention is that, despite the unquestionable (especially military) hegemony of the United States, the first decade of the century evidenced the existence of space for old and new actors to participate in the international agenda.

The emphasis on themes related to security in the American foreign policy after the end of 2001, and the differences between that and the major themes in the international agenda during the first decade of the century, have allowed for some of the parameters in international relations to be redefined in this period. Curiously, the United States military hegemony did not allow them to automatically and freely perform their actions as the planet's most powerful nation but rather eroded their leadership. The military component of their foreign policy in the referred period deeply affected US manoeuvrability in an international system with features inherent to a globalization process and the dynamics of global governance structures.

According to Gelson Fonseca Jr. (2008), though the United States have real power and are able to unilaterally promote any military action due to their strategic advantage, they have been experiencing defeat, especially because they were never open to work with partners to whom they would offer reciprocity to the support given. In this sense, the perception derived from analyzing American foreign policy in the last decades is that the country has increasingly lost its ability to project the so-called *soft power*, to use Joseph Nye's designation when referring to the types of power the United States may enforce. Therefore, there seems to be a gap between the ideals and the ability to implement them.

Noteworthy is the fact that, using the words of Stephen M. Walt, "as the universal ideals of freedom and democracy are basic principles for the Americans, leaders find it difficult to understand societies which do not promptly assimilate those ideals. Even when those leaders understand they are not able to create a *type of Central Asia Vahalla*, as the Secretary of State Robert Gates acknowledged in 2009, they continue to spend billions of dollars attempting to create a democracy in Afghanistan, a society that never became a centralized State or even a democracy"⁶.

Within the referred context, i.e., in the same period the United States have attempted to affirm their interests unilaterally⁷, it is important to emphasize the co-operation initiatives around the main issues in the international agenda, many of which led by Brazil, as is the case of initiatives within the reinforcement and re-dimensioning of global governance structures. Thus, despite American efforts to securitize the international agenda, when in terms of developing better global governance standards, we realize that in the debate on issues such as the environment, international trade and finances, among others, American institutional defeats are frequent (Fonseca Jr, 2008).

Due to an international agenda which cannot be decided solely from the point of view of international security, and in accordance to spaces in international system which cannot be filled considering the assumptions of security alone, other vectors in the structuring of the international scenario have now become relevant. As a result, multilateral

⁶ WALT, Stephen M. "Where Do Bad Ideas Come From?". *Foreign Policy*. January/February 2011. Available at http://www.foreignpolicy.com/articles/2011/01/02/here_do_bad_ideas_come_from?_page=0,1, retrieved in February, 2011.

⁷ They are unable to creatively meet the challenges presented by an international agenda that cannot be designed from the point of view of international security.



initiatives have emerged (for example, G-3, commercial G-20, increased relevance of financial G-20 after the 2008/2009 crisis).

According to Vizentini (2006), *variable geometry initiatives such as G-3 and G-20*, reflected Brazilian initiatives to coordinate efforts and ease space occupation in the international system, as well as evidenced the pragmatism of a strategy designed to expand national power.

The emergence of new patterns in international relations in the first decade of the 21st century presupposes, in turn, a new agenda characterized by the appearance of new actors and their interactions in the international system. In this paper, the word "new" is used to describe the rise of already existing actors in the international system, which now, due to their economic dynamism, have the ability to more assertively influence the international agenda - as is the case of China, India, Brazil, South Africa and Russia. These actors have gradually occupied space in international system⁸.

The context we described earlier appears to confirm the perception that the military relevance of the United States was not viewed as the unquestioned leader in political or economic fields and, though indispensable, the hegemonic nation is inevitably tied to developments in the international agenda - many of which are not always favourable to the US⁹.

At the risk of oversimplifying, we may summarize the American dilemma thus: by turning their back to the multilateral system, the US risk creating a reality in which the existence of rules for international interaction is totally dispensable. As a consequence, these interactions occur in circumstances which will hardly serve all those concerned.

Fareed Zakaria's (2008) arguments are relevant here, as the author analyzes the inevitability of a new world order, in which industrial, financial and cultural power are no longer controlled by the hegemonic power and in which a group of countries will counterbalance American power.

The dynamics of the international agenda in the first decade of the 21st century, therefore, accounts for this study. Initially, we will discuss the role of the United States in the definition of the international agenda and the perceptions other actors in the international system have of the country. Several authors have studied the hegemonic power of the United States, as well as the country's relation with other actors in the international system. John Ikenberry (2006) argues that the world order the United States helped to create is now threatened due to the country's hesitation in facing the challenges posed to the international agenda.

In the referred context, the guiding principles for Brazil's international integration seem to reflect its perception in terms of the superpower's contradictions in assessing costs and benefits of a foreign policy able to balance soft power and hard power. According to Mónica Hirst, "the differences between the two countries in terms of world policy will be maintained or heightened due to the United States' global strategic priorities since September 11. Brazil, in its attempt to have its own - to a certain extent alternative -

⁸ This space have often been left vacant by the traditional actors, the developed countries.

⁹ According to Joseph Nye, the success of the United States in the world - after so many changes - will depend on their ability to fully understand the nature and the role of soft power and at the same time find a balance between hard and soft power in their foreign policy. For Nye, smart power - power smartly used - is not hard or soft. Smart power is a combination of hard and soft power. In "Soft power and Higher Education", available at <http://net.educause.edu/ir/library/pdf/FFP0502S.pdf>.



field of action, has focused on multilateralism to deal with crisis situations in security and in international politics. In its foreign policy, Brazil has also focused on widening the political dialogue with intermediary powers such as South Africa and India, and with world powers, such as China and Russia"¹⁰.

As continuity is one of the defining assumptions of Brazilian foreign policy, we believe it has assimilated the misunderstanding that American strategy for the hemisphere is still based on strategic assumptions established in the 19th century and periodically renewed: that for the United States foreign policy, the hemisphere will continue to be *ad eternum* a preferred field of action¹¹.

In this sense, the pragmatism aimed to ease bilateral relations based on the assumption that both countries would never allow their relation to become a direct confrontation¹².

The securitization of the international agenda

The years after the terrorist attacks on September 11, 2001 deeply influenced the United States foreign policy-makers. Though, admittedly, this policy evidences several internal trends (among impulses, interests, beliefs and semiconscious desires of many people)¹³, 2001 may be considered a moment of change.

Most initiatives of the United States foreign policy are now conditioned by the so-called war on terror. At the same time, in terms of home policy, the American democratic system itself has been conditioned. While Congress approved the Patriot Act - extended in 2010 during the Obama administration - a legal tool used to increase the power of police authorities in the fight against terrorism, externally the United States attacked Iraq and Afghanistan against the United Nations and in a context in which preventative war has become essential from the point of view of Washington.

Faced with the challenge to respond internally and externally to the threat of terrorism, the American government has opted for a new interpretation of some basic American principles as, for example, the defence of democratic regimes and the concern with human rights, among others. In fact, such perception of the international agenda - under the pre-eminence of neo-conservatism - would condition Washington to commit a series of ambiguities in performing their foreign policy¹⁴; explicitly opting for a not using the strategy that had led them to success after World War II¹⁵.

¹⁰ Hirst, Mônica. "Os cinco «AS» das Relações Brasil -Estados Unidos: aliança, alinhamento, autonomia, ajustamento e afirmação" In ALTEMANI, Henrique & LESSA, Antônio Carlos (orgs) *Relações Internacionais do Brasil: temas e agendas*, pp.91-17. Vol.1. São Paulo, Saraiva: 2006.

¹¹ Noteworthy here are Cristina Soreanu Pecequillo's ideas on US perception of Latin America: "*Compared to other regions, Latin America is reasonably stable in US perception, which somewhat underestimate the disruptive impact of their social problems, ethnical interaction, crime and border issues. Bush senior's initiatives are a modern version of "America for the Americans", adapting the rules of the Monroe Doctrine, without deep changes in the dynamics of hemisphere relation or in the United States perception of their regional partners*". In "Manual do candidato: Política Internacional", p216-217. Brasília, Fundação Alexandre de Gusmão - MRE: 2010.

¹² See Mônica Hirst (op.cit.).

¹³ See MEAD, Walter Russell, *op. cit.* p. 23.

¹⁴ According to Francis Fukuyama, these principles are part of the American collective unconscious, especially while they are still described in the abstract. However, the fact that they are described in the abstract has allowed those ideas to be "*taken in different directions which have changed them, whenever misconstrued, into more than individual misunderstandings*". In "O dilema americano: democracia, poder



After World War II, the United States actively worked in the structuring of those bodies on which all the world's (and especially American) hope would be placed of an order able to stop the anarchy typical of an international system. This way, the United States, according to Anne-Marie Slaughter (2007), accepted to restrain themselves, under certain circumstances, heading the foundation of the United Nations Organization and, by doing so, not only did they empower themselves but were also able to organize alliances against their opponents.

The concept, common among United States foreign policy-makers at the time was that it was necessary to face your opponents not wanting to conquer or dominate them but rather taking their points of view into consideration and accepting possible disputes. This way, United States participation in these power disputes, though apparently restricting their field of action, were in fact sources of power (Slaughter, 2007). According to Chanda (2008), under the leadership of Roosevelt and Truman, the United States - then the most powerful country in the world, not only in military terms - opted for creating a cooperative world in which their leadership was highly beneficial for them.

The change in perception of their position in accordance with international agenda after 2001, Washington clearly abandoned the assets their foreign policy had earned in the previous decades. As a result, the idea of performing a "benevolent hegemony" (Fukuyama, 2006) clearly overestimates American capacity to freely accept the international agenda.

Just as the first moment after the Cold War led to optimism in the international system, which would soon become anxiety, the change in American foreign policy after 2001 contributed to new perceptions within the international community on the limits of hegemonic power, especially when we analyze the results of the military option and its limitations. Curiously, Washington continued to harden its positions in the multilateral scenario, even when the limitations to its soft power became visible.

Brazil and the international agenda in the first decade of the 19th century

The international agenda in the first decade of the 21st century was deeply influenced by American efforts to shape it according to their security concerns. From this point of view, the United States allowed themselves to believe that exercising their military hegemony would have easily assimilated costs. In truth, by not believing in multilateralism and focusing on a vision limited to their national interests, supported merely by their military capacity, the United States ignored one of the most relevant elements of the globalization process, of which they were leaders: the interdependency among actors in the international system.

e o legado do neoconservadorismo", pp. 18-19. Translated by Nivaldo Montigelli Jr.- Rio de Janeiro: Rocco, 2006.

¹⁵ Still according to Fukuyama (op. Cit, p.71), "*In the period immediately after World War II, American power was used not only to prevent Soviet aggression but also to create a series of international organizations and agreements, from institution connected to Bretton Woods (the World Bank and the International Monetary Fund) to the UN, NATO, the Security Treaty between the US and Japan, the Australia, New Zealand and United States Security Treaty (ANZUS), GATT and others*".



Though the globalization process is now unabated, you cannot ignore the interdependency among most state actors, regardless of their size. In fact, in a globalized world, international order can no longer be theoretically defined in a simple manner. The period in which two ideologies represented international dispute is long gone, the cohesion factors in the so-called western world can no longer guarantee to the United States that they will maintain a network of allies, especially when they appear to believe that exercising their military hegemony will be enough to guarantee their preponderance in defining the international agenda.

In this context, the conditions affecting the structuring of new patterns in international order seem to confirm that this is not confined to military options. International politics in the last few years has combined, in a complex way, the vectors of the United States hegemonic unilateralism and the patterns derived from globalization in its multilateral dimension.

Considering that the hegemonic power remains indifferent or unable to understand the need to exercise a leadership which is more comprehensive and in accordance with the complexities of the international agenda, gaps are arising in international relations structure where other actors seem to move around better than the superpower.

It is less and less likely that military power alone can define international order. At the same time, and as Zakaria stated, the role of other powers has gradually increased (2008). According to this perspective, Brazil defined a strategy of international integration that was extremely assertive in the sense of occupying spaces within the international agenda where its action was relevant.

Near the end of Fernando Henrique Cardoso's second mandate and during the Lula administration, Brazil tried more intensely to find a new dimension for its international integration. However, it was during the administration of Luis Inácio 'Lula' da Silva that the country tried to exercise a foreign policy visibly more tied to the heritage left by the so-called Independent Foreign Policy¹⁶, with features from Responsible Pragmatism¹⁷ from the Geisel administration and from Universalism¹⁸ from the Figueiredo administration¹⁹.

In view of the complexity of the international agenda at the beginning of the new century, the perception of Brazilian foreign policy-makers in that period suggests there is a high degree of continuity between the FHC and Lula administrations, as the efforts for economic stability and international integration were well taken advantage of by the latter.

¹⁶ In Paulo Fagundes Vizentini's opinion, the Independent Foreign Policy was a "response by Brazilian diplomacy to fast international changes, in particular to the emergence of new actors and the changes in other actors, whose needs and desires placed them outside main political centres.

¹⁷ According to Luis Felipe de Seixas Corrêa, "responsible pragmatism" was a foreign policy guideline which allowed "Brazilian diplomacy to leave behind ideological burdens or alignments that prevented the country from establishing alliances and relations in accordance with their unilateral interests in political or economic terms".

¹⁸ The Diplomacy of Universalism by the Figueiredo administration tried to keep Brazil's autonomy in an unfavourable international scenario while maintaining features of continuity with the assumptions of Responsible Pragmatism.

¹⁹ *Balanço da Política Externa do Governo Lula (2003-2010)* states that "Foreign policy between 2003 and 2010 was guided by the idea that Brazil should take on an increasingly important role in the international scenario, evidencing a proud and sovereign external image". Available at [link](#) website of Ministério das Relações Exteriores (MRE): [Anexo_integra_Balanco MRE.doc](#).



As an example of this, it is important to refer the reinforcement of the agenda for South America during the FHC administration and its efforts in keeping the integration process within a context of preserving autonomy in relation to American hegemony. These initiatives - attempts to have a more pragmatic perception of international relations - were deepened within the scope of foreign policy in the Lula administration.

Within the scope of commercial multilateralism, the positions of the United States and of the European Union were clearly understood, as these were tied to the interests of internal actors, for example, lobbies dedicated to maintaining extraordinary agricultural subsidies. Meanwhile, the diffusion of other spheres of international power became clear evidence that new spaces have emerged for new actors (among which, Brazil) in the structuring of the international agenda.

The pragmatism of Brazilian foreign policy in the first decade of the 21st century is that of an autonomy which is not exclusively confrontational but rather a combination of factors such as cooperation with several actors in different spheres, as well as a low profile in delicate questions within North-South relations. This means that Brazilian foreign policy in this period is the pragmatic combination of several axes (besides North-South axis) (Pecequillo, 2010).

Coordinating initiatives such as the structure of G-3 or G-20, together with the effort in emphasizing multilateral initiatives (*vis-à-vis* a greater involvement in UN peace operations and the effective use of WTO as a forum to reduce controversy in international trade), establish the referred pragmatism of Brazilian foreign policy. Together with actors such as South Africa, China, India and Russia, Brazil has expanded the scope of its participation in the debate of many global themes²⁰.

The decrease in American capacity to meet the challenges posed by the international agenda gained a new dimension during the 2008 global financial crisis, when important financial institutions collapsed and the economic activity throughout the globe also decreased. Important is to verify that, even before the crisis, according to Anup Shah (2010), several scholars had already noticed a new decline, evidenced especially in the way America faced challenges in Iraq and Afghanistan, as well as the deterioration of the country's image in Europe, Asia and other parts of the world.

Brazilian diplomacy in this context, as a reflection of positions observed after 2003, when G-3 and G-20 appeared, focused on gaining a leadership position within the debate, which ultimately led to positive results in initiatives related to changing some of the global governance structures - such as the International Monetary Fund and the World Bank - into institutions more representative of the weight of developing countries.

We can see, therefore, that despite American military power, its limitations have been dramatically exposed, especially as far the vulnerability of the only superpower in terms of defining the economic and financial elements in global agenda, exactly the space in which the coordinated effort of new actors has counterbalanced the influence of the United States.

²⁰ See "*Balanço da Política Externa do Governo Lula (2003-2010)*", available *link* at website of Ministério das Relações Exteriores (MRE): [Anexo_integra_Balanco MRE.doc](#).



Brazilian foreign policy: a pragmatic international integration

Obviously, the apparent decline of the United States does not mean in any way that the country is no longer relevant in the international system. Rather the opposite, we cannot consider any 21st century challenge without understanding and carefully considering the vectors of American foreign policy. However, and paradoxically, what has gradually become more visible is that exercising this hegemony is not always in parallel with the trends of the international agenda.

Whatever the circumstances in which the hegemonic country exercises its power, a reality seems to be established in which new international actors emerged in the spaces the United States no longer occupy. This means that the rise of new powers and the relation between the United States and these new powers seem interrelated phenomena (Zakarias, 2008)²¹.

In this sense, Brazil's international integration strategy in the first decade of the 21st century is clearly evidence of further pragmatic exercising of its foreign policy. By acknowledging the limitations that United States use of military power has been experiencing, as well as dilemmas of the country in exercising all branches of power, Brazilian diplomacy and that of other emerging nations have taken on a role of international integration in accordance with rules of multilateral mechanisms the America helped to create.

This use of multilateralism is justified because, as a consequence of the emergence of multilateralism, an element is developed which can break away from the duality hegemony and balance of power, because of the specificities of multilateral diplomacy, able to express values such as justice and rationality at international level (Fonseca Jr, 2008).

Paradoxically, as previously discussed, the United States increased the dilemmas of their foreign policy by undermining the actions of some global governance structures in which they had invested part of their power in during the past decades. At the same time, other nations - among which Brazil - started to use these vectors as relevant tools in international integration.

Noteworthy is the fact that the costs of opting for a policy of power - not only for the United States, but for any other power - will lead to an inability to coordinate responses to challenges of the international agenda which are based on cooperation and in the ideals of multilateralism. International politics in the first decade of the 21st century reflected these circumstances.

Amado Luiz Cervo, in a text written in 2001, stated that the role of the United States as the keeper of international order and security would probably not become a geostrategic paradigm based on factors such as unilateral and introspective view of international order, in the difficult dialogue, as well as American inability to tolerate other interests at play in international relations.

²¹ For Zakaria, this shows that the power of the USA is put into perspective. Though for some analysts, this putting into perspective does not necessarily imply American decline, we realize that US inability to implement their desires in specific situations cannot be in any way considered one of the vectors of their hegemony.



Within the framework of the pragmatism adopted by Brazilian foreign policy in the first decade of the 21st century, the strategy of international integration seems to have led to a positive outcome, considering that multilateralism integrated the Brazilian option to combine several axes within their international integration.

Noteworthy is, again, to remember the importance of continuity in Brazilian foreign policy.²² From this point of view and in accordance with its ability to exercise its own elements of power, the pragmatism of Brazilian foreign policy in the first decade of the 21st century allowed the country to more actively participate in the definition of many parameters in the international agenda.

Conclusion

Brazil option for a foreign policy we defined as pragmatic did not imply a deep change in its strategy of international integration in the last decades. In fact, if the dynamics of Brazilian growth is analyzed and the tradition of continuity in foreign policy-making, especially after the 1960s, we realize that pragmatism has been part of initiatives in this policy.

Besides, in the same context, though it seems to have assimilated the United States inability to manage a more assertive foreign policy for its own hemisphere, the lack of divergences between Brazil and the United States evidences there is space for furthering bilateral relations and overcoming existing gaps.

Finally, though there is no evidence that American foreign policy will become more assertive and converging with the dynamics of the international agenda for the hemisphere, we must not forget that, on the other hand, the pragmatism of Brazilian foreign policy in the last years, in accordance with its rationality and continuity (Patrício, 2008), has become an instrument able to enhance the country's international integration.

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²² According to Raquel Patrício, "In the evolution of Brasil foreign policy, certain principles and values are being added to the diplomacy. These principles and values became inherent to Brazilian foreign policy and are so specific that, besides providing predictability to Brazilian foreign action, they shape the country's position and are imposed on governments and even regimes. Furthermore, they contribute to Brazilian foreign policy becoming a real State policy, providing it with rationality and continuity rather than change."



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Thoughts and Considerations

CLIMATE CHANGE AS THE DEFINING CRISIS FOR THE 21st CENTURY

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Viriato Soromenho-Marques (1957) teaches Political Philosophy, Philosophy of Nature, and European Ideas in the Departments of Philosophy and European Studies of the University of Lisbon, where he is Full Professor. Since 1978 he has been engaged in the civic environmental movement in Portugal and Europe. He was Chairman of *Quercus* (1992-1995). He is member of the *National Council on Environment and Sustainable Development*. He was Vice-Chair of the *European Environmental and Sustainable Development Advisory Councils* network (2001-2006). He was the scientific coordinator of the Gulbenkian Environment Program (2007-2011). He was one of the twelve members of the High Level Group on Energy and Climate Change by invitation of the President of the European Commission (2007-2010). In the spring of 2008 he was elected member of the Lisbon Academy of Sciences, Class of Humanities (Letras). He was the representative of public opinion in the *Press Council* (1985-1987). He is a regular contributor to some Portuguese *mass media*, particularly, the *Jornal de Letras*, *Rádio Renascença*, the public television network (RTP), *Diário de Notícias*, *Visão*, and the Portuguese and Brazilian Sections of the BBC. He wrote over three hundred works on Philosophy, Environment and International Relations matters. He was speaker in over one thousand conferences in Portugal and twenty three other countries.

By the end of the current year the Kyoto Protocol to the United Nations Framework Convention on Climate Change (UNFCCC) will expire, with no international regime to follow its fragile achievements. In the current landscape of economic and finance crisis and political incompetence, the international community is about to enter in a no man's land regarding the most important ontological challenge human civilization will face during this century.

In his first inaugural speech, read on the 4th March 1933, President Franklin Delano Roosevelt depicted the somber landscape of his country ravaged by poverty, unemployment, and despair. However, he saw that amidst the overwhelming bitterness there was a glimpse of hope: "Nature still offers her bounty.

Three years ago, in a Conference hosted by TERI, the institute led by Dr. Rajendra K. Pachauri, in New Delhi, I listened to the strong moving words of Mr. Anote Tong, President of the Republic of Kiribati, an island country stretching over millions of square kilometers in the central Pacific Ocean, severely endangered by the rising level of the sea. He presented himself to a silent assembly: "I am the President of a country that is going to disappear under water..."



In 2012, like in 1933, the world is under the shadow of a major finance and economic meltdown. In the case of Europe, the situation is even worst. Very quickly the so called "sovereign debt crisis" is changing its nature. More and more, it's becoming a terrific political crisis that can throw over 60 years of European integration into the abyss. Awakening in the process long sleeping devils of an European history marked by turmoil and bloodshed. Besides that, in 2012, however, we can no more share the hope of President F.D. Roosevelt. Now, Nature isn't offering us her blessings but rather her angry feelings, after many decades and centuries of aggression and ill management by human greed and folly. In a crowded planet, not with 2 billion like in Roosevelt years, but over 7 billion people, the major crisis that is growing between us and a sustainable future it isn't at the heart of economic nature, but rather a global environmental crisis. A crisis that becomes more visible to the world through the numerous extreme events of climate change.

§1.

We need to build a common narrative on the seriousness of climate change

Climate change is the most important indicator of the exceptional nature of our time.

More than a century ago some pioneers had already alerted towards the risk of a collision course between our way of life, driven by a still young, immature and primitive technological and scientific structure, and the complex realm of dimensions of what was called during millennia by the word "Nature", and it's named now as "Environment".

Climate change emerged in the last twenty five years as **the clear evidence of that collision course**, which is not a mere suspicion, but a matter of factual truth, repeatedly confirmed by the numerous collecting-data networks that cover the Earth system, from artificial satellites to monitoring devices installed under the oceans waters or inside the ice of glaciers and in the permafrost cover, both on Siberia or Western Antarctica.

The current generations living on Earth have a unique and overwhelming responsibility, with no match in any historical situation ever.

The first task over our shoulders is the need to establish a solid and lasting consensus about the **profoundly seriousness and novelty of the danger presented by the climate change process**.

Climate change contains in itself the prospect of a row of possible future events that would merge in a global tragedy. Accordingly, there is an extreme urgency in the need of dissipating, on the grounds of factual and scientific evidence, those myths that tell us about "winners and losers" in the climate crisis. When the "Titanic" sank, the luxury of the cabins was completely indifferent regarding the sad sake of all those who died in the shipwreck. **In the long run there are only climate change losers.**

What is really at stake, in our present decisions, is the future of humankind. Thomas Jefferson, the third American President, wrote that we should avoid both budget deficit and public debt on the ground of the fairness principle between generations. Upon an



even more strong reason, we need to abide by the moral and political imperative of fighting against climate change if we want to be fair towards our children and grandchildren. **We have the moral obligation to avoid a kind of ontological debt, impossible to be solved.**

§2.

Towards a new global environmental and climate regime

The second task that should unite today humans everywhere is the enlightened refusal of old methods of thinking and doing, of "business as usual" habits.

We have to understand that the chief driving force that will allow us to find solutions with a similar scale and size of our current environmental and climate problems is the **ability to create new political procedures for decision making and new forms of governance**. That assertion is valid both for States and international relations and for small and large private organizations within civil society as well.

In spite of all its current limitations and stalemate, the European Union was certainly the best contemporary example of innovation at political level. The replacement of an endemic culture of hate and war by institutions that enhance peace and cooperation was certainly, until there years from now, an experience with strong universal power of inspiration.

The ambitious proposals advanced since the March 2007 European Council, regarding a new policy linking energy and climate change should be read not only as an internal challenge, directed to the 27 Member States, but also as a negotiation agenda offered by the EU to the rest of the world aiming the need to go further -- after the end of the Kyoto Protocol to the United Nations Convention on Climate Change (UNFCCC), that will expire by the 31st December 2012 -- in a more effective path of mitigation and adaptation policies towards climate change, within the wide range open by the UNFCCC.

In spite of the truly global disappointment represented by the negative outcome of the COP 15, in Copenhagen, in December 2009, we should strive harder for a truly **Pact on Environment and Climate Protection** that should include every country and nation in the planet. Respecting however the **principle of common but differentiated responsibilities**, every country, either developed or developing, should contribute to the common goal. The reduction and stabilizations of GHG emissions should result from the flexible combination of targets and instruments, using both market mechanisms and regulation, striving for technological innovation but recurring also to a more efficient use of already existing hardware, creating national and sector caps, but also preserving forests and enhancing the positive role of agriculture in the carbon cycle.

§3.

Two ways ahead of us

If we allow ourselves to be conquered by the inertia of political egoism, by the narrow logic of the "balance of power" and "national interest", we will lose the battle against climate change, entering immediately after the end of the current year into a hobbesian



climate and environmental "state of nature". Instead of a global regime for reduction and stabilizing of the GHG emissions and concentration, we would be placed before a tremendous drain in human skills and financial resources, sacrificed in the altar of a new arms race serving the fight to accede to dwindling natural resources. Such somber situation could at the end of the road drive us to a new major war and a formidable collapse with no parallel in history. In that case, the "Tragedy of the Commons", studied by Garrett Hardin in 1968, would take real shape before our hopeless eyes.

On the contrary, if we are able to design and implement the political institutions convenient to what I usually call "**compulsory co-operation**", meaning the urgent need to work together for the common interest of mutual survival, in that case we would have tremendous chances of being able to merge together the best of human intelligence and ingenuity in the endeavor of accomplishing a new industrial revolution, probably the first step to a clever way of living together in the world, creating a new global economy, freeing itself gradually from fossil fuels, and prone to establish a symbiotic, non predatory connection with the Earth ecosystems.

This is the great challenge before of us. Not jut for today or tomorrow, but for the 21st century as a whole. This is also a challenge that should invite European not only to bind together within the framework of the European Union, but to improve its hardware in the direction of a truly federal polity.

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Thoughts and Considerations

INTERNATIONAL SEMINAR: "Climate Change and its social and environmental repercussions"

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The International Seminar on "Climate change and its social and environmental repercussions" ("Alterações Climáticas e suas repercussões socio-ambientais") took place from 20 to 23 August 2012 in Palácio dos Congressos, in the city of São Tomé, Democratic Republic of São Tomé and Príncipe. This meeting was organized by a group of nine public, private and civil society institutions acting in São Tomé and Príncipe, Portugal and Spain, in compliance with the principles of international partnership: Direção-Geral do Ambiente (DGA)¹ and Direção das Florestas (DF)² of the Democratic Republic of São Tomé and Príncipe; Observatório de Relações Exteriores, Universidade Autónoma de Lisboa (OBSERVARE, UAL)³; Instituto de Ciências Sociais da Universidade

¹ Dr. Arlindo de Carvalho, director of the governmental office Direção-Geral do Ambiente (Directorate-General for the Environment) of the Republic of São Tomé and Príncipe, was our liaison. The technical team at Direção-Geral, in particular the chemical engineer Sulisa Quaresma and Dra. Aline Castro, also collaborated with the project. Direção-Geral do Ambiente was the local coordinator, ensuring logistics and coordination with the other national partners.

² Direção das Florestas (Directorate-General for Forests) was represented by its director, Eng. Faustino Oliveira. Meyer António, forest engineer in Departamento de Biodiversidade, Sensibilização e Estudos (Department of Biodiversity, Awareness and Studies) played a key role in the organization of practical activities in the forest area, for which he was responsible.

³ The author represented OBSERVARE and Universidade Autónoma de Lisboa as she is Auxiliary Professor in the International Relations Department, researcher within the international relations research unit and Sub-director of JANUS.net, *e-journal of international relations*. She was responsible for international coordination of the Seminar, ensuring the link-up among the different partners, selecting papers, structuring the scientific and the practical activities' programs as well as the creation and management of its webpage and the contents made available.



de Lisboa (ICS-UL)⁴; Universidad de Santiago de Compostela (USC), International Association of Investigators for Environmental Education (NEREA Investiga) and Associação Portuguesa de Educação Ambiental (AsPEA)⁵; Centro de Extensão Universitária e Divulgação Ambiental de Galicia (CEIDA)⁶; the NGO from S. Tomé and Príncipe Mar, Ambiente e Pesca Artesanal⁷ (MARAPA).

Nationally, the meeting was considered important both in terms of theme relevance and approach as well as because it offered the possibility to further projects and organize events based on the principles of Partnerships for Development (PD). State representatives from the Republic of São Tomé and Príncipe acknowledged the importance of the seminar through institutional support provided by the Presidency and through the involvement of government members who actively participated in the programmed activities⁸. National technical staff considered the Seminar an opportunity for informal training, a means to meet or better know the speakers, thus allowing for the establishment of a network of different actors.

Thirty experts from three countries, São Tomé and Príncipe, Portugal and Spain, were present, all from different fields including Sociology, Anthropology, Geography, Economy, Law, Pedagogy, Environmental Engineering and Biology; and about a hundred and fifty participants contributed to the debates. The papers were allocated to the four theme panels - I) Frameworks; II and III) Insularity in debate; IV) Strategies for the future -, which allowed for critical debate on climate change from the perspective of its impact, though always bearing in mind internationalization by means of international cooperation mechanisms.

The program was devised considering a multidisciplinary approach so as foster the mixing of theory, methodology and strategy and focus on pragmatic solutions for real and previously identified issues. Therefore, real problems related to insularity were presented, especially in São Tomé and Príncipe and Cape Verde, as well as problems in continental areas, particularly in Portugal and Spain, though never neglecting to consider these as part of global issues.

The great common concerns to all speakers and participants, regardless of their geographical context, considered as resulting from climate change were:

- a) increasing social and economic precariousness of local populations, which has caused them to become more and more vulnerable and made them redefine strategies to get more income thus leading to more environmental damage;
- b) identification of key sectors in society and economy, considered crucial to ensure social and environmental sustainability but which are impacted by climate change

⁴ Professor Maria Luisa Schmidt, who represented Instituto de Ciências Sociais da Universidade de Lisboa, has coordinated research projects on social and environmental impact of climate change.

⁵ The three institutions - Universidad de Santiago de Compostela, International Association of Investigators for Environmental Education and Associação Portuguesa de Educação Ambiental – were represented by Dr. Joaquim Ramos Pinto, a specialist in Environmental Education and the driving force behind *Plataforma Lusófona de Educação Ambiental*.

⁶ The partner CEIDA was represented by its director, Dr. Carlos Vales Vázquez, who represented the network PARDELA, *Rede Hispano-Lusófona de Gestores de Áreas Naturais Protegidas*.

⁷ The NGO MARAPA was represented by its president, Eng. Jorge de Carvalho do Rio. Technicians from MARAPA assisted in the organization and implementation of practical activities in the coast and the sea areas, namely Elísio Neto, Hipólito Lima, Anne Vidie and Bastien Loloum.

⁸ The Minister for Public Works and Natural Resources, Eng. Carlos Vila Nova, gave the opening speech and the Minister for Planning and Development, Dr. Agostinho Fernandes, gave the closing speech.



- first. Most vulnerable activities include: fisheries, particularly artisanal fisheries; agriculture; non-intensive rearing of livestock; exploitation of natural resources for immediate consumption or semi-processing;
- c) increasing frailty of ecosystems, particularly those in coastal and transitional areas due to erosion, shortage of rain and rise in the seawater level;
 - d) the risk of loss of biodiversity, including in endemic and vulnerable fauna and flora whose number is decreasing globally and which are viewed as more than indigenous species, as element of natural world heritage;
 - e) the need to adopt global international measures, framed and supported by formal, informal, bilateral, multilateral cooperation mechanisms promoted by civil society organizations, universities and research centers;
 - f) the urgent need to adapt national plans on management and use of common space and resources to internationally agreed measures in high level summits so as to create effective synergies which will promote a balance between the ratified principles and the practices carried out *in loco*;
 - g) the understanding that practical actions which imply adopting new behavioral models – by the State, corporations, groups and individuals – demand educational programs to raise awareness, train and provide guided information thus leading to a widened citizenship;
 - h) increase in the importance of a common human heritage, tangible and intangible, and the need for a global management which bears in mind the idea of what is common to all.

To complement the seminar and also be subject of debate, four field visits were organized: two to the forest area and the other two to the coast and the sea areas. These visits, promoted by national partners, took place on two separate days, included practical activities and were attended by both seminar speakers and participants.

- 1) the activities in the forest area were the responsibility of Direção das Florestas; the focus of the visits to the two very different places – the Botanic Garden of Bom Sucesso, at the entrance of Obô Natural Park and to the tree nurseries and Parque Florestal Urbano, a forest in the city - was species recognition and risk assessment due to climate change;
- 2) the activities carried out on the coast and at sea areas were organized by MARAPA, the NGO from São Tomé and Príncipe; their main concern was to show the risks some species are faced with, namely sea turtles and cetaceans. The activities carried out at sea involved collecting the eggs of the sea turtles and their transfer to an artificial incubator and cetacean watching, besides assessing the limitations these species are faced with.

All activities were considered an asset in terms of learning, as they allowed all participants, including the experts, to have new perspectives on this matter based on their experiences during the activities.

The main conclusions drawn from the sharing of ideas and experiences and from the debates were:



1. climate change is a global reality visible in several problems arising which have become globalized (have international impact), especially in fragile areas whose ecosystems are vulnerable, as is the case of islands;
2. the effects of climate change are of different types and more evident in small islands, especially in some geographical areas by the sea (increase of sea level, erosion, variations in biodiversity with an impact on species survival) and affecting their communities in particular;
3. the social and professional activities that are more impacted are those which either depend on halieutic resources (artisanal fisheries) or are related to other activities from the primary sector, such as agriculture, rearing of livestock and direct exploitation of natural resources (collection and artisanal processing);
4. tourism is an activity which, though closely dependent on climate change, contributes to its damage. However, it can minimize some of its impact if events are promoted to raise awareness, to regulate and control the damages;
5. there is an urgent need to adopt national measures (Plano de Ação da Direção-Geral do Ambiente) based on international criteria which allow for the correct treatment of solid waste, especially urban, and thus contribute to reduce gas emission and prevent accidents with chemicals pollutants that have a high social and economic impact;
6. the idea that, from an environmental point of view, there is the need for a shared responsibility is usually accepted by the international community; yet, this is not always the reality, which demands for an immediate intervention and differentiation criteria;
7. cooperation initiatives are viewed as strategic to minimize the problems caused by climate change, so they should focus on new models using participatory methodologies (formal and non formal environmental education; education in citizenship; education for development) which foster the responsible involvement of all stakeholders in the promotion of case by case behavior . These cooperation initiatives should allow for the involvement of traditional bilateral stakeholders as well as universities and research centers to facilitate education towards real needs;
8. all participants agreed that the strategy for promoting environmental education should continue and be enhanced through international cooperation, including through informal mechanisms;
9. there is a need to involve all actors – the State, Private organizations, Civil Society Organizations, Citizens and Universities – as co-responsible and enhance active and participating citizenship;
10. the opportunity should arise to further cooperation initiatives based on partnerships, even informal partnerships, among different actors and through different channels – bilateral, multilateral, and encompassing the scientific community through the involvement of universities and research centers.

Once all conclusions had been systematized, the decision was made to organize a series of initiatives to promote the ideas put forward:



1. The creation of the platform *Plataforma Lusófona de Educação Ambiental* identifying core points who will allow for the implementation of initiatives with Portuguese-speaking organizations. This platform encompasses universities and research centers, civil society organizations and representatives of the different States involved;
2. The enhancement of the network *Rede Pardela*⁹ - *Rede Hispano-Lusófona para a Gestão de Áreas Naturais Protegidas* – with more participants and a selection of future cooperation initiatives;
3. The organization of an annual Seminar based on international partnership and with the involvement of national actors. Though it may take place in other Portuguese-speaking countries, in 2013 the Seminar on "Reservas da Biosfera: Cooperação e Serviços Ambientais" ("Biosphere reserves: Cooperation and Environmental Services") will take place in Príncipe, with the agreement of all members of the Organization. This was widely acclaimed by the representatives of the archipelago;
4. The promotion of (eventually not formal) thematic training sessions so as to optimize the presence of the experts who participate in the Seminar as well as of the members of the Organization. These sessions will be mostly practical and focused on the perceived needs;
5. The online edition of Seminar Proceedings will be made available; eventually a reduced paper version may be published. In this case, a selection will be necessary of the papers to include.

⁹ See <http://www.pardela.org>

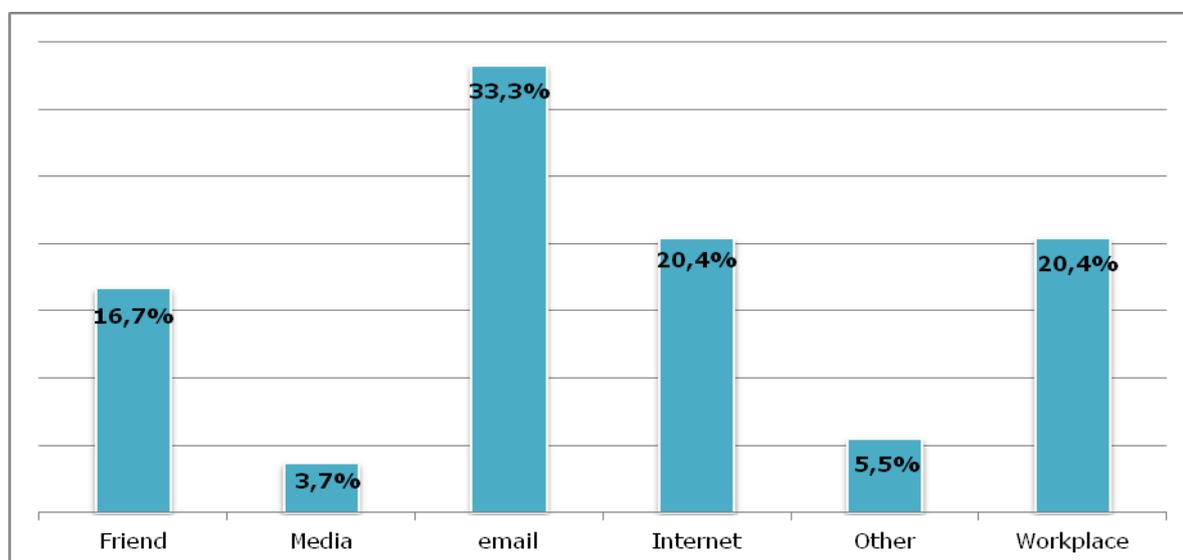


ATTACHMENT – Brief assessment of the International Seminar

An online questionnaire was applied to participants at the end of the Seminar. The objective was twofold: on the one hand, assess the relevance of the promoted activities and, on the other hand, understand the importance of carrying out new initiatives so as to understand which themes are priorities.

The analysis of the results (N=73) has enhanced the importance of the event to the archipelago. Most respondents knew of the event through email and the Internet (53.7% no total), some through information made available in their workplace (20.4%) and through friends (16.7%).

Chart 1 – How did you know about the Seminar?



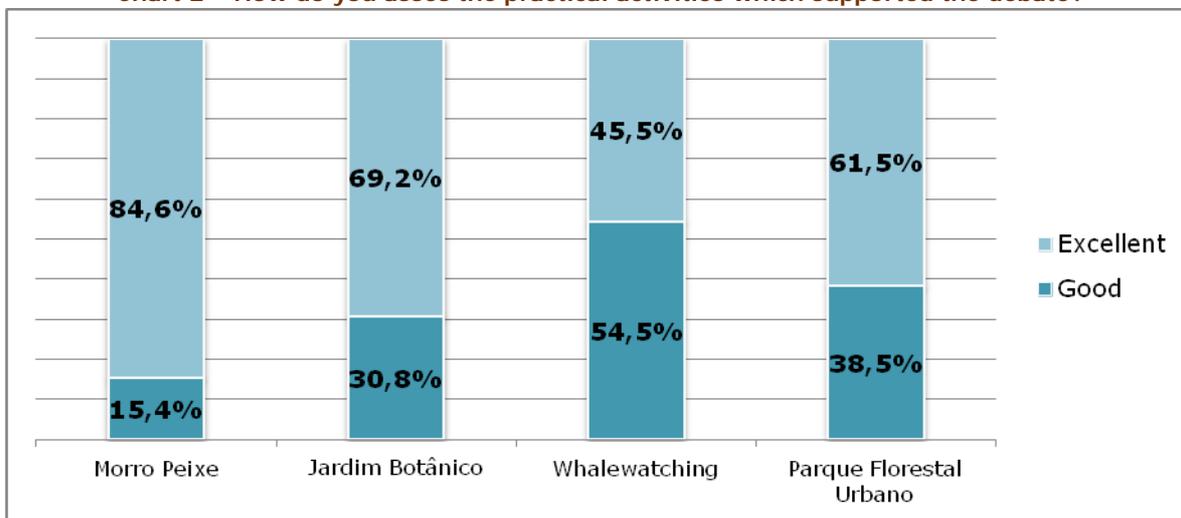
The information made available on the webpage¹⁰ especially created for the Seminar was considered sufficient and relevant by most respondents (97.1%).

As far as the practical activities are concerned, the assessment showed the relevance and importance of the activities on the coast and the sea areas, and in the forest area, to better contextualize the debates. Respondents rated these activities excellent or good in all items (the scale included the following options: excellent; good; average; indifferent; bad).

¹⁰ The webpage <http://climatechangestp2012.weebly.com/> is still active for consultation and documentation. It includes the presentations made available by the speakers, the book of abstracts, the opening and closing speeches, contacts of all speakers, the rationale and the reasons behind the choice of the archipelago of São Tomé and Príncipe for hosting the seminar.

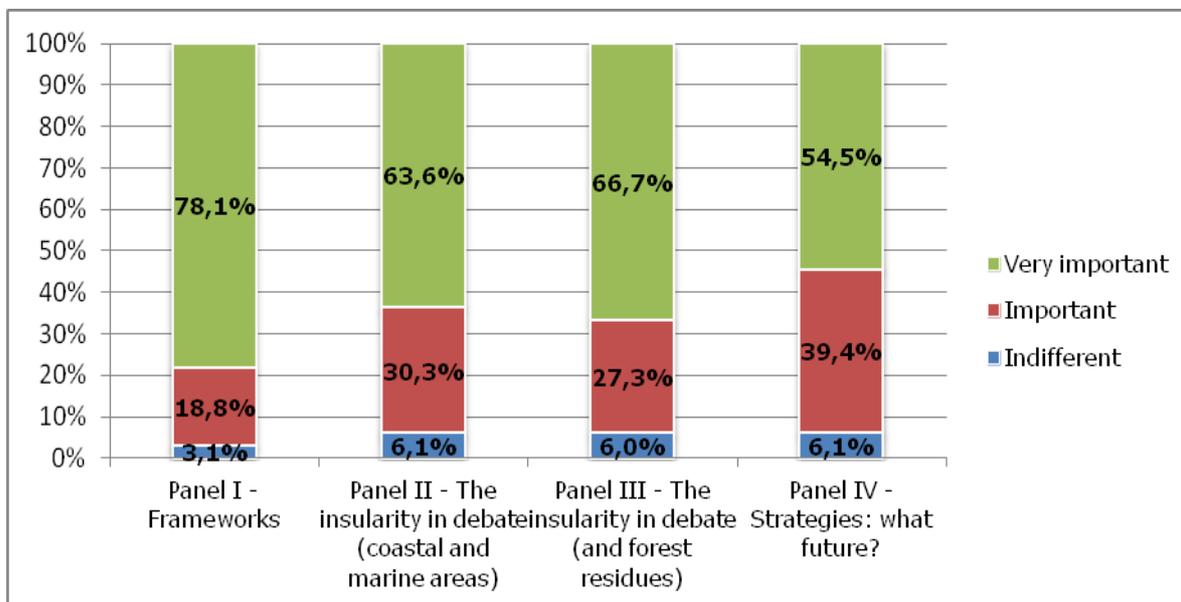


Chart 2 – How do you assess the practical activities which supported the debate?



Noteworthy is the fact that the activities considered excellent (84.6% at Morro Peixe; 69.2% at the Botanic Garden and 61.5% at Parque Florestal Urbano) were those whose aim was pedagogical, in which a close interpersonal relationship was formed between the participants and the local promoters and facilitators.

Chart 3 – How do you assess the papers presented at panel?

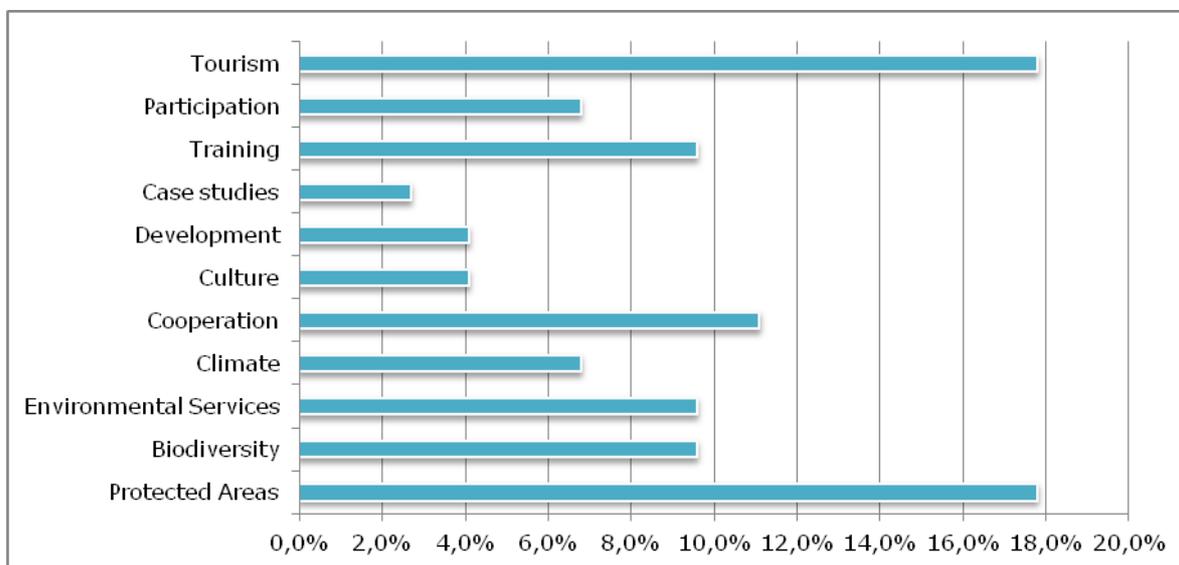


Respondents assessed the papers presented at panel as Very Important and Important; the option "indifferent" did not obtain a relevant result.

Most respondents (88.2%), when asked about the opportunity and relevance of future initiatives, replied stating their intention to participate in new events and selected some priority themes.



Chart 4 – What areas would you select for future scientific meetings?



The themes selected as priority for a future event were those directly related to the environment, namely those connected with protected areas, the problems of environmental services, conservation of biodiversity, the influence of climate and tourism. Cooperation for development, continuing of training sessions and use of participatory methodologies as a means of intervention were also selected. Thus, and bearing in mind the concerns mentioned, an international event will be organized in 2013 on cooperation and environmental services, including tourism, within the scope of protected areas, the reference being Reserva da Biosfera da Ilha do Príncipe. We hope new partnerships will be signed with other Biosphere Reserves, which will allow for exchange of experiences and further learning.

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